Form **990**

Department of the Treasury
Internal Revenue Service

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

▶ The organization may have to use a copy of this return to satisfy state reporting requirements.

OMB No 1545-0047

2003

Open to Public Inspection

A For the 2003 calendar year, or tax year beginning JAN 1, 2003 and ending MAR 31, 2003

B Check if applicable:
- ☐ Address change
- ☐ Name change
- ☐ Initial return
- ☐ Final return
- ☐ Amended return
- ☐ Application pending

Please use IRS label or print or type See Specific Instructions

C Name of organization
ACLU FOUNDATION OF SOUTHERN CALIFORNIA

Number and street (or P.O. box if mail is not delivered to street address) Room/suite
1616 BEVERLY BLVD.

City or town, state or country, and ZIP + 4
LOS ANGELES, CA 90026

D Employer identification number
95-2673361

E Telephone number
213/977-9500

F Accounting method ☐ Cash ☒ Accrual ☐ Other (specify) ▶

- Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts must attach a completed Schedule A (Form 990 or 990-EZ).

H and I are not applicable to section 527 organizations.

H(a) Is this a group return for affiliates? ☐ Yes ☒ No

H(b) If "Yes," enter number of affiliates ▶

H(c) Are all affiliates included? N/A ☐ Yes ☐ No (If "No," attach a list.)

H(d) Is this a separate return filed by an organization covered by a group ruling? ☐ Yes ☒ No

G Website: ▶WWW.ACLU-SC.ORG

J Organization type (check only one) ▶ ☒ 501(c)(3) ◀ (insert no) ☐ 4947(a)(1) or ☐ 527

K Check here ▶ ☐ if the organization's gross receipts are normally not more than $25,000. The organization need not file a return with the IRS; but if the organization received a Form 990 Package in the mail, it should file a return without financial data. **Some states require a complete return.**

I Group Exemption Number ▶

M Check ▶ ☐ if the organization is **not** required to attach Sch. B (Form 990, 990-EZ, or 990-PF).

L Gross receipts: Add lines 6b, 8b, 9b, and 10b to line 12 ▶ 564,861.

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances

Revenue	1	Contributions, gifts, grants, and similar amounts received:			
	a	Direct public support	1a	237,000.	
	b	Indirect public support	1b		
	c	Government contributions (grants)	1c		
	d	**Total** (add lines 1a through 1c) (cash $ 237,000. noncash $)			1d 237,000.
	2	Program service revenue including government fees and contracts (from Part VII, line 93)			2 32,335.
	3	Membership dues and assessments			3
	4	Interest on savings and temporary cash investments			4
	5	Dividends and interest from securities			5 85,586.
	6 a	Gross rents	6a		
	b	Less: rental expenses	6b		
	c	Net rental income or (loss) (subtract line 6b from line 6a)			6c
	7	Other investment income (describe ▶)			7
	8 a	Gross amount from sales of assets other than inventory	(A) Securities 209,740.	8a	(B) Other
	b	Less: cost or other basis and sales expenses	253,840.	8b	
	c	Gain or (loss) (attach schedule)	-44,100.	8c	
	d	Net gain or (loss) (combine line 8c, columns (A) and (B)) STMT 1			8d -44,100.
	9	Special events and activities (attach schedule). If any amount is from **gaming**, check here ▶ ☐			
	a	Gross revenue (not including $ 0. of contributions reported on line 1a)	9a 200.		
	b	Less: direct expenses other than fundraising expenses	9b		
	c	Net income or (loss) from special events (subtract line 9b from line 9a) SEE STATEMENT 2			9c 200.
	10 a	Gross sales of inventory, less returns and allowances	10a		
	b	Less: cost of goods sold	10b		
	c	Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a)			10c
	11	Other revenue (from Part VII, line 103)			11
	12	**Total revenue** (add lines 1d, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11)			12 311,021.
Expenses	13	Program services (from line 44, column (B))			13 653,650.
	14	Management and general (from line 44, column (C))			14 124,610.
	15	Fundraising (from line 44, column (D))			15 126,599.
	16	Payments to affiliates (attach schedule)			16
	17	**Total expenses** (add lines 16 and 44, column (A))			17 904,859.
Net Assets	18	Excess or (deficit) for the year (subtract line 17 from line 12)			18 -593,838.
	19	Net assets or fund balances at beginning of year (from line 73, column (A))			19 8,651,762.
	20	Other changes in net assets or fund balances (attach explanation) SEE STATEMENT 3			20 -50,706.
	21	Net assets or fund balances at end of year (combine lines 18, 19, and 20)			21 8,007,218.

RECEIVED
FEB 23 2004
867 IRS-OSC
OGDEN, UT

MAR 08 2004
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323001
12-17-03 LHA **For Paperwork Reduction Act Notice, see the separate instructions.** Form **990** (2003)

613

1

Part II Statement of Functional Expenses All organizations must complete column (A). Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others.

Do not include amounts reported on line 6b, 8b, 9b, 10b, or 16 of Part I		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22 Grants and allocations (attach schedule) cash $ ____ noncash $ ____	22				
23 Specific assistance to individuals (attach schedule)	23				
24 Benefits paid to or for members (attach schedule)	24				
25 Compensation of officers, directors, etc.	25	0.	0.	0.	0.
26 Other salaries and wages	26	522,194.	333,298.	94,629.	94,267.
27 Pension plan contributions	27	18,574.	18,065.	509.	
28 Other employee benefits	28	54,552.	35,757.	7,942.	10,853.
29 Payroll taxes	29	45,943.	33,654.	4,754.	7,535.
30 Professional fundraising fees	30				
31 Accounting fees	31	19,545.	14,896.	10.	4,639.
32 Legal fees	32	48,709.	48,709.		
33 Supplies	33	7,220.	5,973.	1,137.	110.
34 Telephone	34	11,922.	11,922.		
35 Postage and shipping	35	15,562.	13,785.	144.	1,633.
36 Occupancy	36	32,500.	32,500.		
37 Equipment rental and maintenance	37				
38 Printing and publications	38	16,920.	11,737.		5,183.
39 Travel	39	3,291.	949.	2,342.	
40 Conferences, conventions, and meetings	40	3,204.	771.	2,328.	105.
41 Interest	41				
42 Depreciation, depletion, etc. (attach schedule)	42	28,559.	28,559.		
43 Other expenses not covered above (itemize):					
a ____	43a				
b ____	43b				
c ____	43c				
d ____	43d				
e SEE STATEMENT 4	43e	76,164.	63,075.	10,815.	2,274.
44 Total functional expenses (add lines 22 through 43). Organizations completing columns (B)-(D), carry these totals to lines 13-15	44	904,859.	653,650.	124,610.	126,599.

Joint Costs. Check ▶ ☐ if you are following SOP 98-2.

Are any joint costs from a combined educational campaign and fundraising solicitation reported in (B) Program services? ▶ ☐ Yes ☒ No

If "Yes," enter (i) the aggregate amount of these joint costs $ ____ ; (ii) the amount allocated to Program services $ ____ ; (iii) the amount allocated to Management and general $ ____ ; and (iv) the amount allocated to Fundraising $ ____ .

Part III Statement of Program Service Accomplishments

What is the organization's primary exempt purpose? ▶

LEGAL SERVICES

All organizations must describe their exempt purpose achievements in a clear and concise manner State the number of clients served, publications issued, etc Discuss achievements that are not measurable (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others)

Program Service Expenses (Required for 501(c)(3) and (4) orgs., and 4947(a)(1) trusts, but optional for others)

a LEGAL SERVICES PROGRAM-NUMEROUS CASES SEE ATTACHED TABLE OF CONTENTS AND ALPHABETICAL LISTING OF CASES FROM LEGAL DOCKET FOR EXAMPLES

(Grants and allocations $) 653,650.

b ____ (Grants and allocations $)

c ____ (Grants and allocations $)

d ____ (Grants and allocations $)

e Other program services (attach schedule) (Grants and allocations $)

f **Total of Program Service Expenses** (should equal line 44, column (B), Program services) ▶ 653,650.

Part IV Balance Sheets

Note: *Where required, attached schedules and amounts within the description column should be for end-of-year amounts only.*				(A) Beginning of year		(B) End of year
Assets	45	Cash - non-interest-bearing		1,207,583.	45	979,828.
	46	Savings and temporary cash investments			46	
	47 a	Accounts receivable	47a 375,610.			
	b	Less: allowance for doubtful accounts	47b	475,806.	47c	375,610.
	48 a	Pledges receivable	48a			
	b	Less: allowance for doubtful accounts	48b		48c	
	49	Grants receivable			49	
	50	Receivables from officers, directors, trustees, and key employees			50	
	51 a	Other notes and loans receivable	51a			
	b	Less: allowance for doubtful accounts	51b		51c	
	52	Inventories for sale or use			52	
	53	Prepaid expenses and deferred charges			53	
	54	Investments - securities STMT 5 STMT 6 ▶ ☐ Cost ☒ FMV		6,494,643.	54	6,278,818.
	55 a	Investments - land, buildings, and equipment: basis	55a			
	b	Less: accumulated depreciation	55b		55c	
	56	Investments - other SEE STATEMENT 7		3,827,557.	56	3,654,686.
	57 a	Land, buildings, and equipment: basis	57a 3,219,267.			
	b	Less: accumulated depreciation STMT 8	57b 1,505,874.	1,739,824.	57c	1,713,393.
	58	Other assets (describe ▶ SEE STATEMENT 9)		162,053.	58	213,667.
	59	**Total assets** (add lines 45 through 58) (must equal line 74)		13,907,466.	59	13,216,002.
Liabilities	60	Accounts payable and accrued expenses		237,233.	60	235,136.
	61	Grants payable			61	
	62	Deferred revenue		1,772,810.	62	1,791,670.
	63	Loans from officers, directors, trustees, and key employees			63	
	64 a	Tax-exempt bond liabilities			64a	
	b	Mortgages and other notes payable			64b	
	65	Other liabilities (describe ▶ SEE STATEMENT 10)		3,245,661.	65	3,181,978.
	66	**Total liabilities** (add lines 60 through 65)		5,255,704.	66	5,208,784.
Net Assets or Fund Balances		**Organizations that follow SFAS 117, check here** ▶ ☒ and complete lines 67 through 69 and lines 73 and 74.				
	67	Unrestricted		6,495,632.	67	5,970,054.
	68	Temporarily restricted		1,448,362.	68	1,341,428.
	69	Permanently restricted		707,768.	69	695,736.
		Organizations that do not follow SFAS 117, check here ▶ ☐ and complete lines 70 through 74.				
	70	Capital stock, trust principal, or current funds			70	
	71	Paid-in or capital surplus, or land, building, and equipment fund			71	
	72	Retained earnings, endowment, accumulated income, or other funds			72	
	73	**Total net assets or fund balances** (add lines 67 through 69 **or** lines 70 through 72; column (A) **must** equal line 19; column (B) **must** equal line 21)		8,651,762.	73	8,007,218.
	74	**Total liabilities and net assets / fund balances** (add lines 66 and 73)		13,907,466.	74	13,216,002.

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

Part IV-A Reconciliation of Revenue per Audited Financial Statements with Revenue per Return

a Total revenue, gains, and other support per audited financial statements ▶	a	355,121.
b Amounts included on line a but not on line 12, Form 990:		
(1) Net unrealized gains on investments $		
(2) Donated services and use of facilities $		
(3) Recoveries of prior year grants $		
(4) Other (specify): STMT 11 $ 44,100.		
Add amounts on lines (1) through (4) ▶	b	44,100.
c Line a minus line b ▶	c	311,021.
d Amounts included on line 12, Form 990 but not on line a:		
(1) Investment expenses not included on line 6b, Form 990 $		
(2) Other (specify): $		
Add amounts on lines (1) and (2) ▶	d	0.
e Total revenue per line 12, Form 990 (line c plus line d) ▶	e	311,021.

Part IV-B Reconciliation of Expenses per Audited Financial Statements with Expenses per Return

a Total expenses and losses per audited financial statements ▶	a	999,665.
b Amounts included on line a but not on line 17, Form 990:		
(1) Donated services and use of facilities $		
(2) Prior year adjustments reported on line 20, Form 990 $		
(3) Losses reported on line 20, Form 990 $ 58,774.		
(4) Other (specify): STMT 12 $ 36,032.		
Add amounts on lines (1) through (4) ▶	b	94,806.
c Line a minus line b ▶	c	904,859.
d Amounts included on line 17, Form 990 but not on line a:		
(1) Investment expenses not included on line 6b, Form 990 $		
(2) Other (specify): $		
Add amounts on lines (1) and (2) ▶	d	0.
e Total expenses per line 17, Form 990 (line c plus line d) ▶	e	904,859.

Part V List of Officers, Directors, Trustees, and Key Employees (List each one even if not compensated.)

(A) Name and address	(B) Title and average hours per week devoted to position	(C) Compensation (If not paid, enter -0-.)	(D) Contributions to employee benefit plans & deferred compensation	(E) Expense account and other allowances
BOARD OF DIRECTORS (SEE ATTACHED ROSTER AS REQUIRED)		0.	0.	0.

75 Did any officer, director, trustee, or key employee receive aggregate compensation of more than $100,000 from your organization and all related organizations, of which more than $10,000 was provided by the related organizations? If "Yes," attach schedule. ▶ ☐ Yes ☒ No

Part VI Other Information

				Yes	No
76	Did the organization engage in any activity not previously reported to the IRS? If "Yes," attach a detailed description of each activity		76		X
77	Were any changes made in the organizing or governing documents but not reported to the IRS? If "Yes," attach a conformed copy of the changes.		77		X
78 a	Did the organization have unrelated business gross income of $1,000 or more during the year covered by this return?		78a		X
b	If "Yes," has it filed a tax return on **Form 990-T** for this year?	N/A	78b		
79	Was there a liquidation, dissolution, termination, or substantial contraction during the year? If "Yes," attach a statement		79		X
80 a	Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization?		80a	X	
b	If "Yes," enter the name of the organization ▶ ACLU OF SOUTHERN CALIFORNIA and check whether it is [X] exempt or [ ] nonexempt.				
81 a	Enter direct or indirect political expenditures. See line 81 instructions	81a 0.			
b	Did the organization file **Form 1120-POL** for this year?		81b		X
82 a	Did the organization receive donated services or the use of materials, equipment, or facilities at no charge or at substantially less than fair rental value?		82a		X
b	If "Yes," you may indicate the value of these items here. Do not include this amount as revenue in Part I or as an expense in Part II. (See instructions in Part III.)	82b N/A			
83 a	Did the organization comply with the public inspection requirements for returns and exemption applications?		83a	X	
b	Did the organization comply with the disclosure requirements relating to quid pro quo contributions?		83b	X	
84 a	Did the organization solicit any contributions or gifts that were not tax deductible?		84a		X
b	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?	N/A	84b		
85	*501(c)(4), (5), or (6) organizations.* a Were substantially all dues nondeductible by members?	N/A	85a		
b	Did the organization make only in-house lobbying expenditures of $2,000 or less?	N/A	85b		
	If "Yes" was answered to either 85a or 85b, **do not** complete 85c through 85h below unless the organization received a waiver for proxy tax owed for the prior year.				
c	Dues, assessments, and similar amounts from members	85c N/A			
d	Section 162(e) lobbying and political expenditures	85d N/A			
e	Aggregate nondeductible amount of section 6033(e)(1)(A) dues notices	85e N/A			
f	Taxable amount of lobbying and political expenditures (line 85d less 85e)	85f N/A			
g	Does the organization elect to pay the section 6033(e) tax on the amount on line 85f?	N/A	85g		
h	If section 6033(e)(1)(A) dues notices were sent, does the organization agree to add the amount on line 85f to its reasonable estimate of dues allocable to nondeductible lobbying and political expenditures for the following tax year?	N/A	85h		
86	*501(c)(7) organizations.* Enter: a Initiation fees and capital contributions included on line 12	86a N/A			
b	Gross receipts, included on line 12, for public use of club facilities	86b N/A			
87	*501(c)(12) organizations.* Enter: a Gross income from members or shareholders	87a N/A			
b	Gross income from other sources. (Do not net amounts due or paid to other sources against amounts due or received from them.)	87b N/A			
88	At any time during the year, did the organization own a 50% or greater interest in a taxable corporation or partnership, or an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? If "Yes," complete Part IX		88		X
89 a	*501(c)(3) organizations.* Enter: Amount of tax imposed on the organization during the year under: section 4911 ▶ 0. ; section 4912 ▶ 0. ; section 4955 ▶ 0.				
b	*501(c)(3) and 501(c)(4) organizations.* Did the organization engage in any section 4958 excess benefit transaction during the year or did it become aware of an excess benefit transaction from a prior year? If "Yes," attach a statement explaining each transaction		89b		X
c	Enter: Amount of tax imposed on the organization managers or disqualified persons during the year under sections 4912, 4955, and 4958	▶ 0.			
d	Enter: Amount of tax on line 89c, above, reimbursed by the organization	▶ 0.			
90 a	List the states with which a copy of this return is filed ▶ CALIFORNIA				
b	Number of employees employed in the pay period that includes March 12, 2003	90b 46			
91	The books are in care of ▶ EXECUTIVE DIRECTOR Telephone no. ▶ (213) 977-9500				
	Located at ▶ 1616 BEVERLY BLVD., LA, CA 90026 ZIP + 4 ▶ 90026				
92	*Section 4947(a)(1) nonexempt charitable trusts filing Form 990 in lieu of* **Form 1041**- Check here ▶ [ ] and enter the amount of tax-exempt interest received or accrued during the tax year ▶	92 N/A			

Part VII Analysis of Income-Producing Activities (See page 33 of the instructions.)

Note: *Enter gross amounts unless otherwise indicated.*	Unrelated business income		Excluded by section 512, 513, or 514		
	(A) Business code	(B) Amount	(C) Exclu-sion code	(D) Amount	(E) Related or exempt function income
93 Program service revenue:					
a LITIGATION FEES					32,335.
b					
c					
d					
e					
f Medicare/Medicaid payments					
g Fees and contracts from government agencies					
94 Membership dues and assessments					
95 Interest on savings and temporary cash investments					
96 Dividends and interest from securities			14	85,586.	
97 Net rental income or (loss) from real estate:					
a debt-financed property					
b not debt-financed property					
98 Net rental income or (loss) from personal property					
99 Other investment income					
100 Gain or (loss) from sales of assets other than inventory			18	-44,100.	
101 Net income or (loss) from special events			01	200.	
102 Gross profit or (loss) from sales of inventory					
103 Other revenue:					
a					
b					
c					
d					
e					
104 Subtotal (add columns (B), (D), and (E))		0.		41,686.	32,335.
105 **Total** (add line 104, columns (B), (D), and (E))				▶	74,021.

Note: *Line 105 plus line 1d, Part I, should equal the amount on line 12, Part I.*

Part VIII Relationship of Activities to the Accomplishment of Exempt Purposes (See page 34 of the instructions.)

Line No. ▼	Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes).
93	INCOME RELATES TO LEGAL SERVICES PROGAM-NUMBEROUS CASES. SEE ATTACHED TABLE OF CONTENTS AND ALPHABETICAL LISTING OF CASES FROM LEGAL DOCKET FOR EXAMPLES.

Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities (See page 34 of the instructions.)

(A) Name, address, and EIN of corporation, partnership, or disregarded entity	(B) Percentage of ownership interest	(C) Nature of activities	(D) Total income	(E) End-of-year assets
	%			
N/A	%			
	%			
	%			

Part X Information Regarding Transfers Associated w

(a) Did the organization, during the year, receive any funds, directly or indirectly, t

(b) Did the organization, during the year, pay premiums, directly or indirectly, on a

Note: *If "Yes" to (b), file Form 8870 and Form 4720 (see instructions).*

Please Sign Here — Under penalties of perjury, I declare that I have examined this return, including accom correct, and complete. Declaration of preparer (other than officer) is based on all inform

▶ Signature of officer 2/18/04 Date 2

Paid Preparer's Use Only

Preparer's signature ▶

Firm's name (or yours if self-employed), address, and ZIP + 4 ▶ ENGEL KALVIN MCMILLAN & 11845 W OLYMPIC BLVD., LOS ANGELES, CA 90064-5

323161 12-17-03

SCHEDULE A
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Organization Exempt Under Section 501(c)(3)

(Except Private Foundation) and Section 501(e), 501(f), 501(k), 501(n), or Section 4947(a)(1) Nonexempt Charitable Trust

Supplementary Information-(See separate instructions.)

▶ MUST be completed by the above organizations and attached to their Form 990 or 990-EZ

OMB No 1545-0047

2003

Name of the organization

ACLU FOUNDATION OF SOUTHERN CALIFORNIA

Employer identification number

95 2673361

Part I Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees

(See page 1 of the instructions. List each one. If there are none, enter "None.")

(a) Name and address of each employee paid more than $50,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans & deferred compensation	(e) Expense account and other allowances
NONE				
Total number of other employees paid over $50,000 ▶	0			

Part II Compensation of the Five Highest Paid Independent Contractors for Professional Services

(See page 2 of the instructions. List each one (whether individuals or firms). If there are none, enter "None.")

(a) Name and address of each independent contractor paid more than $50,000	(b) Type of service	(c) Compensation
NONE		
Total number of others receiving over $50,000 for professional services ▶	0	

Part III Statements About Activities (See page 2 of the instructions.)

		Yes	No
1	During the year, has the organization attempted to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum? If "Yes," enter the total expenses paid or incurred in connection with the lobbying activities ▶ $ _____ $ _____ (Must equal amounts on line 38, Part VI-A, or line I of Part VI-B.) Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A. Other organizations checking "Yes," must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities.	1	X	
2	During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary? *(If the answer to any question is "Yes," attach a detailed statement explaining the transactions.)*			
a	Sale, exchange, or leasing of property?	2a	X	
b	Lending of money or other extension of credit?	2b		X
c	Furnishing of goods, services, or facilities?	2c		X
d	Payment of compensation (or payment or reimbursement of expenses if more than $1,000)?	2d		X
e	Transfer of any part of its income or assets?	2e		X
3 a	Do you make grants for scholarships, fellowships, student loans, etc.? (If "Yes," attach an explanation of how you determine that recipients qualify to receive payments.)	3a		X
b	Do you have a section 403(b) annuity plan for your employees?	3b		X
4	Did you maintain any separate account for participating donors where donors have the right to provide advice on the use or distribution of funds?	4		X

Part IV Reason for Non-Private Foundation Status (See pages 3 through 6 of the instructions.)

The organization is not a private foundation because it is: (Please check only **ONE** applicable box.)

- 5 ☐ A church, convention of churches, or association of churches. Section 170(b)(1)(A)(i).
- 6 ☐ A school. Section 170(b)(1)(A)(ii). (Also complete Part V.)
- 7 ☐ A hospital or a cooperative hospital service organization. Section 170(b)(1)(A)(iii).
- 8 ☐ A Federal, state, or local government or governmental unit. Section 170(b)(1)(A)(v).
- 9 ☐ A medical research organization operated in conjunction with a hospital. Section 170(b)(1)(A)(iii). **Enter the hospital's name, city, and state** ▶ _____
- 10 ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit. Section 170(b)(1)(A)(iv). (Also complete the **Support Schedule** in Part IV-A.)
- 11a ☒ An organization that normally receives a substantial part of its support from a governmental unit or from the general public. Section 170(b)(1)(A)(vi). (Also complete the **Support Schedule** in Part IV-A.)
- 11b ☐ A community trust. Section 170(b)(1)(A)(vi). (Also complete the **Support Schedule** in Part IV-A.)
- 12 ☐ An organization that normally receives: **(1) more than 33 1/3%** of its support from contributions, membership fees, and gross receipts from activities related to its charitable, etc., functions - subject to certain exceptions, and **(2) no more than 33 1/3%** of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See section 509(a)(2). (Also complete the **Support Schedule** in Part IV-A.)
- 13 ☐ An organization that is not controlled by any disqualified persons (other than foundation managers) and supports organizations described in: (1) lines 5 through 12 above; or (2) section 501(c)(4), (5), or (6), if they meet the test of section 509(a)(2). (See section 509(a)(3).)

Provide the following information about the supported organizations. (See page 5 of the instructions.)

(a) Name(s) of supported organization(s)	(b) Line number from above

- 14 ☐ An organization organized and operated to test for public safety. Section 509(a)(4). (See page 6 of the instructions.)

Part IV-A **Support Schedule** (Complete only if you checked a box on line 10, 11, or 12.) **Use cash method of accounting.**
Note: *You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting.*

Calendar year (or fiscal year beginning in) ▶	(a) 2002	(b) 2001	(c) 2000	(d) 1999	(e) Total
15 Gifts, grants, and contributions received. (Do not include unusual grants. See line 28.)	2,881,649.	1,773,594.	2,031,145.	2,362,450.	9,048,838.
16 Membership fees received					
17 Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is related to the organization's charitable, etc., purpose					
18 Gross income from interest, dividends, amounts received from payments on securities loans (section 512(a)(5)), rents, royalties, and unrelated business taxable income (less section 511 taxes) from businesses acquired by the organization after June 30, 1975	282,897.	244,854.	247,327.	365,294.	1,140,372.
19 Net income from unrelated business activities not included in line 18					
20 Tax revenues levied for the organization's benefit and either paid to it or expended on its behalf					
21 The value of services or facilities furnished to the organization by a governmental unit without charge. Do not include the value of services or facilities generally furnished to the public without charge					
22 Other income. Attach a schedule. Do not include gain or (loss) from sale of capital assets					
23 Total of lines 15 through 22	3,164,546.	2,018,448.	2,278,472.	2,727,744.	10,189,210.
24 Line 23 minus line 17	3,164,546.	2,018,448.	2,278,472.	2,727,744.	10,189,210.
25 Enter 1% of line 23	31,645.	20,184.	22,785.	27,277.	

26	**Organizations described on lines 10 or 11:** a Enter 2% of amount in column (e), line 24 ▶	26a	203,784.
b	Prepare a list for your records to show the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts for 1999 through 2002 exceeded the amount shown in line 26a. **Do not file this list with your return.** Enter the total of all these excess amounts ▶	26b	2,429,729.
c	Total support for section 509(a)(1) test: Enter line 24, column (e) ▶	26c	10,189,210.
d	Add: Amounts from column (e) for lines: 18 1,140,372. 19 _____ 22 _____ 26b 2,429,729. ▶	26d	3,570,101.
e	Public support (line 26c minus line 26d total) ▶	26e	6,619,109.
f	**Public support percentage (line 26e (numerator) divided by line 26c (denominator))** ▶	26f	64.9619%

27 **Organizations described on line 12:** a For amounts included in lines 15, 16, and 17 that were received from a "disqualified person," prepare a list for your records to show the name of, and total amounts received in each year from, each "disqualified person." **Do not file this list with your return.** Enter the sum of such amounts for each year: N/A

(2002) (2001) (2000) (1999)

b For any amount included in line 17 that was received from each person (other than "disqualified persons"), prepare a list for your records to show the name of, and amount received for each year, that was more than the **larger** of **(1)** the amount on line 25 for the year or **(2)** $5,000. (Include in the list organizations described in lines 5 through 11, as well as individuals.) **Do not file this list with your return.** After computing the difference between the amount received and the larger amount described in **(1)** or **(2)**, enter the sum of these differences (the excess amounts) for each year: N/A

(2002) (2001) (2000) (1999)

c	Add: Amounts from column (e) for lines: 15 _____ 16 _____ 17 _____ 20 _____ 21 _____ ▶	27c	N/A
d	Add: Line 27a total _____ and line 27b total _____ ▶	27d	N/A
e	Public support (line 27c total minus line 27d total) ▶	27e	N/A
f	Total support for section 509(a)(2) test: Enter amount on line 23, column (e) ▶ 27f N/A		
g	**Public support percentage (line 27e (numerator) divided by line 27f (denominator))** ▶	27g	N/A %
h	**Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator))** ▶	27h	N/A %

28 **Unusual Grants:** For an organization described in line 10, 11, or 12 that received any unusual grants during 1999 through 2002, prepare a list for your records to show, for each year, the name of the contributor, the date and amount of the grant, and a brief description of the nature of the grant. **Do not file this list with your return.** Do not include these grants in line 15.

NONE

Part V **Private School Questionnaire** (See page 7 of the instructions.) N/A

(To be completed ONLY by schools that checked the box on line 6 in Part IV)

			Yes	No
29	Does the organization have a racially nondiscriminatory policy toward students by statement in its charter, bylaws, other governing instrument, or in a resolution of its governing body?	29		
30	Does the organization include a statement of its racially nondiscriminatory policy toward students in all its brochures, catalogues, and other written communications with the public dealing with student admissions, programs, and scholarships?	30		
31	Has the organization publicized its racially nondiscriminatory policy through newspaper or broadcast media during the period of solicitation for students, or during the registration period if it has no solicitation program, in a way that makes the policy known to all parts of the general community it serves?	31		
	If "Yes," please describe; if "No," please explain. (If you need more space, attach a separate statement.)			
32	Does the organization maintain the following:			
a	Records indicating the racial composition of the student body, faculty, and administrative staff?	32a		
b	Records documenting that scholarships and other financial assistance are awarded on a racially nondiscriminatory basis?	32b		
c	Copies of all catalogues, brochures, announcements, and other written communications to the public dealing with student admissions, programs, and scholarships?	32c		
d	Copies of all material used by the organization or on its behalf to solicit contributions?	32d		
	If you answered "No" to any of the above, please explain. (If you need more space, attach a separate statement.)			
33	Does the organization discriminate by race in any way with respect to:			
a	Students' rights or privileges?	33a		
b	Admissions policies?	33b		
c	Employment of faculty or administrative staff?	33c		
d	Scholarships or other financial assistance?	33d		
e	Educational policies?	33e		
f	Use of facilities?	33f		
g	Athletic programs?	33g		
h	Other extracurricular activities?	33h		
	If you answered "Yes" to any of the above, please explain. (If you need more space, attach a separate statement.)			
34 a	Does the organization receive any financial aid or assistance from a governmental agency?	34a		
b	Has the organization's right to such aid ever been revoked or suspended?	34b		
	If you answered "Yes" to either 34a or b, please explain using an attached statement.			
35	Does the organization certify that it has complied with the applicable requirements of sections 4.01 through 4.05 of Rev. Proc. 75-50, 1975-2 C.B. 587, covering racial nondiscrimination? If "No," attach an explanation	35		

Part VI-A Lobbying Expenditures by Electing Public Charities (See page 9 of the instructions.)

(To be completed ONLY by an eligible organization that filed Form 5768)

Check ▶ a ☐ if the organization belongs to an affiliated group. Check ▶ b ☐ if you checked "a" and "limited control" provisions apply.

Limits on Lobbying Expenditures (The term "expenditures" means amounts paid or incurred.)		(a) Affiliated group totals	(b) To be completed for ALL electing organizations
		N/A	
36 Total lobbying expenditures to influence public opinion (grassroots lobbying)	36		0.
37 Total lobbying expenditures to influence a legislative body (direct lobbying)	37		0.
38 Total lobbying expenditures (add lines 36 and 37)	38		0.
39 Other exempt purpose expenditures	39		999,665.
40 Total exempt purpose expenditures (add lines 38 and 39)	40		999,665.
41 Lobbying nontaxable amount. Enter the amount from the following table -			
If the amount on line 40 is - / **The lobbying nontaxable amount is -**			
Not over $500,000 — 20% of the amount on line 40			
Over $500,000 but not over $1,000,000 — $100,000 plus 15% of the excess over $500,000			
Over $1,000,000 but not over $1,500,000 — $175,000 plus 10% of the excess over $1,000,000	41		174,950.
Over $1,500,000 but not over $17,000,000 — $225,000 plus 5% of the excess over $1,500,000			
Over $17,000,000 — $1,000,000			
42 Grassroots nontaxable amount (enter 25% of line 41)	42		43,738.
43 Subtract line 42 from line 36. Enter -0- if line 42 is more than line 36	43		0.
44 Subtract line 41 from line 38. Enter -0- if line 41 is more than line 38	44		0.

Caution: *If there is an amount on either line 43 or line 44, you must file Form 4720.*

4-Year Averaging Period Under Section 501(h)

(Some organizations that made a section 501(h) election do not have to complete all of the five columns below. See the instructions for lines 45 through 50 on page 11 of the instructions.)

	Lobbying Expenditures During 4-Year Averaging Period				
Calendar year (or fiscal year beginning in) ▶	(a) 2003	(b) 2002	(c) 2001	(d) 2000	(e) Total
45 Lobbying nontaxable amount	174,950.	328,704.	311,682.	281,862.	1,097,198.
46 Lobbying ceiling amount (150% of line 45(e))					1,645,797.
47 Total lobbying expenditures		11,933.	10,036.	14,182.	36,151.
48 Grassroots nontaxable amount	43,738.	82,176.	77,921.	70,466.	274,301.
49 Grassroots ceiling amount (150% of line 48(e))					411,452.
50 Grassroots lobbying expenditures		11,933.	10,036.	14,182.	36,151.

Part VI-B Lobbying Activity by Nonelecting Public Charities

(For reporting only by organizations that did not complete Part VI-A) (See page 12 of the instructions.) N/A

During the year, did the organization attempt to influence national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of:	Yes	No	Amount
a Volunteers			
b Paid staff or management (Include compensation in expenses reported on lines c through h.)			
c Media advertisements			
d Mailings to members, legislators, or the public			
e Publications, or published or broadcast statements			
f Grants to other organizations for lobbying purposes			
g Direct contact with legislators, their staffs, government officials, or a legislative body			
h Rallies, demonstrations, seminars, conventions, speeches, lectures, or any other means			
i Total lobbying expenditures (Add lines c through h.)			0.

If "Yes" to any of the above, also attach a statement giving a detailed description of the lobbying activities.

Part VII Information Regarding Transfers To and Transactions and Relationships With Noncharitable Exempt Organizations (See page 12 of the instructions.)

51 Did the reporting organization directly or indirectly engage in any of the following with any other organization described in section 501(c) of the Code (other than section 501(c)(3) organizations) or in section 527, relating to political organizations?

		Yes	No
a	Transfers from the reporting organization to a noncharitable exempt organization of:		
	(i) Cash	51a(i)	X
	(ii) Other assets	a(ii)	X
b	Other transactions:		
	(i) Sales or exchanges of assets with a noncharitable exempt organization	b(i)	X
	(ii) Purchases of assets from a noncharitable exempt organization	b(ii)	X
	(iii) Rental of facilities, equipment, or other assets	b(iii) X	
	(iv) Reimbursement arrangements	b(iv) X	
	(v) Loans or loan guarantees	b(v)	X
	(vi) Performance of services or membership or fundraising solicitations	b(vi)	X
c	Sharing of facilities, equipment, mailing lists, other assets, or paid employees	c X	

d If the answer to any of the above is "Yes," complete the following schedule. Column (b) should always show the fair market value of the goods, other assets, or services given by the reporting organization. If the organization received less than fair market value in any transaction or sharing arrangement, show in column (d) the value of the goods, other assets, or services received:

(a) Line no.	(b) Amount involved	(c) Name of noncharitable exempt organization	(d) Description of transfers, transactions, and sharing arrangements
			PAYROLL, PAYROLL TAXES,
	60,826.	ACLU OF SOUTHERN CALIFORNIA	EMPLOYEE BENEFITS
	2,556.	ACLU OF SOUTHERN CALIFORNIA	OFFICE SUPPLIES 15%
	1,629.	ACLU OF SOUTHERN CALIFORNIA	EQUIPMENT RENTAL
	1,500.	ACLU OF SOUTHERN CALIFORNIA	REPRODUCTION 15%
	2,250.	ACLU OF SOUTHERN CALIFORNIA	TELEPHONE 15%
	6,625.	ACLU OF SOUTHERN CALIFORNIA	CHARGED FOR 15% OF SQ. FOOTAGE

52 a Is the organization directly or indirectly affiliated with, or related to, one or more tax-exempt organizations described in section 501(c) of the Code (other than section 501(c)(3)) or in section 527? ▶ [X] Yes [ ] No

b If "Yes," complete the following schedule:

(a) Name of organization	(b) Type of organization	(c) Description of relationship
		HISTORIC AND CONTINUING
ACLU OF SOUTHERN CALIFORNIA	501(C) 4	RELATIONS

Asset Number	Description of property	Date placed in service	Method/ IRC sec.	Life or rate	Line No.	Cost or other basis	Basis reduction	Accumulated depreciation/amortization	Current year deduction
2	LAND								
		12/31/90	L			691,767.			0.
	* 990 PAGE 2 TOTAL - BUILDING IMPROVEMENTS					691,767.	0.	0.	0.
	OFFICE EQUIPMENT								
1	OFFICE EQUIPMENT								
		VARIES	SL	5.00	16	2,222.		2,222.	0.
4	OFFICE EQUIPMENT								
		07/01/90	SL	5.00	16	91,772.		91,772.	0.
7	OFFICE EQUIPMENT								
		07/01/91	SL	5.00	16	113,338.		113,338.	0.
8	OFFICE FURNITURE								
		07/01/92	SL	5.00	16	33,010.		33,010.	0.
10	OFFICE EQUIPMENT								
		07/01/93	SL	5.00	16	8,586.		8,586.	0.
15	OFFICE EQUIPMENT								
		01/15/95	SL	5.00	16	1,981.		1,981.	0.
38	TELEPHONE EQUIPMENT								
		03/01/97	SL	5.00	16	3,655.		3,655.	0.
59	TELEPHONE EQUIPMENT								
		11/01/98	SL	5.00	16	19,600.		13,720.	980.
77	TELEPHONE EQUIPMENT								
		01/01/99	SL	5.00	16	3,855.		2,698.	193.
78	TELEPHONE EQUIPMENT								
		02/01/99	SL	5.00	16	2,500.		1,750.	125.
79	TELEPHONE EQUIPMENT								
		03/01/99	SL	5.00	16	56,010.		39,207.	2,801.
80	TELEPHONE EQUIPMENT								
		03/01/99	SL	5.00	16	935.		654.	47.
81	OFFICE EQUIPMENT								
		04/01/99	SL	5.00	16	2,358.		1,652.	118.
82	AIR CONDITIONING EQUIPMENT								
		05/01/99	SL	5.00	16	1,723.		1,207.	86.
83	AIR CONDITIONING EQUIPMENT								
		05/01/99	SL	5.00	16	1,900.		1,330.	95.
84	OFFICE EQUIPMENT								
		10/01/99	SL	5.00	16	1,600.		1,120.	80.
104	OFFICE EQUIPMENT								
		03/01/00	SL	5.00	16	3,800.		1,900.	190.
112	OFFICE EQUIPMENT								
		06/01/00	SL	5.00	16	622.		310.	31.
113	OFFICE EQUIPMENT								
		11/01/00	SL	5.00	16	325.		162.	16.
116	OFFICE EQUIPMENT								
		02/01/01	SL	5.00	16	641.		192.	32.
117	COMPUTER EQUIPMENT								
		02/01/01	SL	5.00	16	275.		82.	14.
118	OFFICE EQUIPMENT								
		02/01/01	SL	5.00	16	340.		102.	17.
119	OFFICE EQUIPMENT								
		02/01/01	SL	5.00	16	208.		63.	10.
120	OFFICE EQUIPMENT								
		02/01/01	SL	5.00	16	1,186.		356.	59.

- Current year section 179 (D) - Asset disposed

Asset Number	Description of property	Date placed in service	Method/ IRC sec.	Life or rate	Line No.	Cost or other basis	Basis reduction	Accumulated depreciation/amortization	Current year deduction
121	OFFICE EQUIPMENT	02 01 01	SL	5.00	16	302.		90.	15.
155	OFFICE EQUIPMENT	10 01 02	SL	5.00	16	528.		53.	26.
156	OFFICE EQUIPMENT	11 01 02	SL	5.00	16	304.		30.	15.
	* 990 PAGE 2 TOTAL - OFFICE EQUIPMENT					353,576.	0.	321,242.	4,950.
	COMPUTER EQUIPMENT								
5	COMPUTER EQUIPMENT	VARIES	SL	5.00	16	371,393.		371,393.	0.
60	COMPUTER EQUIPMENT	03 01 98	SL	5.00	16	2,436.		2,192.	121.
61	COMPUTER EQUIPMENT	03 01 98	SL	5.00	16	1,022.		918.	51.
62	COMPUTER EQUIPMENT	04 01 98	SL	5.00	16	2,241.		2,016.	112.
63	COMPUTER EQUIPMENT	04 01 98	SL	5.00	16	1,862.		1,674.	92.
64	COMPUTER EQUIPMENT	06 01 98	SL	5.00	16	2,653.		2,389.	132.
65	COMPUTER EQUIPMENT	09 01 98	SL	5.00	16	931.		837.	46.
66	COMPUTER EQUIPMENT	10 01 98	SL	5.00	16	1,134.		1,021.	56.
67	COMPUTER EQUIPMENT	10 01 98	SL	5.00	16	2,534.		2,282.	127.
68	COMPUTER EQUIPMENT	11 01 98	SL	5.00	16	95.		86.	5.
69	COMPUTER EQUIPMENT	12 01 98	SL	5.00	16	877.		788.	44.
70	COMPUTER EQUIPMENT	12 01 98	SL	5.00	16	91.		81.	5.
71	COMPUTER EQUIPMENT	12 01 98	SL	5.00	16	95.		86.	5.
72	COMPUTER EQUIPMENT	12 01 98	SL	5.00	16	97.		86.	5.
73	COMPUTER EQUIPMENT	12 01 98	SL	5.00	16	6,550.		5,895.	328.
74	COMPUTER EQUIPMENT	12 01 98	SL	5.00	16	1,890.		1,701.	95.
85	COMPUTER EQUIPMENT	01 01 99	SL	5.00	16	317.		221.	16.
86	COMPUTER EQUIPMENT	02 01 99	SL	5.00	16	550.		385.	28.
87	COMPUTER EQUIPMENT	03 01 99	SL	5.00	16	510.		357.	26.
88	COMPUTER EQUIPMENT	04 01 99	SL	5.00	16	1,306.		913.	65.
89	COMPUTER EQUIPMENT	05 01 99	SL	5.00	16	107.		74.	5.
90	COMPUTER EQUIPMENT	05 01 99	SL	5.00	16	9,434.		6,605.	472.

- Current year section 179 (D) - Asset disposed

Asset Number	Description of property	Date placed in service	Method/ IRC sec.	Life or rate	Line No.	Cost or other basis	Basis reduction	Accumulated depreciation/amortization	Current year deduction
91	COMPUTER EQUIPMENT	07/01/99	SL	5.00	16	2,559.		1,792.	128.
92	COMPUTER EQUIPMENT	09/01/99	SL	5.00	16	1,572.		1,099.	79.
93	COMPUTER EQUIPMENT	10/01/99	SL	5.00	16	374.		262.	19.
94	COMPUTER EQUIPMENT	11/01/99	SL	5.00	16	500.		350.	25.
95	COMPUTER EQUIPMENT	11/01/99	SL	5.00	16	448.		314.	22.
105	COMPUTER EQUIPMENT	04/01/00	SL	5.00	16	6,517.		3,258.	326.
106	COMPUTER EQUIPMENT	05/01/00	SL	5.00	16	10,937.		5,468.	547.
107	COMPUTER EQUIPMENT	06/01/00	SL	5.00	16	2,076.		1,038.	104.
108	COMPUTER EQUIPMENT	08/01/00	SL	5.00	16	1,964.		983.	98.
109	COMPUTER EQUIPMENT	09/01/00	SL	5.00	16	184.		92.	9.
110	COMPUTER EQUIPMENT	12/01/00	SL	5.00	16	1,324.		663.	66.
111	COMPUTER EQUIPMENT	03/01/00	SL	5.00	16	6,711.		3,355.	336.
122	COMPUTER EQUIPMENT	02/01/01	SL	5.00	16	215.		65.	11.
123	COMPUTER EQUIPMENT	03/01/01	SL	5.00	16	9,535.		2,861.	477.
124	COMPUTER EQUIPMENT	04/01/01	SL	5.00	16	477.		143.	24.
125	COMPUTER EQUIPMENT	04/01/01	SL	5.00	16	992.		297.	50.
126	COMPUTER EQUIPMENT	04/01/01	SL	5.00	16	193.		58.	10.
127	COMPUTER EQUIPMENT	05/01/01	SL	5.00	16	3,781.		1,134.	189.
128	COMPUTER EQUIPMENT	05/01/01	SL	5.00	16	483.		145.	24.
129	COMPUTER EQUIPMENT	05/01/01	SL	5.00	16	45.		14.	2.
130	COMPUTER EQUIPMENT	07/01/01	SL	5.00	16	1,190.		357.	60.
131	COMPUTER EQUIPMENT	09/01/01	SL	5.00	16	288.		87.	14.
132	COMPUTER EQUIPMENT	10/01/01	SL	5.00	16	285.		85.	14.
133	COMPUTER EQUIPMENT	10/01/01	SL	5.00	16	155.		47.	8.
134	COMPUTER EQUIPMENT	10/01/01	SL	5.00	16	961.		288.	48.
144	COMPUTER EQUIPMENT	07/01/01	SL	5.00	16	302.		90.	15.
157	COMPUTER EQUIPMENT	02/01/02	SL	5.00	16	3,597.		360.	180.

- Current year section 179 (D) - Asset disposed

Asset Number	Description of property	Date placed in service	Method/ IRC sec.	Life or rate	Line No.	Cost or other basis	Basis reduction	Accumulated depreciation/amortization	Current year deduction
158	COMPUTER EQUIPMENT	05 01 02	SL	5.00	16	3,607.		361.	180.
159	COMPUTER EQUIPMENT	05 01 02	SL	5.00	16	17,444.		1,744.	872.
160	COMPUTER EQUIPMENT	07 01 02	SL	5.00	16	4,346.		435.	217.
161	COMPUTER EQUIPMENT	09 01 02	SL	5.00	16	2,165.		216.	108.
162	COMPUTER EQUIPMENT	09 01 02	SL	5.00	16	542.		54.	27.
163	COMPUTER EQUIPMENT	11 01 02	SL	5.00	16	10,029.		1,003.	501.
164	COMPUTER EQUIPMENT	01 01 03	SL	5.00	16	362.			18.
165	COMPUTER EQUIPMENT	03 01 03	SL	5.00	16	1,766.			88.
	* 990 PAGE 2 TOTAL - COMPUTER EQUIPMENT					506,051.	0.	430,518.	6,732.
	BUILDING								
3	BUILDING	09 01 91	SL	25.00	16	740,674.		340,360.	7,407.
6	BUILDING IMPROVMENTS	09 01 91	SL	25.00	16	758,925.		342,034.	7,589.
135	BUILDING	01 01 01	SL	25.00	16	4,340.		261.	43.
136	BUILDING	02 01 01	SL	25.00	16	5,710.		342.	57.
137	BUILDING	03 01 01	SL	25.00	16	4,080.		245.	41.
	* 990 PAGE 2 TOTAL - BUILDING					1,513,729.	0.	683,242.	15,137.
	BUILDING IMPROVEMENTS								
9	BUILDING IMPROVEMENTS	07 01 92	SL	25.00	16	23,386.		14,032.	291.
11	BUILDING IMPROVEMENTS	07 01 93	SL	25.00	16	30,976.		19,706.	201.
58	CBS COATING - ROOF	04 01 97	SL	39.00	16	2,700.		743.	34.
75	BUILDING IMPROVEMENTS	12 01 98	SL	20.00	16	1,250.		252.	16.
76	ROOF	12 01 99	SL	20.00	16	25,300.		4,428.	316.
114	BUILDING IMPROVEMENTS	01 01 00	SL	25.00	16	950.		119.	12.
115	BUILDING IMPROVEMENTS	05 01 00	SL	25.00	16	2,092.		261.	26.
138	BUILDING IMPROVEMENTS	05 01 01	SL	20.00	16	578.		43.	7.
139	BUILDING IMPROVEMENTS	05 01 01	SL	20.00	16	1,450.		109.	18.
140	BUILDING IMPROVEMENTS	10 01 01	SL	20.00	16	1,600.		120.	20.

- Current year section 179 (D) - Asset disposed

Depreciation and Amortization Detail FORM 990 PAGE 2 990

Asset Number	Description of property	Date placed in service	Method/ IRC sec.	Life or rate	Line No.	Cost or other basis	Basis reduction	Accumulated depreciation/amortization	Current year deduction
141	BUILDING IMPROVEMENTS	11 01 01	SL	20.00	16	6,360.		477.	80.
142	BUILDING IMPROVEMENTS	12 01 01	SL	20.00	16	11,694.		877.	146.
143	BUILDING IMPROVEMENTS	12 31 01	SL	20.00	16	24,794.		620.	310.
150	BUILDING IMPROVEMENTS	02 01 02	SL	20.00	16	2,754.		69.	34.
151	BUILDING IMPROVEMENTS	08 01 02	SL	20.00	16	8,635.		216.	108.
152	BUILDING IMPROVEMENTS	10 01 02	SL	20.00	16	3,325.		83.	42.
153	BUILDING IMPROVEMENTS	10 01 02	SL	20.00	16	600.		15.	8.
154	BUILDING IMPROVEMENTS	12 01 02	SL	20.00	16	5,700.		143.	71.
	* 990 PAGE 2 TOTAL - BUILDING IMPROVEMENTS					154,144.	0.	42,313.	1,740.
	* GRAND TOTAL 990 PAGE 2 DEPR					3,219,267.	0.	1,477,315.	28,559.

316261
05-01-03

- Current year section 179 (D) - Asset disposed

FORM 990 GAIN (LOSS) FROM PUBLICLY TRADED SECURITIES STATEMENT 1

DESCRIPTION	GROSS SALES PRICE	COST OR OTHER BASIS	EXPENSE OF SALE	NET GAIN OR (LOSS)
LOSS ON SALE OF INVESTMENTS	209,740.	253,840.	0.	-44,100.
TO FORM 990, PART I, LINE 8	209,740.	253,840.	0.	-44,100.

FORM 990 SPECIAL EVENTS AND ACTIVITIES STATEMENT 2

DESCRIPTION OF EVENT	GROSS RECEIPTS	CONTRIBUT. INCLUDED	GROSS REVENUE	DIRECT EXPENSES	NET INCOME
FUNDRAISING	200.		200.		200.
TO FM 990, PART I, LINE 9	200.		200.		200.

FORM 990 OTHER CHANGES IN NET ASSETS OR FUND BALANCES STATEMENT 3

DESCRIPTION	AMOUNT
CHANGE IN SPLIT-INTEREST AGREEMENTS	-36,032.
NET UNREALIZED LOSS ON INVESTMENTS	-14,674.
TOTAL TO FORM 990, PART I, LINE 20	-50,706.

FORM 990 OTHER EXPENSES STATEMENT 4

DESCRIPTION	(A) TOTAL	(B) PROGRAM SERVICES	(C) MANAGEMENT AND GENERAL	(D) FUNDRAISING
MAINTENANCE	6,076.	6,076.		
INSURANCE	6,658.	6,658.		
BOOKS AND SUBSCRIPTIONS	15,971.	15,023.	456.	492.
OTHER	47,083.	35,141.	10,299.	1,643.
CONTRIBUTIONS AND GIFTS	376.	177.	60.	139.
TOTAL TO FM 990, LN 43	76,164.	63,075.	10,815.	2,274.

FORM 990 NON-GOVERNMENT SECURITIES STATEMENT 5

SECURITY DESCRIPTION	CORPORATE STOCKS	CORPORATE BONDS	OTHER PUBLICLY TRADED SECURITIES	OTHER SECURITIES	TOTAL NON-GOV'T SECURITIES
US GOVERNMENT AGENCY SECURITIES			27,782.		27,782.
MUTUAL FUNDS				6,251,036.	6,251,036.
TO 990, LN 54 COL B			27,782.	6,251,036.	6,278,818.

FORM 990 GOVERNMENT SECURITIES STATEMENT 6

DESCRIPTION	U.S. GOVERNMENT	STATE AND LOCAL GOV'T	TOTAL GOV'T SECURITIES
US TREASURY NOTES & BONDS	0.		
TOTAL TO FORM 990, LINE 54, COL B	0.		

FORM 990 OTHER INVESTMENTS STATEMENT 7

DESCRIPTION	VALUATION METHOD	AMOUNT
CHARITABLE TRUST & ANNUITY ACCOUNTS	MARKET VALUE	3,407,974.
MISCELLANEOUS	MARKET VALUE	246,712.
TOTAL TO FORM 990, PART IV, LINE 56, COLUMN B		3,654,686.

FORM 990 DEPRECIATION OF ASSETS NOT HELD FOR INVESTMENT STATEMENT 8

DESCRIPTION	COST OR OTHER BASIS	ACCUMULATED DEPRECIATION	BOOK VALUE
OFFICE EQUIPMENT	2,222.	2,222.	0.
LAND	691,767.	0.	691,767.
BUILDING	740,674.	347,767.	392,907.
OFFICE EQUIPMENT	91,772.	91,772.	0.
COMPUTER EQUIPMENT	371,393.	371,393.	0.

STATEMENT(S) 5, 6, 7, 8

BUILDING IMPROVMENTS	758,925.	349,623.	409,302.
OFFICE EQUIPMENT	113,338.	113,338.	0.
OFFICE FURNITURE	33,010.	33,010.	0.
BUILDING IMPROVEMENTS	23,386.	14,323.	9,063.
OFFICE EQUIPMENT	8,586.	8,586.	0.
BUILDING IMPROVEMENTS	30,976.	19,907.	11,069.
OFFICE EQUIPMENT	1,981.	1,981.	0.
TELEPHONE EQUIPMENT	3,655.	3,655.	0.
CBS COATING - ROOF	2,700.	777.	1,923.
TELEPHONE EQUIPMENT	19,600.	14,700.	4,900.
COMPUTER EQUIPMENT	2,436.	2,313.	123.
COMPUTER EQUIPMENT	1,022.	969.	53.
COMPUTER EQUIPMENT	2,241.	2,128.	113.
COMPUTER EQUIPMENT	1,862.	1,766.	96.
COMPUTER EQUIPMENT	2,653.	2,521.	132.
COMPUTER EQUIPMENT	931.	883.	48.
COMPUTER EQUIPMENT	1,134.	1,077.	57.
COMPUTER EQUIPMENT	2,534.	2,409.	125.
COMPUTER EQUIPMENT	95.	91.	4.
COMPUTER EQUIPMENT	877.	832.	45.
COMPUTER EQUIPMENT	91.	86.	5.
COMPUTER EQUIPMENT	95.	91.	4.
COMPUTER EQUIPMENT	97.	91.	6.
COMPUTER EQUIPMENT	6,550.	6,223.	327.
COMPUTER EQUIPMENT	1,890.	1,796.	94.
BUILDING IMPROVEMENTS	1,250.	268.	982.
ROOF	25,300.	4,744.	20,556.
TELEPHONE EQUIPMENT	3,855.	2,891.	964.
TELEPHONE EQUIPMENT	2,500.	1,875.	625.
TELEPHONE EQUIPMENT	56,010.	42,008.	14,002.
TELEPHONE EQUIPMENT	935.	701.	234.
OFFICE EQUIPMENT	2,358.	1,770.	588.
AIR CONDITIONING EQUIPMENT	1,723.	1,293.	430.
AIR CONDITIONING EQUIPMENT	1,900.	1,425.	475.
OFFICE EQUIPMENT	1,600.	1,200.	400.
COMPUTER EQUIPMENT	317.	237.	80.
COMPUTER EQUIPMENT	550.	413.	137.
COMPUTER EQUIPMENT	510.	383.	127.
COMPUTER EQUIPMENT	1,306.	978.	328.
COMPUTER EQUIPMENT	107.	79.	28.
COMPUTER EQUIPMENT	9,434.	7,077.	2,357.
COMPUTER EQUIPMENT	2,559.	1,920.	639.
COMPUTER EQUIPMENT	1,572.	1,178.	394.
COMPUTER EQUIPMENT	374.	281.	93.
COMPUTER EQUIPMENT	500.	375.	125.
COMPUTER EQUIPMENT	448.	336.	112.
OFFICE EQUIPMENT	3,800.	2,090.	1,710.
COMPUTER EQUIPMENT	6,517.	3,584.	2,933.
COMPUTER EQUIPMENT	10,937.	6,015.	4,922.
COMPUTER EQUIPMENT	2,076.	1,142.	934.
COMPUTER EQUIPMENT	1,964.	1,081.	883.
COMPUTER EQUIPMENT	184.	101.	83.
COMPUTER EQUIPMENT	1,324.	729.	595.

COMPUTER EQUIPMENT	6,711.	3,691.	3,020.
OFFICE EQUIPMENT	622.	341.	281.
OFFICE EQUIPMENT	325.	178.	147.
BUILDING IMPROVEMENTS	950.	131.	819.
BUILDING IMPROVEMENTS	2,092.	287.	1,805.
OFFICE EQUIPMENT	641.	224.	417.
COMPUTER EQUIPMENT	275.	96.	179.
OFFICE EQUIPMENT	340.	119.	221.
OFFICE EQUIPMENT	208.	73.	135.
OFFICE EQUIPMENT	1,186.	415.	771.
OFFICE EQUIPMENT	302.	105.	197.
COMPUTER EQUIPMENT	215.	76.	139.
COMPUTER EQUIPMENT	9,535.	3,338.	6,197.
COMPUTER EQUIPMENT	477.	167.	310.
COMPUTER EQUIPMENT	992.	347.	645.
COMPUTER EQUIPMENT	193.	68.	125.
COMPUTER EQUIPMENT	3,781.	1,323.	2,458.
COMPUTER EQUIPMENT	483.	169.	314.
COMPUTER EQUIPMENT	45.	16.	29.
COMPUTER EQUIPMENT	1,190.	417.	773.
COMPUTER EQUIPMENT	288.	101.	187.
COMPUTER EQUIPMENT	285.	99.	186.
COMPUTER EQUIPMENT	155.	55.	100.
COMPUTER EQUIPMENT	961.	336.	625.
BUILDING	4,340.	304.	4,036.
BUILDING	5,710.	399.	5,311.
BUILDING	4,080.	286.	3,794.
BUILDING IMPROVEMENTS	578.	50.	528.
BUILDING IMPROVEMENTS	1,450.	127.	1,323.
BUILDING IMPROVEMENTS	1,600.	140.	1,460.
BUILDING IMPROVEMENTS	6,360.	557.	5,803.
BUILDING IMPROVEMENTS	11,694.	1,023.	10,671.
BUILDING IMPROVEMENTS	24,794.	930.	23,864.
COMPUTER EQUIPMENT	302.	105.	197.
BUILDING IMPROVEMENTS	2,754.	103.	2,651.
BUILDING IMPROVEMENTS	8,635.	324.	8,311.
BUILDING IMPROVEMENTS	3,325.	125.	3,200.
BUILDING IMPROVEMENTS	600.	23.	577.
BUILDING IMPROVEMENTS	5,700.	214.	5,486.
OFFICE EQUIPMENT	528.	79.	449.
OFFICE EQUIPMENT	304.	45.	259.
COMPUTER EQUIPMENT	3,597.	540.	3,057.
COMPUTER EQUIPMENT	3,607.	541.	3,066.
COMPUTER EQUIPMENT	17,444.	2,616.	14,828.
COMPUTER EQUIPMENT	4,346.	652.	3,694.
COMPUTER EQUIPMENT	2,165.	324.	1,841.
COMPUTER EQUIPMENT	542.	81.	461.
COMPUTER EQUIPMENT	10,029.	1,504.	8,525.
COMPUTER EQUIPMENT	362.	18.	344.
COMPUTER EQUIPMENT	1,766.	88.	1,678.
TOTAL TO FORM 990, PART IV, LN 57	3,219,267.	1,505,874.	1,713,393.

FORM 990 OTHER ASSETS STATEMENT 9

DESCRIPTION	AMOUNT
OTHER ASSETS	126,454.
DUE FROM ACLU OF SOUTHERN CALIFORNIA	62,896.
CONTRIBUTIONS RECEIVABLE	24,317.
TOTAL TO FORM 990, PART IV, LINE 58, COLUMN B	213,667.

FORM 990 OTHER LIABILITIES STATEMENT 10

DESCRIPTION	AMOUNT
DUE TO ACLU NATIONAL OFFICE	2,422,907.
ANNUITY PAYABLE	190,114.
OBLIGATIONS UNDER TRUST AGREEMENT	568,957.
TOTAL TO FORM 990, PART IV, LINE 65, COLUMN B	3,181,978.

FORM 990 OTHER REVENUE NOT INCLUDED ON FORM 990 STATEMENT 11

DESCRIPTION	AMOUNT
REALIZED CAPITAL LOSS	44,100.
TOTAL TO FORM 990, PART IV-A	44,100.

FORM 990 OTHER EXPENSES NOT INCLUDED ON FORM 990 STATEMENT 12

DESCRIPTION	AMOUNT
CHANGE IN SPLIT- INTEREST AGREEMENTS	36,032.
TOTAL TO FORM 990, PART IV-B	36,032.

Form **4562**

Department of the Treasury
Internal Revenue Service

Depreciation and Amortization 990
(Including Information on Listed Property)

▶ See separate instructions. ▶ Attach to your tax return.

OMB No 1545-0172

2003

Attachment Sequence No **67**

Name(s) shown on return	Business or activity to which this form relates	Identifying number
ACLU FOUNDATION OF SOUTHERN CALIFORNIA	FORM 990 PAGE 2	95-2673361

Part I **Election To Expense Certain Tangible Property Under Section 179** **Note:** If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount. See instructions for a higher limit for certain businesses	1	100,000.
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation	3	400,000.
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year Subtract line 4 from line 1 If zero or less, enter -0- If married filing separately, see instructions	5	

6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost

7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the **smaller** of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2002 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5	11	
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2004. Add lines 9 and 10, less line 12 ▶	13	

Note: *Do not use Part II or Part III below for listed property. Instead, use Part V.*

Part II **Special Depreciation Allowance and Other Depreciation (Do not include listed property.)**

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions)	14	
15	Property subject to section 168(f)(1) election (see instructions)	15	
16	Other depreciation (including ACRS) (see instructions)	16	28,559.

Part III **MACRS Depreciation (Do not include listed property.)** (See instructions.)

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2003	17	
18	If you are electing under section 168(i)(4) to group any assets placed in service during the tax year into one or more general asset accounts, check here ▶ ☐		

Section B - Assets Placed in Service During 2003 Tax Year Using the General Depreciation System

	(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only - see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a	3-year property						
b	5-year property						
c	7-year property						
d	10-year property						
e	15-year property						
f	20-year property						
g	25-year property			25 yrs.		S/L	
h	Residential rental property	/		27.5 yrs.	MM	S/L	
		/		27.5 yrs.	MM	S/L	
i	Nonresidential real property	/		39 yrs.	MM	S/L	
		/			MM	S/L	

Section C - Assets Placed in Service During 2003 Tax Year Using the Alternative Depreciation System

20a	Class life					S/L	
b	12-year			12 yrs.		S/L	
c	40-year	/		40 yrs.	MM	S/L	

Part IV **Summary** (See instructions.)

21	Listed property. Enter amount from line 28	21	
22	**Total.** Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return Partnerships and S corporations - see instr.	22	28,559.
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

Part V **Listed Property** (Include automobiles, certain other vehicles, cellular telephones, certain computers, and property used for entertainment, recreation, or amusement.)

Note: *For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete* **only** *24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.*

Section A - Depreciation and Other Information (Caution: *See instructions for limits for passenger automobiles* **)**

24a Do you have evidence to support the business/investment use claimed? ☐ Yes ☐ No 24b If "Yes," is the evidence written? ☐ Yes ☐ No

(a) Type of property (list vehicles first)	(b) Date placed in service	(c) Business/ investment use percentage	(d) Cost or other basis	(e) Basis for depreciation (business/investment use only)	(f) Recovery period	(g) Method/ Convention	(h) Depreciation deduction	(i) Elected section 179 cost
25 Special depreciation allowance for qualified listed property placed in service during the tax year and used more than 50% in a qualified business use						25		
26 Property used more than 50% in a qualified business use:								
		%						
		%						
		%						
27 Property used 50% or less in a qualified business use:								
		%				S/L -		
		%				S/L -		
		%				S/L -		
28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1						28		
29 Add amounts in column (i), line 26. Enter here and on line 7, page 1							29	

Section B - Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person.
If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

	(a) Vehicle		(b) Vehicle		(c) Vehicle		(d) Vehicle		(e) Vehicle		(f) Vehicle	
30 Total business/investment miles driven during the year (**do not** include commuting miles)												
31 Total commuting miles driven during the year												
32 Total other personal (noncommuting) miles driven												
33 Total miles driven during the year. Add lines 30 through 32												
34 Was the vehicle available for personal use during off-duty hours?	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
35 Was the vehicle used primarily by a more than 5% owner or related person?												
36 Is another vehicle available for personal use?												

Section C - Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who **are not** more than 5% owners or related persons.

	Yes	No
37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?		
38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See instructions for vehicles used by corporate officers, directors, or 1% or more owners		
39 Do you treat all use of vehicles by employees as personal use?		
40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?		
41 Do you meet the requirements concerning qualified automobile demonstration use?		

Note: *If your answer to 37, 38, 39, 40, or 41 is "Yes," do not complete Section B for the covered vehicles.*

Part VI **Amortization**

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Code section	(e) Amortization period or percentage	(f) Amortization for this year
42 Amortization of costs that begins during your 2003 tax year:					
43 Amortization of costs that began before your 2003 tax year				43	
44 **Total.** Add amounts in column (f). See instructions for where to report				44	

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ACLU FOUNDATION OF SOUTHERN CALIFORNIA

CLOSED DOCKET

NOVEMBER 2002

CLOSED DOCKET TABLE OF CONTENTS

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ABORTION

1. American Academy of Pediatrics v. Lungren (Court of Appeal, First District)

Suit filed on behalf of a number of health care providers seeking a preliminary injunction to block a statute enacted in 1987 restricting abortions for pregnant minors. The law requires pregnant minors to have the consent of their parents before they can obtain an abortion. If obtaining parental consent is a problem, the minor can seek a judicial order determining that she is "sufficiently mature" to make the decision and authorizing an abortion without parental permission. The new law contained no further guidelines to assist the courts in making these determinations. The lawsuit contends that the bill infringes on fundamental privacy rights of pregnant minors by denying them the right of procreative choice and by releasing private information about them to other parties. The suit also contends that the law's application will be counterproductive in that minors will delay getting needed medical assistance if they must tell their parents first and risk their anger and punishment, or become involved in a lengthy judicial process in order to get a court order bypassing their parents. We contend the law will have a negative deterrent effect on minors, as has been the experience in those states which now have parental consent laws in place. Anyone who performs an abortion on a minor without proof of either parental consent or a judicial order authorizing the procedure is guilty of a crime.

A trial was held in the fall of 1991. A decision was filed on May 27, 1992, striking down the parental consent law as violative of the right of privacy. Additionally, the court found that the evidence did not support a finding that the compelled parental notification advanced the State's interest in protecting the health of minors. On June 30, 1994, the Court of Appeal unanimously upheld the decision of the lower court, finding that the state's parental consent law violated minors' rights of reproductive privacy. On April 4, 1996, the California Supreme Court reversed the judgment of the Court of Appeal. Plaintiffs filed a petition for rehearing on April 19. On May 22 the California Supreme Court agreed to re-hear the case; the two new justices on the Court voted with three of their colleagues to re-hear the case. The case was reargued on May 7 by Margaret Crosby.

On August 5, 1997, the California Supreme Court reversed its earlier decision and struck down the parental consent law by a 4-3 vote. The court ruled that the statute violated the right of privacy guaranteed by the California constitution. The Court held that the California constitution's right of privacy is explicit rather than implied and is broader is scope and application than the federal constitutional right of privacy. Attorneys fees were awarded. (Margaret Crosby, ACLU/NC; Linda Shostak, ACLU/NC volunteer attorney; Abigail English, Nat'l. Center for Youth Law; Carol Sobel)

ACCESS TO JUSTICE

2. Darby v. City of Torrance (U.S. Court of Appeals, Ninth Circuit)

In April 1993, we filed an amicus brief in support of the effort to undue the ill effect of a United States Supreme Court case, Jeff D. v. Evans, which upheld the practice of many public offices defending civil rights cases to require plaintiffs to waive their right to statutory attorneys fees in order to obtain a settlement. The court held that the fees provided for in the statute (42 USC 1988) belong to the suing client and not to his/her attorney. The court then reasoned that since the fees belong to the client, the client could do with them what he/she willed, including waiving them. Though the statute was enacted for the purpose of encouraging lawyers, by providing for compensation, to take meritorious civil rights cases, the practice thwarts that goal and has resulted in just the opposite -- this because most of the victims of civil rights abuses cannot afford to pay counsel. With the right to obtain fees in settling cages taken away by the waiver practice, attorneys are unable to accept modest, albeit meritorious, civil rights cases because they would be working for nothing; indeed, because of court costs and office expenses, they would be out of pocket. Mike Mitchell, a Los Angeles attorney, who has done much toward attempting to solve the problem, including taking a case to the United State Supreme Court, has tried once again in this case. He reasoned from what the Supreme Court had said in Jeff D. that the client could assign his right to the statutory fees to his attorney and, with the consent and understanding of his client, he so provided in the retainer agreement. Also provided was a clause that if the court did not sustain the assignment, Mitchell could withdraw as counsel. He, as so many other attorneys, would not have undertaken the case without those assurances; he just couldn't afford it. United States District Judge Hauk refused to allow the implementation of the proviso and also would not allow Mitchell to withdraw. Mitchell appealed. Our amicus brief urges the appellate court to effectuate the purpose of the fee statute by sustaining the validity of the retainer provision. The parties have stipulated to the dismissal of this appeal with prejudice. As a result Mike Mitchell has lost his right to statutory fees again. Fred Okrand was the author of the brief. (Fred Okrand, Paul Hoffman)

AIDS/HIV

3. AIDS Project Los Angeles, et al. v. Western Dental Services, Inc., et al. (L.A. County Superior Court)

This action challenged the refusal of a dental clinic, two of its associated dentists and its personnel to provide dental care and treatment to individuals who are HIV positive. The complaint, filed on March 5, 1992 on behalf of four individuals who were refused services and APLA and the Gay and Lesbian Community Services Center on behalf of their clients, alleged that such discrimination was medically unjustifiable, unethical and created a false sense of security, creating the risk that universal precautions would not be carefully observed, and thereby threatening the health and safety of all staff and patients.

The action sought an injunction to prevent other discrimination and compensatory damages for the individual plaintiffs, some of whom were refused service while in severe pain and in need of emergency care. One patient was told by one of the dentists, "I don't work on people like you! Get him out of here." His inability to find another dentist for several days led to extreme pain, swelling, and an infection requiring months of monitoring and treatment. The complaint included claims for violations of the City of Los Angeles' AIDS anti-discrimination ordinance, the Unruh Act, the California Business and Professions Code, the federal Rehabilitation Act of 1973, and for intentional and negligent infliction of emotional distress. The City of Los Angeles intervened in the suit on April 20, 1992 to seek civil penalties against the clinic for its discriminatory acts. Defendants answered the complaint on April 3, 1992 and the complaint in intervention on May 8, 1992, and both sides engaged in extensive discovery.

Settlement of the case was put on the record on July 16, 1993. Under the settlement, Western Dental agreed to undertake extensive education and training of all its staff regarding HIV disease, proper infection control techniques, and the legal requirements of non-discrimination and confidentiality. It has also developed a written reaffirmation of its anti-discrimination policy and developed new patient information materials explaining its infection control and non-discrimination policies. The Court agreed to retain jurisdiction for three years in order to permit enforcement of the settlement agreement. The other terms of the settlement are confidential. Recent reporting on implementation of the settlement agreement indicates that several hundred dentists throughout California have undergone extensive AIDS training as a result of the settlement. (Jon Davidson, with Kathleen Wohn, Robin Weiner, and Michael Bierman of Tuttle & Taylor, and with Western Law Center for Disability Rights, Lambda LDEF, APLA, and the Gay and Lesbian Community Services Center)

4. Bender v. Diversified Education Co. (U.S. District Court, Central District)

Lawsuit against a vocational institute for refusing to allow a student who tested positive for HIV to complete his training in its emergency medical technician program. Plaintiff Robert Bender was head of his class and chosen to be a student instructor when he disclosed to the college that he had been diagnosed with HIV. The school thereupon refused to allow him to complete his educational studies or use the facilities necessary for graduation and denied him certificates for courses and programs he had already completed. The school also fraudulently misled plaintiff into believing that, because he was HIV+, he would not be able to obtain employment as an EMT and constructively expelled him from the school. Under the Americans with Disabilities Act, plaintiff cannot be denied equal services enjoyed by other students. He has the right to pursue the career of his choice. Federal and state health and safety codes require and/or recommend all health care providers use "universal precautions" -- such as sterile gloves, shields, or face masks -- to protect both the public and health care workers from transmitting HIV, hepatitis B and other diseases. As a result, people infected with HIV pose no significant risk to others, even in medical or emergency personnel positions. An early meeting of counsel and preliminary settlement discussions were held July 7, 1993. The parties agreed to a settlement in November, 1993. Under the

settlement, the school agreed to readmit Mr. Bender under the same terms and conditions as all students, to refund his tuition in full (so that he will attend for free), and to implement strong anti-discrimination policies and expanded AIDS training for staff. (Alan Friel, Jon Davidson, and attorneys from AIDS Project Los Angeles)

5. Bullock v. Gomez (U.S. District Court, Central District)

HIV discrimination lawsuit against the California Department of Corrections (CDC) and California Men's Colony, under the Americans with Disabilities Act and the Rehabilitation Act. Plaintiffs are a husband and wife, both of whom are HIV+, who seek to participate in the California prison system's conjugal visiting program. For prisoners with contagious diseases, the CDC makes a case-by-case determination of whether a prisoner can have a conjugal visit. Pursuant to written policy, however, the CDC has a blanket exclusion of all HIV+ prisoners. The plaintiffs have been denied visits even though both husband and wife are HIV+, the couple is unable to bear children, and they have agreed to use condoms. There is thus no risk of HIV transmission or reinfection.

The ACLU, with the Prison Law Project and Kaye, Scholer, Fierman, Hays & Handler, successfully settled the case this June. The plaintiffs have been granted conjugal visits. The visits are particularly important in this case because the plaintiffs have not been able to visit each other for the past year, and it is not expected that the husband will survive the length of his prison term. (Taylor Flynn)

6. Doe v. Centinela Hospital (U.S. District Court, Central District)

Suit to challenge the exclusion of a patient from an alcohol and drug abuse program at Centinela Hospital after his blood test was positive for AIDS antibodies. The hospital required the blood test as a condition of staying in the program. This suit raises the issue, left open in Nassau School Board v. Arline, of whether persons who are infected with the AIDS virus who do not display symptoms of the disease are protected under §504 of the Federal Rehabilitation Act. On June 30, 1988, Judge Rymer issued a decision granting the plaintiff a partial summary judgment. The most significant portion of the ruling is that the court found that plaintiff was a "handicapped" person within the meaning of §504 of the Rehabilitation Act of 1973 because the hospital regarded him as handicapped due to its fear that the plaintiff would transmit the AIDS virus to others in the rehabilitation program. The court's reasoning means that hundreds of thousands of asymptomatic AIDS positive persons will have the protection of the anti-discrimination protection of §504 of the Federal Rehabilitation Act. However, the court also found that a trial must be held on the issue of whether the hospital's exclusionary policy could be upheld for legitimate public health reasons. The Court did rule that the hospital bears the burden of proof on this issue. On January 10, 1989, we reached a settlement of the case. The primary term of the settlement is that the hospital will rescind its policy of testing patients for HIV as part of its admission policy and will not exclude or discriminate against HIV seropositive patients in any way in its Life Starts Program. The agreement provides for continuing jurisdiction in the trial court

to enforce the settlement. There have been no reported violations of the agreement to date. (Mickey Wheatley, Paul Hoffman, Jon Davidson)

7. Fuentes v. Reich (U.S. District Court, Central District)

This was believed to be the first AIDS discrimination action ever filed under the Americans with Disabilities Act. On March 20, 1992, we filed a complaint in federal court on behalf of Salvador Fuentes, who was refused necessary urgent care by Dr. Thelma Reich and the Ventura Urgent Care Center on February 14, 1992 because he disclosed that he is HIV-positive. Dr. Reich refused to treat or even examine a severe cut to Mr. Fuentes' hand, instead giving him a signed and dated note on her prescription pad, which was worded: "This is to inform you that I do not treat patient [sic] with HIV positive in our clinic. Advised to go to County ER for treatment." Our complaint included claims under the Americans with Disabilities Act, the Rehabilitation Act of 1973, California's Unruh Civil Rights Act, California's Unfair Business Practices Act, and for intentional and negligent infliction of emotional distress. After we filed our complaint, Dr. Reich resigned from the clinic. Defendants filed an answer on April 10, 1992, and an amended answer on April 29, 1992. Both sides propounded written discovery. Numerous depositions were taken. Defendants moved for summary judgment, asserting that the prerequisites for jurisdiction under the Americans with Disabilities Act and the Rehabilitation Act of 1973 were not met in this case. Defendants' motion was denied in full on July 15, 1993. A pretrial was to have been held April 19, 1993, but was postponed (for the third time) to August 30, 1993. Trial was rescheduled for November 30, 1993. On that date, Defendants agreed to pay Mr. Fuentes $85,000 in settlement of the case. To the best of our knowledge, this was the largest payment even made is an AIDS "refusal to treat" case up to that time. Dr. Reich also agreed to submit proof that, subsequent to the filing of this suit, she took AIDS education training. (Jon W. Davidson, with Sande Buhai Pond and David Raizman of the Western Center for Disability Rights)

8. Kerins v. Hartley (California Supreme Court)

On July 30, 1993, the California Court of Appeal ruled, contrary to almost all other courts that have considered the question, that a patient treated by a physician infected with HIV can state a claim for "fear of developing AIDS" when the patient has not become and is unlikely to become infected with HIV, even when there is no evidence that the patient was actually exposed to the virus through contact with the doctor's blood. The court further held that the patient also can state a claim for battery whenever a doctor fails to disclose his or her HIV status in response to pre-operation HIV concerns of the patient. On September 28, 1992, we filed a letter brief with the California Supreme Court on behalf of the ACLU of Southern California, AIDS Project Los Angeles, and the San Francisco AIDS Foundation, urging the Court to grant a petition for review filed by the doctor's estate and his former partners. After providing the Court with information about HIV transmission and the development of strategies to minimize the risks of HIV transmission in health care settings, we argued that the Court of Appeal's decision ignores the considered development of public health policy and the weight of medical expert opinion regarding the management of the risk of

transmission of AIDS and violates the rights of privacy of medical practitioners. We also argued that the Court of Appeal's decision could encourage discrimination against people living with HIV disease in employment and a wide range of other settings. In addition, on September 28, 1993, we concurrently filed with the California Supreme Court a separate letter alternatively requesting depublication of the Court of Appeal's decision. The AMA additionally filed a letter urging review. On October 28, 1993, the California Supreme Court granted the petition for review. On February 24, 1994, the Supreme Court transferred the case back to the Court of Appeal to reconsider it in light of a subsequently decided "fear of cancer" case. On March 24, 1994, the Court of Appeal directed the parties to file letter briefs addressing the impact of that subsequent case. We filed an amicus brief with the Court of Appeal in response on April 22, 1994. On August 23, 1994, the Court of Appeal reversed it's prior position and held, as we had argued, that no claim for "fear" of infection was available under California law. (Jon W. Davidson, Peter Lee of Tuttle & Taylor)

9. People v. Clean Needles Now

We represent a group of AIDS activists who are exchanging clean hypodermics for used ones. Several received "notice to appear" citations and we will mount a necessity defense if the City Attorney's office decides to prosecute. For the time being, however, no charges have been filed. We assisted in the successful efforts to convince the L.A. City Council and Mayor to declare a state of emergency urging the LAPD and City Attorney not to take steps to interfere with needle exchange activities. We also assisted in the City of West Hollywood's enactment of a similar declaration of a state of emergency. We continue to act as counsel to Clean Needles Now in its ongoing work. (Jon W. Davidson, Alan Friel, Cathy Dreyfuss)

CHILDREN'S RIGHTS

10. Rodriguez-Mendez v. Anderson (San Francisco County Superior Court)

Plaintiffs in this action are adults wishing to adopt minor children and minor children who are in the adoption process in the State of California. The children's adoption is being prevented by the State Department of Social Services (hereafter "DSS") due to the child's undocumented status or alleged undocumented status and in some instances the status of the prospective parent, who is in the country legally. The State Department of Social Services (hereafter "DSS") is preventing the adoptions to go forward solely because of the children's legal status in this country. The policy change as it exists violates state adoption laws, the California Administrative Procedure Act, it denies plaintiffs of Equal Protection under the California and United States Constitution and it is preempted by federal law. This policy is in direct conflict with State and Federal laws. Plaintiffs seek a preliminary and permanent injunction prohibiting the DSS from implementing the provisions of all County Letter 92-94; that this court issue a declaratory judgment that all county letter 92-94 without promulgation as a regulation, without public notice and review in accordance with the APA violates plaintiffs and other prospective adoptive families rights under the Act; that denying

undocumented/ illegal children and their prospective adoptive parents the right to be processed for and adopted violates California law. The case was filed on December 30, 1992. On January 29, 1993, a preliminary injunction was granted in San Francisco Superior Court. A demand for attorneys fees was made in mid-October, 1993. The attorneys' fees were negotiated in October, 1994 and the ACLU received approximately $1,000 in fees. (Silvia Argueta, Paul Hoffman with National Center for Immigrants Rights, Alan Schlosser, ACLU/NC, the Alliance for Children's Rights and Nervo and Bean)

CHURCH/STATE

11. American Jewish Congress, et al. v. City of Beverly Hills, et al. (Court of Appeals, Ninth Circuit)

This is a challenge to the display of a solitary 28-foot Menorah in the public park across from Beverly Hills Civic Center and the main Beverly Hills branch of the U.S. Post Office. The lawsuit alleges that the display violates the Establishment Clause. The lawsuit also challenges the City's Standard Agreement for Holiday Religious Displays that permits individuals to place any religious symbols on any public property in the City of Beverly Hills for an extended period of time. On December 13, 1990, the judge granted our temporary restraining order and ordered the City to Change the display so that the Menorah did not stand alone. Our request for a permanent injunction was denied as moot since the Chanukah display had been taken down. Settlement discussions failed. On December 4, 1992, the judge entered summary judgment in favor of the defendants, permitting the menorah. We filed a notice of appealed the decision. Oral argument was heard in early June, 1994. In late September, 1995, a decision was issued, remanding the case to the district court for trial. Subsequently, defendants' suggestions for an en banc hearing was granted. The hearing will be held March 21, 1996.

In a unanimous en banc decision, the U.S. Court of Appeals for the Ninth Circuit held that the display of a menorah on public park property was unconstitutional. The July 19 ruling found that the City of Beverly Hills had violated the First Amendment by allowing Chabad, an Orthodox Jewish religious group, "to erect its menorah pursuant to an ad hoc policy that allows for religious freedom." The 11-0 decision directed the District Court to enter judgment in favor of the ACLU, and awarded attorneys fees. The case was returned to the district court for entry of judgment on Sept. 16, 1996. The question of attorneys fees was resolved in early 1998. (Carol Sobel, Doug Mirell)

12. People v. Ridley (2nd District Court of Appeal)

In August, the ACLU/SC filed leave to file an *amicus* brief on behalf of David Ridley, a homeless man who slept in his RV with his companion of four years and their dog on the streets of Santa Barbara; he was cited for a violation of a city ordinance, "Residing in rec veh on the street." The woman, who is developmentally disabled and cannot drive the vehicle,

was acquitted because there were no spaces at the homeless shelter open to women that night.

Homeless people may seek shelter without cost at the Rescue Mission. The Mission is an Evangelical Christian religious program that requires users to listen to religious messages. Among other issues (leaving his companion and dog alone), Mr. Ridley did not want to be subjected to the Mission's religious message. He raised this as an affirmative defense at trial; the judge rejected the defense and he was convicted in a non-jury trial. The case is now on appeal.

The ACLU/SC's brief concentrates on the First Amendment issue involved: conditioning the enforcement of a penal law upon one's participation in a religious activity. Oral argument was held in November, 2001; in December, the Court reversed the conviction. In an opinion certified for publication, the Court ruled that the City of Santa Barbara did not provide an adequate housing alternative and the trial court should have applied defendant's necessity defense to the circumstances of the case. It also held that forcing a person to either face criminal prosecution or be required to participate in a religious service violated the First Amendment. (Theodore Boutrous and Tanya Acker of Gibson Dunn)

13. Riedel v. Johnson, et al. (U.S. District Court, Central District)

This case challenges a "self-esteem" program in the public elementary and middle school taught by a fundamentalist religious group, Victory Outreach. The program teaches children that the only way to combat drugs and gangs is to find God, know that Jesus loves you, go to church and carry a Bible. When one parent protested the program, school officials responded by removing the parent's child from the next assembly run by Victory Outreach and putting the child to work doing clerical assignments in the vice-principal's office. The suit alleges that the school's practice violates the Establishment Clause of the First Amendment to the federal Constitution, and the three religion clauses of the California Constitution, including a provision which bars any teaching or instruction in sectarian doctrine in the public schools. The case settled when defendants agreed to issue instructions to all school principals in the district that these religious groups are to be barred from the schools. Dismissal was entered in early February 1992. (Carol Sobel)

14. Roman v. Val Verde School District (U.S. District Court, Central District)

This case, filed November 16, 1999, challenges the constitutionality of the decision in November, 1999 by the Val Verde School Board to post copies of the Ten Commandments in administrative offices of schools in the district. We argue that the School Board's action violates the Establishment Clause of the First Amendment of the U.S. Constitution under the Supreme Court's 1980 decision in Stone v. Graham, which invalidated a Kentucky law that required the posting of the 10 Commandments in public school rooms in the state.

The case is brought on behalf of six students who attend schools in the Val Verde district. The students come from two different families.

The Val Verde School District is located in the Inland Empire. The district covers parts of the communities of Perris, Mead Valley and Moreno Valley. School officials are well aware of Stone v. Graham, but have proclaimed that they are free to ignore it. The School Board President told the Riverside Press-Enterprise newspaper that "[i]t is the views of the majority of the people that counts." In his opinion, because the majority of the people in the community want to post the Ten Commandments, and because a majority of the School Board voted for that action, the Board is not bound by what the Supreme Court says.

School Board officials also have told the newspaper that the posting of the Ten Commandments is a response to the episodes of school violence in the nation in recent years: it will teach children right from wrong, or so goes their argument. The ACLU has pointed out that the Constitution does not forbid public school officials from seeking to integrate the Bible (including the Ten Commandments) into the curriculum in an objective manner as part of a discussion of the history of religion, comparative religion, or ethical values. But that is not this case. Rather, the Val Verde School Board's action has an impermissible religious purpose, and at bottom, is really about indoctrinating impressionable children.

On November 22, 1999 the School Board voted not to post the Ten Commandments in any of the district's school. The ACLU agreed to dismiss the case in December, 2000. (Michael Small, Peter Eliasberg, and Morrison and Foerster)

15. Sands v. Morongo Unified School District (California Supreme Court)

Suit filed on behalf of two taxpayers to halt the practice of having clergy and teachers deliver prayers at the public school graduation and preceding baccalaureate services in the Morongo Unified School District. We challenged the practice as a violation of federal and state establishment clauses and as an unlawful preference and indirect grant of support for sectarian beliefs. The court denied our request for a preliminary injunction in the spring of 1986 saying the request came too close to graduation and that the harm to the students from having to change long-standing traditions at this late date would be greater than the injury to the taxpayer plaintiffs. Following a ruling by the Court of Appeal in Northern California last fall striking down prayers at public school graduations, we moved for summary judgment. The defendants filed a cross-motion for summary judgment. The court granted our motion. The district appealed in March 1988. Oral argument was heard on August 3, 1989. The Court of Appeal issued its opinion on September 19, 1989, reversing the trial court. The California Supreme Court granted our Petition for Review and oral argument took place February 6, 1991. On May 6, 1991, the California Supreme Court held in a 5-2 decision that the practice violates the federal Establishment Clause. The Morongo Unified School District has now filed a petition for certiorari with the U.S. Supreme Court. Briefing with U.S. Supreme Court was completed in early November. On June 24, 1992, the Supreme Court by a 5-4 vote upheld a ban on prayer at graduation ceremonies in Rhode Island. This decision leaves our victory in the California Supreme Court in place. We settled the attorney's fees issue. (Carol Sobel, Mark Rosenbaum)

16. Stone v. San Luis Obispo (U.S. District Court, Central District)

The San Luis Obispo County Board of Supervisors approved an appropriation of $2500 to go to a local Catholic School's drama department on April 27, 1999. The ACLU filed a suit on April 29, 1999 for injunctive relief under both the Establishment Clause of the United States Constitution and Article IX section 8 and Article XVI section 5 of the California Constitutions, which prohibit government funding of sectarian schools and government aid to sectarian institutions.

This expenditure appears to be invalid because it is:
1) not available to all students, public and parochial, unlike, for example a program that provides school bus service to **all** schoolchildren,
2) a direct monetary contribution to a sectarian school, as opposed to monies provided to families that send their children to such schools; and
3) it is of the type that is readily available for use in religious instruction, e.g., the drama club can use the money to put on a religious play.

The California Supreme Court has interpreted Article IX section 8 and Article XVI section 5 of the California Constitution to provide an even stronger bar to government expenditures on behalf of sectarian schools. For example, in California Teachers Ass'n v. Riles, the Court relied on these provisions to strike down a program that allowed the Superintendent of Public Instruction to loan public school textbooks to parents whose children attended nonpublic schools, including parochial schools. Justice Mosk's opinion criticized the US Supreme Court's jurisprudence, particularly the distinction the Supreme Court has sometimes drawn between aiding sectarian schools, as opposed to aiding the families whose children attended those schools. The California Court invalidated the textbook loan program because it provided direct benefit to sectarian institutions, and advanced the educational mission of the sectarian schools. The opinion distinguished between aid that directly advanced the school's mission, and aid that constitutes "generalized services government might provide to schools in common with others" such as fire department services, or bus transportation provided to all school children.

The suit was settled on May 25, 1999. Under the terms of the settlement, the grant to Mission College Catholic Preparatory High School was withdrawn. In addition, the defendants agreed to abide carefully by the provisions of the California and federal constitutions guaranteeing the separation of church and state and to reimburse the ACLU for its costs and attorneys' fees. (Peter Eliasberg, Barbara Antonio)

17. Van Ry v. Belridge Unified School District (U.S. District Court, Eastern District)

The ACLU filed a challenge on August 24, 1999 to the decision of a one-school, local school district to use books published by A Beka Book – a school book publisher whose goal is "building the content of every textbook on the foundation of God's word." The case was brought on behalf of a parent whose eighth grade daughter has attended the school since first grade, but who intended to send her child to another school because she objected to the use

of these textbooks.

Our primary claim is under the Establishment Clause. It appears that the use of these books would not pass muster under either of the first two prongs of the Lemon test – the secular purpose and primary effects tests. While the school district could claim that the secular purpose of using these books is that it has determined that the books are the best available materials to teach English, History, etc., that argument fails for two reasons. First, the publisher itself (whose main market is homeschooling and private schools) proudly proclaims that "A Beka Book [is] unashamedly Christian and traditional in its approach to education." It also states that it has "often had to go against the tide of the academic establishment in order to meet the highest standards of Christian scholarship." Because A Beka's own purpose is so obviously religious, even if the district asserted that it had chosen these books solely because they are good for teaching"the three R's" a court would likely reject this asserted secular purpose as a sham. See, e.g., Stone v. Graham, 449 U.S. 39 (1980)(rejecting any asserted secular purposes for law requiring posting of Ten Commandments in schools).

Second, the books themselves are so honeycombed with religious references, even proselytizing, that a judge would be very skeptical of any asserted secular purpose for their use. For example, the third-grade American History textbook's introduction states:

> God sent daring captains like John Smith and Miles Standish to help settle a new land. god gave wisdom to men like George Washington, Benjamin Franklin, and Thomas Jefferson to help them form a new nation. God gave understanding to men like Abraham Lincoln, Robert E. Lee, and Ulysses S. Grant to help heal a divided land.

The third-grade English textbook includes in a list of ten sentences or sentence fragments the following:

2. Noah built an ark for God.

7. Jesus loves children.

In other places it instructs students to punctuate or capitalize various verses from the Bible. While public schools may discuss religion and religion's role in history, Abington v. Schempp, 374 U.S. 203, 225 (1963), it is extremely unlikely that the repeated uses of Biblical verses as part of an English textbook is constitutional. Cf. id. (finding practice of reading verses from the Bible at the beginning of the school day to violate Establishment Clause).

Moreover, under the "primary effects" test, courts try to determine whether a reasonable observer would see the challenged practice as an endorsement of religion. Certainly a history textbook that states

> Throughout the history of America, God has heard the prayers of those who love him and their country. The names of many of these praying Christians are not written in history books, but their prayers were heard by God.

would appear to a reasonable person not only to endorse religion, but also to endorse Christianity over other religions.

The ACLU's suit sought an injunction forbidding the use of the A Beka Book textbooks in the Belridge School District, and fairly limited damages for the plaintiff for two reasons. First, she has had to undergo a number of hardships involved in finding a new school for her daughter to attend. Second, the actions of the school superintendent appear particular egregious. He has been advised by the County Board of Education not to use the A Beka Books and went ahead anyway, despite their clear religious perspective. We believe that he would not be entitled to qualified immunity under these circumstances.

In response to the lawsuit, the school district pulled the books from use in the curriculum on August 26, 1999. Settlement negotiations resulted in the filing of a settlement proposal and proposed consent decree with the court in April, 2000. The agreement forbids the defendants from using A Beka Book material and a number of other practices that endorse religion. The agreement also provides for payment of damages as well as attorneys' fees. (Peter Eliasberg, Michael Small, Barbara Antonio)

DEATH PENALTY

18. People v. McDermott (California Supreme Court)

Maureen McDermott is the first woman on death row in California since the restoration of the death penalty. This is an automatic appeal from her conviction and sentence. Record correction is proceeding, and attorneys are beginning review of the transcripts and preparing appellant's opening brief, which will not be due until after the record is certified. Verna Wefald, who handled the case when it was in the Office of the State Public Defender, is lead counsel.

A motion to substitute new counsel to replace the ACLU will be filed in early 1996. (Verna Wefald, Steffan Imhoff, Paul Hoffman, Tracy Rice, and Mark Silverstein)

19. People v. Mincey (United States District Court, Central District)

This is a direct appeal from a death penalty judgment raising a number of issues, including instructional errors, improper exclusion of exculpatory evidence, admission of incompetent testimony, and prosecutorial misconduct for reversal of the conviction and instructional errors, disproportionality, jury misconduct (including Bible reading during deliberations), and improper exclusion of mitigating evidence for reversal of the death sentence. In April 1992, the Court affirmed the conviction and sentence in all respect. Justice Mosk dissented

on the Bible issue and our Petition for Certiorari was denied in early December 1992. A state habeas petition, alleging 23 claims for relief, was filed on December 31, 1991.

On April 14, 1993, the California Supreme Court denied the Petition for Writ of Habeas Corpus. A federal habeas petition will now be filed by newly-appointed counsel, Jack Cairl. We will assist as second counsel in the federal proceedings. (Joan Howarth, Tracy Rice, Mark Silverstein, with Jack Cairl)

20. People v. Mitcham (U.S. District Court, Northern District of California)

This challenge to a 1984 Alameda County judgment of death raises a wide range of constitutional issues. Issues raised in the state habeas petition include the prosecutor's deliberate exclusion of all African-Americans from the jury, perjured testimony on material issues relating to the conviction, the jury's receipt of prejudicial exhibits that were not admitted into evidence, and ineffective assistance of trial counsel in both the guilt and penalty phases of the capital trial. In late 1993, the California Supreme Court denied the habeas petition, and the United States Supreme Court denied a subsequent petition for certiorari on June 30, 1994.

Since August 1994, the case has been in the chambers of U.S. District Court Judge Saundra Armstrong, who has issues a series of stays of execution pending the request for appointment of counsel in federal court. (Paul Hoffman, Mark Silverstein.)

21. People v. Williams (California Supreme Court)

We are appointed by the California Supreme Court to represent Barry Williams in appellate and post-conviction challenges to his conviction and sentence of death, which was imposed in Los Angeles in 1986. The appellate briefing is completed, but no date for oral argument has been set. In November, 1995, we filed a comprehensive petition for writ of habeas corpus. The California Supreme Court has asked the Attorney General for a response, which was filed in September, 1996. Argument was held on May 7, 1997. On September 18, 2000, the Court denied the petition, including all subclaims, with Justices Mosk and Kennard dissenting. The case has been transferred to the Federal Defenders Office to pursue claims in federal court. (Joan Howarth, Mark Silverstein.)

22. Tuilaepa v. California (U.S. Supreme Court)

Along with the case of Proctor v. California, this case presented the Supreme Court with a broad constitutional challenge to the vagueness of the aggravating factors in California death penalty statute. A favorable result could have provided the basis to challenge every sentence of death in California. The ACLU filed an amicus brief January 24 arguing that one danger of instructing the jury to consider a factor so vague as "the circumstances of the crime" is that it does nothing to guard against the risk that the jury will consider constitutionally impermissible factors like race. The Supreme Court upheld the California statute on June 30, the last day of the term. (Michael Laurence, Paul Hoffman, Mark Silverstein)

DISABILITY RIGHTS

23. Badua v. City of San Diego (U.S. District Court)

In November, 1997, the ACLU filed a suit in federal district court on behalf of people with mental disabilities who are subject to discrimination under the City of San Diego's Self-Funded Employees' Long-Term Disability Income Plan. Plaintiff, a city employee, was diagnosed with a bi-polar disorder in 1994 and placed on long-term disability due to severe depression and anxiety. Under the city's plan, she received 24 months of LTD benefits. The city then terminated all payments, placing plaintiff and her family in financial crisis. The city grants benefits to age 65 for its employees with the exception of those with "mental or nervous disorder related disabilities." The principal claim for relief is under the Americans with Disabilities Act. A motion for a preliminary injunction to restore benefits for Ms. Badua was denied by the district court on grounds that no irreparable injury had been shown since suicide would constitute a "self-inflicted injury" and loss of home would be later made compensable in damages. On appeal, the Ninth Circuit affirmed the district court as not exceeding its discretion in denying the injunction. Because of the lack of success, and adverse rulings from other courts on issues similar or identical to those raised in this case, a settlement was reached awarding Badua very nominal damages. No fees were obtained. (Mark Rosenbaum, with the ACLU of San Diego and Imperial Counties and the Disability Rights Education and Defense Fund, Inc.)

24. Fredette v. Atlanta Casualty (U.S. District Court)

This action was filed on behalf of Ronald Fredette, who is disabled and has virtually no use of his legs and feet. He requires hand controls in order to drive his modified vehicle, which he has been doing for almost 18 years. The insurance company canceled his policy under its rule that it will insure no modified vehicles. Fredette had applied for the policy in person in his wheelchair, the agent had taken pictures of his mini-van before issuing the policy, and Fredette had paid several premiums before being canceled. Fredette is dependent on his vehicle to purchase food, attend rehabilitation programs, obtain medical treatment, and take care of other basic needs.

The ACLU alleges violation of the Americans with Disabilities Act, the Unruh Civil Rights Act, the Unfair Business Practices Act, and the Covenant of Good Faith and Fair Dealing. We are seeking compensatory and punitive damages, as well as a change in the company's underwriting policies. This is believed to be the first-ever disability discrimination suit against an auto-insurance company. Defendant's answer to the complaint was due on August 15, 1997. The case was settled pursuant to a sealed settlement agreement. (Dan Tokaji, Stanley Fleishman)

25. Grimes v. Department of Social Services (Los Angeles Superior Court, North Valley District)

This action challenges the State of California's interpretation and provision of the Community Care Facilities Act (the "CCF Act"), through which the state requires licensure of all housing in which those who need "care or supervision" reside. The effect of this requirement is a severe limitation upon the kinds of housing opportunities available to people with disabilities, forced institutionalization of many people with disabilities, and a government prohibition upon many people with disabilities living with non-relative (even those with whom a familial relationship exists) who might seek to care for them. The plaintiffs are Tracy Grimes (a 32 year-old woman who is partially paralyzed as a result of a brain stem hemorrhage), Gabrielle and Frederick Hanna (with whom Tracy lived for five months, forming a family bond, until the state forced her to move out by threatening the Hannas with fines for allegedly operating an "unlicenced community care facility"), Jane Doe (a 43 year-old woman with multiple sclerosis suing under an alias because she currently lives in an unlicenced apartment building from which she fears the state will force her to be evicted if her identity is discovered), and the Westside Center for the Independent Living (suing on behalf of those it serves). The complaint, which was filed August 5, 1994, includes claims for violation of the federal Fair Housing Amendments Act, the Americans with Disabilities Act, the Rehabilitation Act of 1973, the California Fair Employment and Housing Act, and for violation of federal and state constitutional rights to privacy, intimate association, equal protection, and due process. A motion for preliminary injunction, to allow Ms. Grimes to move back in with the Hannas pending trial without the threat or imposition of fines, was granted August 29, 1994. We met with defendants on November 3, 1994 to discuss settlement, but defendants rejected our demands. We propounded discovery on defendants, to which they responded. Defendants' demurrer to our first amended complaint was taken under submission on January 12, 1995 and the trial court subsequently dismissed the case. The action was appealed and on March 22, 1999 the Court of Appeal ruled that the state abused its discretion when it denied Ms. Grimes an individualized assessment. The Court denied a motion for rehearing in April, 1999. (Mark Rosenbaum, with Mark Johnson of the Western Law Center for Disability Rights, San Fernando Neighborhood Legal Services, and David Raizman)

26. Hall Negotiations with United States & International Olympic Committees

Negotiations on behalf of cancer survivor Kevin Hall, pursuant to the Olympic constitution, to require the USOC to administer a non-discriminatory drug test.

Kevin Hall is the top contender for the U.S. Olympics team in sailing, as well as a contender for the Gold Medal, but may be barred from participation because he suffered from testicular cancer and now requires externally administered testosterone which is banned under Olympic rules. Kevin's cancer required 3 major surgeries resulting in the removal of his abdominal lymph nodes and both testicles. The testosterone injections do not enhance Kevin's athletic performance, and without them, Kevin cannot remain healthy.

The US and International Olympic Committees state that the ban on testosterone is to prevent substance abuse. This interpretation, however, fails to take into account the unique circumstances of the disabled. The USOC and IOC have indicated that the prohibition of exogenous testosterone is to prevent athletes from artificially enhancing their performance by increasing their testosterone to above-average levels. This concern does not apply to Kevin's situation: his testosterone levels are no greater than, and often are lower than, the level present in men of Kevin's approximate age and stature. The USOC and IOC can determine that Kevin's athletic ability has not been enhanced by simply using a different type of drug test. Both Committees administer a test that measures the ratio of epitestosterone to testosterone. Since his body does not produce epitestosterone, Kevin would fail this test. However, Kevin would pass any test which focused on the hormone level of testosterone in the body.

The ACLU successfully negotiated with the USOC and IOC, and we secured an agreement from the organizations to permit Kevin to participate in the Olympic trials. At the trials, Kevin finished 5th out of 48 contenders -- a strong finish, but one that failed to qualify him for the Olympic team. However, Kevin di qualify for the U.S. team and plans to try out for the Olympics in the year 2000. Now a precedent for alternative testing procedures has been set which should help Kevin and other disabled athletes in the future. (Mark Rosenbaum, Taylor Flynn)

27. Shannon v. The Burbank/Glendale/Pasadena Airport (U.S. District Court, Central District)

This was an action for disability discrimination. We represented Michael Shannon, a forty year-old man who was born with cerebral palsy, and his father, Robert Shannon. In February 1993, Michael went with his father to the Burbank Airport to exchange a ticket for a trip he was planning to take to visit his mother in Arizona. Michael went into the terminal by himself and stopped in the men's room on the way to the ticket counter. He set his ticket down on top of the urinal he was going to use and it fell behind the urinal. Someone tried to help him retrieve it but, when they could not, went to get help. An airport police officer subsequently entered the bathroom and began to harass Michael because of his appearance and speech impediment, disbelieving that he had lost his ticket. Subsequent officers were called in and Michael was ordered to leave the bathroom and the terminal under threat of arrest. The officers followed him out and, in the presence of Robert, continued to harass and humiliate Michael and to order neither of them to return to the men's room. A complaint for violation of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1983, 42 U.S.C. §1983 and numerous state law claims was filed in federal court on February 17, 1994. On March 17, 1994, a first amended complaint was filed. Defendants answered the amended complaint on March 30, 1994. On May 4, 1994, the court ordered all state claims dismissed and we subsequently refiled those claims in a separate action in state court, which we have informally agreed to leave dormant pending trial in the federal case. Both actions have now been resolved. (Jon Davidson, Jenny Skoble, Mark Rosenbaum, with the Western Law Center for Disability Rights)

DISCRIMINATION: GENERAL

28. Acuna v. The Regents of the University of California (U.S. District Court, Central District)

Dr. Acuña is a full professor at Cal State Northridge, head of the Chicano Studies Department there and the founder of Chicano Studies. He filed suit against the UC Regents for the denial of his application for a Step VI professorship at UC Santa Barbara. UCSB claimed that Dr. Acuña lacked scholarship and the requisite academic experience supervising students necessary for a full professor. Dr. Acuña has sued the Regents and others for employment discrimination based on race, ethnicity, age, political views in violation of the California Constitution, article 1, section 2. On July 12, 1993, the U.S. District Court Judge Harry Hupp permitted us to sue all individual defendants in their official capacities only, dismissing the defendants in their private, non-official capacities.

Some of the comments made regarding Dr. Acuña were summarized in UCSB's CAP aggregate summary of comments and contained statements such as: "This reviewing agency does not judge Acuña's fiery brand of advocacy appropriate for a professorship in the University of California," This reviewing agency has doubts as to whether his teaching is unbiased; indeed it has every reason from the record to suppose that it would be strongly politically proactive," "This reviewing agency having read Professor Acuña's work, finished that task feeling strongly that he is an inveterate polemicist and pamphleteer who ignores the rules of evidence, fills his work with angry pronouncements on a wide array of subjects, and flagrantly, openly, and apparently on purpose shapes his analyses and narrative to serve a political purpose."

Rudy Acuña is an important figure in the Chicano community and the denial of his appointment has been a rallying vehicle for Chicanos and progressives throughout the state. The complaint was originally filed in Alameda County (Northern California) on September 25, 1992. The defendants removed it to federal court because of the federal age discrimination claim. Subsequently, the state claims were remanded to state court, and venue transferred to Santa Barbara (Judge Stevens), and the federal action to the Central District of California (Judge Harry Hupp). The state claims are based on race, ethnic, and age discrimination in violation of the Ca. Fair Employment and Housing Act (FEHA) and Cal. Gov. Code § 12900(a) and Article I, Section 2 of the California Constitution. The federal action is based on a violation of Title VII of the Civil Rights Act of 1964 as amended 42 U.S.C. § 2000(e), et seq., the Age Discrimination in Employment Act, 29 U.S.C. §623(a)(1), and the First Amendment to the U.S. Constitution.

On January 11, 1994, the discovery referee in state court granted broad discovery to plaintiffs allowing access to documents regarding the hiring of professors and teaching assistants at UCSB for a ten year period and allowed discovery of employment practices for the past ten years at the 9 UC campuses, including all documents the UC system must file with the EEOC, and with the California legislature. Depositions of defendants and witnesses were taken. Plaintiff and defendants recently stipulated to a four month extension of discovery

moving the date to June, 1994. Motions in limine were heard September 25, 1995. The sole issue remaining is age discrimination. Defendants won summary judgment on the race discrimination issue.

The federal case on the issue of age discrimination went to trial on October 10, 1995 and we won with an 8-0 jury verdict on October 30, 1995. The finding made by the jury was that the determining factor in denying Professor Acuña the position was age. Post trial motions were filed in December; they asked for Professor Acuña's reinstatement as a professor Step Level VI. On January 24, 1996, Judge Collins denied that motion and instead granted Dr. Acuña $326,000 in front and back pay. The legal team is considering an appeal of that order. The judge did deny defendant's motion for a new trial or in the alternative for judgment notwithstanding the verdict. The judge awarded $500,000 in attorneys fees to all plaintiff's counsel; an appeal regarding attorneys fees was filed with the Ninth Circuit in February 1997. The Ninth Circuit reversed part of the decree, awarding $300,000 more to plaintiffs. (Mark Rosenbaum, with Beth Minsky of the National Coalition for Universities in the Public Interest, Center for Constitutional Rights, Armando Duron (federal suit), and Moises Vasquez (state case))

29. Alarcon, et al. v. Six Flags Magic Mountain (U.S. District Court, Central District)

Case involving the denial by amusement park officials of admission of three Latino youths based solely on their appearance and race. We contend that Magic Mountain discriminated against plaintiffs by arbitrarily denying them admission because their physical characteristics allegedly coincided with the profile of "gang" membership, which Magic Mountain contends justifies exclusion from the park. Although none of the three youths belong to a gang, they were falsely perceived as being gang members based on an overbroad and over-inclusive physical description of gang membership, and were publicly humiliated and abusively searched and interrogated before being forced to leave the premises. Magic Mountain's policy of exclusion is not new. In 1988, the ACLU Foundation filed a civil rights lawsuit against them and the L.A. County Sheriff's Department on behalf of four Latino youths because they were searched and denied entrance based on race and appearance. A settlement was reached in that case. The defendants have removed the case to federal court, where Judge Kelleher will be presiding over the case. We are in the process of amending the complaint to include six Filipino youths from Union City who had a similar experience at the park. Both cases have now settled. (Sharon Robinson, Carol Sobel)

30. American-Arab Anti-Discrimination Committee v. Reno (U.S. Supreme Court)

Suit on behalf of the respondents in INS v. Hamide, et. al. and a coalition of groups challenging the constitutionality of §241(a)(6) of the McCarran-Walter Act of 1952, and alleging selective prosecution in violation of the First Amendment. We initially sought an injunction prohibiting the INS from enforcing §§241(a)(6)(D)(G)(v) and (H) of the Act, which authorized the deportation of aliens who "advocate" "world communism" or who are "members" or "affiliates" of organizations which distribute literature advocating "world communism." We argued these provisions violated the First and Fifth Amendments. After

the INS added § 241(a)(6) (F)(iii) ("affiliation" with an organization that "advocates" or "teaches" the" destruction of property") charges, we included a challenge to this section in our request for a preliminary injunction.

On December 21, 1988, U. S. District Judge Stephen Wilson ruled that the provisions of the McCarran-Walter Act we challenged violated the First Amendment. He also ruled that resident aliens had the same rights as citizens under the First Amendment in the deportation context. The published decision of the court and a judgment declaring the challenged provisions of the Act to be unconstitutional were filed January 26, 1989. The decision is reported as 714 F.Supp. 1060. In November 1989 Judge Wilson also declared the (F)(ii) provision unconstitutional but denied our challenge with respect to similar provisions limiting the granting of various forms of discretionary relief, including legalization, based on ideological grounds. The government filed an appeal. While the appeal was pending, Congress repealed the McCarren-Walter Act provisions that Judge Wilson had declared unconstitutional. In July 1991 the Ninth Circuit reversed Judge Wilson's decision finding that, in light of the repeal, the plaintiffs claims were not "ripe" for decision.

Despite the McCarren-Walter Act's repeal, the INS continued to seek deportation, charging six of the eight aliens with technical visa violations (such as taking too few credits on a student visa), and proceeding against the two permanent resident aliens on charges that they had provided support to a terrorist organization.

In January 1994, after substantial briefing, the district court ruled on two important issues left in the federal case. First, it found that plaintiffs had made a preliminary showing that they had been selectively targeted for deportation based on their First Amendment activities (while similarly situated members and supporters of the Nicaraguan Contras, Afghanistan Mujahedin, and anti-Castro Cuban groups had not been deported). On that basis, it preliminarily enjoined deportation proceedings against six of the eight immigrants, declining to enjoin the proceeding against permanent residents Hamide and Shehadeh only because it believed it lacked jurisdiction over their claims.

Second, the court issued a second preliminary injunction against the INS, which had sought to rely on secret evidence to deny legalization to permanent resident status to two of the eight aliens, Naim Sharif and Aiad Barakat, who were otherwise eligible for legalization under the Immigration Reform and Control Act. (Legalization is an amnesty program that permitted persons who had been in the United States illegally for seven years prior to 1986 to become permanent residents). The court held that reliance on secret evidence was likely to violate due process, and ordered discovery. The government appealed both injunctions; Hamide and Shehadeh appealed the court's decision that it lacked jurisdiction to hear their selective prosecution claims.

In January 1995, the district court granted Sharif and Barakat summary judgment on their claims that the use of secret evidence violates due process. It considered an ex parte submission from the government, in which the INS set forth why it needed to use secret evidence against the two, and found it wanting. Specifically, it found that the government's

submission did not show that Barakat or Sharif had "personally participated in any 'terrorist' activity." The government appealed again.

In November 1995, in a landmark decision, the U.S. Court of Appeals for the Ninth Circuit affirmed both injunctions. It squarely rejected the government's argument that immigrants are not entitled to the same First Amendment protections as U.S. citizens. And it held that using secret evidence cannot be squared with fundamental principles of due process. In addition, it ruled that the district court erroneously concluded that it lacked jurisdiction over Hamide and Shehadeh's selective prosecution claims.

In April 1996, the district court extended the "selective prosecution" preliminary injunction against deportation proceedings to permanent residents Hamide and Shehadeh. After the November 1995 Ninth Circuit decision, the INS submitted 10,000 pages of evidence to the court — much of it FBI surveillance of the eight — and argued that this evidence showed that it was justified in targeting the respondents for deportation. Judge Wilson reviewed all of the evidence, and ruled that all of the activities revealed therein — selling newspapers, participating in demonstrations, and organizing humanitarian aid fund-raisers — were protected by the First Amendment. The government appealed again. On this appeal, now pending before the Ninth Circuit, the government argues that no one — citizen or non-citizen — has a First Amendment right to support the lawful activities of a foreign "terrorist organization."

In October 1996, the government moved to dismiss the respondents' federal case against it, arguing that a "court stripping" provision in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 deprives the federal district court of jurisdiction to hear the eight immigrants' constitutional challenge to its actions. In January 1997, Judge Wilson denied the INS's motion to dismiss, ruling that the eight are constitutionally entitled to immediate federal district court review of their First Amendment selective prosecution claims. The issue is also currently pending in the Ninth Circuit. In April, 1997, the INS granted legal resident status of two of the eight plaintiffs, Aiad Barakat and Naim Sharif.

On July 10, 1997 the 9th Circuit ruled that the INS is barred from proceeding with the deportation cases. In unanimously affirmed the district court's injunction against the INS. The 9th Circuit decision holds that immigrants cannot be targeted for supporting the lawful activities of foreign groups that also engage in terrorism, absent a showing that they specifically intended to further the group's illegal ends. The court rejected the government's argument that fundraising for such groups should receive no First Amendment protection at all, and cast serious doubt on the constitutionality of central provisions of the new Anti-terrorism Act. The decision also held that immigrants raising constitutional challenges to immigrant action have a right to seek immediate judicial review of their claims; the government had argued that the 1996 Immigration Reform Act stripped the courts of jurisdiction.

The government appealed to the U.S. Supreme Court. On February 24, in a two-prong ruling, the Justices held 8-1 that federal courts cannot review most claims by aliens before

a final judgment is made by immigration officials on deportation. In a separate ruling decided by a five member majority the Court held that illegal immigrants are barred from seeking federal court review of selective enforcement claims at any time. The Justices ruled on this aspect of the case despite having specifically told both parties to the lawsuit that it would not reach this issue and did not want legal briefing or oral argument on it. The Court thus upheld the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which speeds up the deportation process, and also denied aliens the right to raise a First Amendment defense against selective deportation based on their political ties.

The first part of the Supreme Court's ruling is especially significant because it upheld Congress' court-stripping legislation, denying federal courts jurisdiction to hear certain constitutional claims. The second part of the decision strips aliens of First Amendment rights, and has the potential to intimidate immigrants who might speak out on political matters for fear of drawing attention to their illegal status. Moreover, the decision is likely to have a chilling effect on the exercise of free speech by legal immigrants awaiting a final determination of their status. (Paul Hoffman, Carol Sobel, with the National ACLU, the National Lawyer's Guild [Marc Van Der Hout and Lenny Weinglass], and the Center for Constitutional Rights [David Cole]).

31. Barlow v. Wilson (Alameda County Superior Court)

On April 2, 1998, the ACLU filed suit challenging Governor Wilson's Executive Order W-172-98 which eliminates monitoring of state contracting. The Order, released March 10, requires all state agencies to "cease any enforcement of the minority and women business enterprise participation goals and the good faith effort requirements related thereto under Public Contract Code §10115 et seq." In addition, that "[a]ll actions, programs and regulations which seek to monitor, promote, or comply with the minority business enterprise and women business enterprise goals or the good faith efforts thereto under PCC §10115 et seq. shall no longer be administered and where appropriate, be repealed."

Plaintiffs allege that by ending the monitoring and reporting provisions of the code, the Governor and State are violating Article III, section 3.5 of the California Constitution which requires all state agencies to implement state law, unless and until an appellate decision declares such law unconstitutional.

The Executive Order followed the recent Ninth Circuit decision in the case *Monterey Mechanical v. Wilson.* In that case, the Ninth Circuit Court of Appeals struck down, based on the Equal Protection Clause, Public Contract Code §10115's requirement that contractors make good faith efforts to do outreach to women- and minority-owned firms.

The Executive Order goes beyond the elimination of affirmative action goals and outreach, and is being used to end tabulation of the number of minorities and women receiving the State's contracting business. Public Contract Code § 10115.5 requires that "each awarding department shall report to the Governor and the Legislature the level of participation of minority, women, and disabled veteran business enterprises in contracts."

Although the Ninth Circuit's decision does not require the State to stop monitoring and reporting on contracting with minority- and women-owned businesses, the State's latest contracting manual, updated immediately after the Executive Order, indicates that this information will no longer be collected.

The lawsuit alleges the people of California and throughout the nation have a right to information regarding the number of women and minority contractors awarded state business contracts. This information is vital to determine whether women and minorities have equal access to taxpayer-funded state contracts. In the wake of Prop. 209 and the Ninth Circuit decision, civil rights groups anticipate a severe drop in the number of women and minority-owned businesses receiving state contracts. To gauge the effects of Proposition 209's ending of affirmative action, and to determine the extent to which barriers to women and minorities remain, monitoring information is obviously critical. A temporary restraining order was denied on grounds that no injury was imminent, and a preliminary inunction was subsequently denied on the merits. The Superior Court subsequently issued summary judgment for defendants, and we appealed. The case was argued before the Court of Appeal in San Francisco in May, 1999, which affirmed. The California Supreme Court denied review. However, the same issue is raised in our cross-appeal in the Connerly v. State Personnel Board case, currently pending before the Sacramento Court of Appeal. (Mark Rosenbaum, Dan Tokaji, and other civil rights groups, including the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, the ACLU of Northern California, Equal Rights Advocates and the Employment Law Center)

32. Black Probation Officers Association, et al. v. County of Los Angeles, (U.S. District Court, Central District of California.

This suit was filed in federal district court on May 25, 1994 by the NAACP Legal Defense and Education Fund. The suit was brought by African-American probation officer associations, community organizations and individuals, and challenged as racially discriminatory the delivery of probation services by the Los Angeles County Probation Department, and the employment practices of the Department. It alleges that minority urban poverty core communities receive inferior probation services in that they are allocated disproportionately lower levels of resources and personnel. The action also claims that minority juveniles are discriminatorily denied access to preventive and diversionary programs such as counseling, drug treatment, mental health services, crisis resolution services, sheltered care, and vocational training services. Employment policies contested include racially segregated work assignments, denial of advancement to supervisorial and managerial positions, denial of equal job responsibility, performance ratings and salary in managerial positions. The County Probation Department has been long regarded as a major problem area regarding racially discriminatory policies and practices. We have joined the litigation as co-counsel. Settlement discussions resulted in a consent decree significantly increasing the number of probation officers and services in inner city communities. (Mark Rosenbaum with NAACP Legal Defense and Education Fund)

33. Cameron, et al. v. City of Los Angeles, et al. (U.S. District Court, Central District of California)

This federal lawsuit against the Los Angeles City Fire Department was filed on April 3, 1995. The lawsuit alleges that the department allows pervasive harassment and discrimination based on sex, ethnicity and race against its women firefighters. In early 1994, after several years of a hiring freeze, the LAFD began a new class with approximately 50 trainees, equally divided between male and female recruits. This was the first time the LAFD had hired such a large number of women. During the course of the training, the drill tower staff prepared an edited videotape of female candidates, entitled "Female Follies." The tape was widely shown at fire stations throughout the City.

The tape purported to show females failing the physical tests when, in reality, among other things, they were being forced to perform skill tests with defective equipment, heavier ladders than those being used by male trainees and after being required to perform exhausting, punitive exercises prior to doing the tests. Female applicants who were injured during training were forced to return to duty before sufficient recovery, causing them to resign or face termination. Overall, nearly 85% of the women failed before the completion of probation, while barely 15% of the male candidates washed out.

After receiving numerous complaints, the City Human Resources department conducted an audit of the Fire Department. The audit concluded that the women were subjected to system-wide abuses. Those who made it through the Academy usually faced another hurdle through probation and were generally sent to what the LAFD referred to as "killer rookie" stations.

The lawsuit contends that the LAFD has intentionally violated and ignored the rights of its women firefighters in every phase of the department's operation, including biased hiring, assignment and promotion practices; tolerating severe and pervasive sexual harassment; unlawful racial and ethnic discrimination against women of all colors; inadequate and discriminatory handling of women firefighters' misconduct claims, including inappropriate investigation practices and lax disciplining of perpetrators; and retaliation against employees who protest such misconduct. The lawsuit further contends that the department's policies, practices and customs deprive women employees of their rights to equal employment opportunities and protection under the law, the federal and state constitutions and several California civil rights statutes.

The lawsuit calls for the department to initiate a number of reforms to eliminate completely gender and racially based harassment and discrimination in the LAFD. Most of those reforms are being implemented through a Human Resources Development Plan, drafted by LAFD officials in conjunction with representatives of the various minority groups within the LAFD. The suit also seeks general, compensatory and punitive damages for the plaintiffs and other employees with valid claims against the LAFD. Among the reforms sought by the plaintiffs are an aggressive affirmative action program to eliminate the effect of prior discrimination within the LAFD; development of standardized hiring, assignment and promotion practices; establishment of sexual harassment and discrimination complaints; and

establishing a fund to compensate other LAFD employees with similar valid claims.

Immediately after filing the lawsuit, we initiated settlement discussions with the City. The discussions have now been halted by the City. In light of these discussions, the Court had initially stayed discovery and the filing of a class certification motion pending the outcome of settlement discussions. We filed a class cert motion, which was denied in early August, 1997, on the sole ground that we failed to meet the requirement of "numerosity." The case is proceeding on behalf of six individuals. We are proceeding with discovery and have a trial date set for October 1999. The case was successfully settled and the plaintiffs received monetary damages. The case was dismissed on April 3, 2001. (Carol Sobel, Mark Rosenbaum with Hadsell and Stormer)

34. Coalition for Economic Equity v. Wilson (USDC, Northern District; US Ct of Appeals, 9th Circuit, U.S. S. Ct.)

On November 5, 1996, a majority of California voters enacted Proposition 209, a sweeping ban on race- and gender-conscious affirmative action programs run by state and local government. The day after Proposition 209's passage, the ACLU of Southern and Northern California, along with a coalition of civil rights groups, filed suit in federal district court for the Northern District of California in order to invalidate the initiative and stop it from being implemented. Plaintiffs in this lawsuit include a broad spectrum of individuals and groups that benefit from affirmative action programs for women and minorities.

The lawsuit alleges that Proposition 209 violates the Equal Protection Clause of the United States Constitution, because it prevents women and minorities from seeking gender- and race -conscious remedies for past discrimination. In addition, plaintiffs allege that Proposition 209 violates the Supremacy Clause of the United States Constitution, because it conflicts with Congress' intent to encourage affirmative action to remedy past discrimination.

Along with their complaint, plaintiffs filed a motion seeking a Temporary Restraining Order against Governor Wilson and Attorney General Lungren, to prevent them from giving effect to Proposition 209. On the day after the election, both Wilson and Lungren took swift action attempting to immediately implement the measure. Plaintiffs' request for a TRO was heard on November 25, 1997 and, on November 27, the district court issued an order restraining the Governor and Attorney General from implementing or enforcing Proposition 209.

Despite the TRO, the University of California stated its intention to move ahead with its plan to immediately abolish its affirmative action programs in admission because of Proposition 209. Although the UC Regents had earlier passed resolutions that would eliminate race- and gender-conscious admissions, those resolutions were not scheduled to go into effect until Spring 1998. To prevent the UC from immediately abolishing affirmative action, plaintiffs moved for a TRO against the UC Regents on December 3, 1997. On December 6, 1997, the court issued a TRO blocking the UC Regents from implementing Proposition 209.

On November 29, 1997, plaintiffs moved for a preliminary injunction against a class of

defendants, including **all** state and local entities in California that operate affirmative action programs. It was necessary to include all these entities as defendants, since Proposition 209 requires each individual unit of government to give effect to its flat ban on affirmative action. After hearing argument on the matter on December 16, the district court, on December 23, 1997, issued a preliminary injunction stopping all units of government from implementing Proposition 209. The Court found that plaintiffs had demonstrated a likelihood of prevailing on their claims that Proposition 209 violates the Equal Protection Clause and conflicts with Title VII of the Civil Rights Act of 1964. It also found that the balance of hardships and public interest weighed decisively in favor of issuing a preliminary injunction.

The proponents of Proposition 209 subsequently filed motions stay the preliminary injunction. In an extremely unusual maneuver, the proponents simultaneously sought a stay from both the district court and the Ninth Circuit Court of Appeals. On February 7, 1997, the district court heard argument on and denied the proponents' motion for a stay. On February 10, 1997, the Ninth Circuit heard argument on the motion for a stay. That same day, the Ninth Circuit issued an order deferring submission of the stay.

In the meantime, both the proponents of Proposition 209 and the State filed appeals of the preliminary injunction with the Ninth Circuit. Briefing of the preliminary injunction was completed on February 28, 1997. On April 8, 1997 the 9th Circuit ruled that Prop. 209 was constitutional as a matter of law. The ACLU filed an *en banc* petition for review, which was denied on August 21, 1997. The injunction remained in effect until August 28. The 9th Circuit denied a motion for a stay pending review by the U.S. Supreme Court; a request for a stay was filed with the U.S. S.Ct. on August 29th. The standard for granting a stay, however, is stringent, and on September 4, 1997, the Court denied a stay without opinion.

The petition for certiorari — co-authored by the ACLU, Stanford Professor Kathleeen M. Sullivan, UCLA Professor Evan H. Caminker, and Harvard Professor Laurence H. Tribe — was filed with the S. Ct. on August 29. On November 3, 1997, the S. Ct. denied review. (Mark Rosenbaum, David Schwartz, Dan Tokaji, Peter Eliasberg; co-counsel include Professors Evan Caminker and Karl Manheim, of Northern California, the Employment Law Center, Lawyers' Committee for Civil Rights, Equal Rights Advocates, California Women's Law Center, Asian Pacific American Legal Center, and NOW Legal Defense Fund).

35. Connerly v. State Personnel Board, et al. (Sacramento Superior Court)

On August 10, 1995, Governor Wilson filed a petition for a writ of mandate in the California Court of Appeal, Third Appellate District, against eight state officials and state agencies, seeking to restrain enforcement of five of California's affirmative action statutes. Governor Wilson filed the petition in his official capacity, represented by the Pacific Legal Foundation, arguing that the programs are unconstitutional race-based preferences.

We filed an amici curiae brief in informal opposition to the petition on behalf of fifteen minority and women's groups on August 15, 1995. Our co-counsel on the brief included

MALDEF, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, NAACP Legal Defense Fund, Employment Law Center, Equal Rights Advocates, California Women's Law Center, ACLU/NC, and Karl Manheim. We argued that the case should be dismissed because (1) Wilson did not have standing to file the petition, (2) there was a lack of adversariness between Wilson and the named respondents, (3) Wilson did not name any real parties in interest, and (4) the petition raises serious factual issues that should be resolved in Superior Court.

The Court of Appeal granted us amicus status and accepted our brief for filing on August 17, 1995. It also gave the parties 20 days to file a response. Dan Lungren, Attorney General of California, stated he could not defend the respondents, due to the conflict with his usual role of representing the Governor..

On August 23, 1995, Governor Wilson amended his petition to name the fifteen amici as real parties in interest. We subsequently filed a brief as real parties in interest, pointing out that his petition was still defective in numerous respects, despite his cosmetic amendment. The Court of Appeal subsequently rejected Governor Wilson's petition.

The Governor subsequently filed a Petition for Review of the Court of Appeal's decision with the California Supreme Court. We filed an opposition and, on January 4, 1996, the Supreme Court unanimously denied review. It did so, however, without prejudice to the Governor's refiling in Superior Court.

Governor Wilson re-filed his lawsuit in Sacramento Superior Court. Again, he effectively sued himself, naming as defendants his own inferior officer and attempting to restrain them from enforcing affirmative action laws. The case was removed to federal district court, on the ground that Wilson's lawsuit against his own state agencies is a "sham" and should be dismissed. The District Court granted Wilson's motion to remand, ruling that it was unclear whether Wilson had any claims against the state agencies and officers under state law and, therefore, that the state court should decide the issue.

After the case was remanded to Superior Court, our clients filed a peremptory challenge to disqualify the judge to whom the case was assigned. When that motion was denied, we filed a writ petition in the Court of Appeal. The Court of Appeal ruled in our favor, finding that the judge should be disqualified. A new judge was assigned. The petition was amended to include a cause of action under Proposition 209, with Ward Connerly added as a petitioner. Both sides undertook extensive discovery. Trial occurred in June 1998.

On November 20, 1998 the court ruled against Gov. Wilson and Ward Connerly on three key provisions. The court held that three of the five statutes did not violate either the Equal Protection Clause or Prop. 209 because they were reasonable goals and outreach programs designed to combat discrimination. The other two statutes, which we did not defend, were struck down. However, the Superior Court ruled that a provision of the Public Contract Code which requires data collection regarding the number of women and minority contractors was not severable from the remainder of the statute, and was therefore void. Wilson has now been replaced in the lawsuit by new Governor Gray Davis, who has not

appealed the decision. However, Ward Connerly filed an appeal to the Court of Appeal in Sacramento on February 26, 1999. We have cross-appealed on the data collection issue. We filed a supplemental brief on the impact of the California Supreme Court's *Hi-Voltage* decision, in January, 2001

The matter was submitted to the Court of Appeal, Third Appellate District after hearing on August 24, 2001. On August 28, 2001, we filed a supplemental brief at the Court of Appeal regarding the standard for a facial challenge.

On September 4, 2001, the Court of Appeal in Sacramento issued a mixed decision. The court invalidated some provisions, including those involving goals and timetables, as "preferences" that violate Proposition 209. However, the court upheld other provisions requiring public agencies to collect and report data on race, ethnicity, and gender – information that is vital to determine whether public agencies are providing equal opportunity. The Court also held that "outreach or recruitment efforts designed to broaden the pool of potential applicants" are permissible. (Mark Rosenbaum and Dan Tokaji for ACLU/SC, Jeff Bleich of Munger, Tolles & Olson, with MALDEF and many other public interest law groups)

36. Dimaranan and EEOC v. Pomona Valley Hospital Medical Center (U.S. District Court, Central District)

This action was a challenge to the Pomona Valley Hospital Maternal/Child Services Unit's "No Filipino Language" policy. Our client, Aida Dimaranan, the assistant head nurse on the unit, was demoted for refusing to comply with and enforce the policy against her Filipino staff nurses. We claimed that the hospital's banning of the speaking of Tagalog constitutes unlawful discrimination based on national origin under Title VII of the 1964 Civil Rights Act, since the hospital policy covers situations where no business necessity exists to justify it. The complaint also alleged that the plaintiff was retaliated against for continuing to resist the blanket ban. On July 18, 1989, we filed a lawsuit in federal court challenging the "English Only" rule and challenging retaliatory action taken by the hospital administration against Dimaranan. On April 2, 1990, the U.S. Equal Employment Opportunity Commission's motion for leave to intervene as plaintiffs was granted. The trial began on April 18, 1991, and lasted ten court days. Judge Rafeedie issued his decision on October 24, 1991, in which he found that hospital management did prohibit Dimaranan and the Filipina nurses on Dimaranan's shift from speaking their native language. This language rule, however, was not an "English Only" policy and was not discriminatory under Title VII, according to the opinion. In our favor, Judge Rafeedie decided that Dimaranan's negative job evaluations, demotion and transfer, and subsequent denial of a position in Pediatrics, constituted unlawful retaliation against her for opposing the language restrictions. The court ordered the hospital to award Dimaranan back pay, reinstate her, and expunge her personnel records of all unfavorable documentation that coincided with the language restrictions. Judge Rafeedie issued the judgment on November 20, 1991. The hospital filed a motion for a new trial solely on the retaliation issue, which was denied on January 6, 1992. On February 3, 1992, Judge Rafeedie ordered the defendants to pay us attorneys' fees and costs in the amount we requested in our motion. Plaintiff, defendants and the EEOC all appealed. The case was settled in April 1993. (Robin Toma, Paul Hoffman, Carol Sobel, Mark Rosenbaum,

with Kathryn Imahara of the Asian Pacific American Legal Center of Southern California)

37. Dimaranan v. Pomona Valley Hospital Medical Center (L.A. County Superior Court)

Filed on March 2, 1990, this lawsuit challenges the "English Only" work place rule at Pomona Valley Hospital Medical Center and the retaliatory harassment, demotion and transfer of the Filipino nurse, Aida Dimaranan, for opposing the language rule under the state law claims which were dismissed by Judge Rafeedie. No action is likely in this case until our Title VII action is resolved in federal court. The action was transferred to the East District of Los Angeles Superior Court. We have agreed to a stay of the state court proceedings pending resolution of the federal lawsuit. This case was resolved by the settlement in federal court. We filed a Request for Dismissal on April 13, 1993. (Robin Toma, Carol Sobel, with Kathryn Imahara of the Asian Pacific American Legal Center of Southern California)

38. Doe v. National Security Agency (U.S. District Court)

Suit was filed on January 27, 2000 in the United States District Court for the Central District of California, on behalf of a high school student who was denied the opportunity to compete for a training program sponsored by the federal government, solely because he presently resides with his elderly grandmother who is not a U.S. Citizen.

Plaintiff is a senior with a straight-A GPA at Riverside Poly High School. In fact, his academic GPA, weighted to include the numerous AP and honors courses he has taken, is 4.60. Plaintiff also placed in the 99th percentile on both the verbal and math SAT's. He is a United States citizen of Taiwanese descent, was born in the United States, and has lived in the United States all his life. Plaintiff currently resides in Riverside with his parents who are both naturalized U.S. citizens, his sister who is a U.S.-born citizen, and his elderly grandmother who has been a lawful permanent resident since 1989 but is **not** a U.S. citizen.

In November 1999, Plaintiff filed an application to the National Security Agency's Undergraduate Training Program (UTP), a selective program that provides full college tuition and other benefits to students who commit to working for the NSA for a prescribed period of years after college graduation. Plaintiff has applied to Harvard, Stanford, MIT and several other highly competitive colleges. Plaintiff plans to major in computer engineering and computer science, and is in all respects an ideal candidate for the NSA's program. His candidacy for the UTP was even recommended by the Chairman of the UC Riverside Department of Computer Science. He very much desires the opportunity to pursue a career with the NSA and, as his stellar GPA and credentials demonstrate, is eminently qualified to do so.

Nevertheless, in December 1999, his application to the UTP was summarily rejected by the NSA, **solely and expressly** because he currently resides with his grandmother who is not a U.S. citizen. The NSA's written letter accompanying the rejection stated point-blank:

"[B]ecause a member of your immediate family is not a U.S. citizen, we cannot continue to process your application."

We argued that the rejection of plaintiff's application solely because of his grandmother's citizenship status, without any consideration of the merits, violated his rights to equal protection, due process, free association, and the privileges and immunities of U.S. citizenship. There was no showing, nor even any individualized effort to determine, whether plaintiff -- or his elderly grandmother -- pose any security risk whatsoever. The rejection of his application was especially arbitrary and indefensible given that plaintiff will be starting college in the fall of this year and living on campus. Thus, if he were admitted into the UTP, he would no longer be living with his grandmother when the time comes for him to have security clearance.

Contemporaneous with service of the complaint, defendants were sent a letter asking that they stipulate in writing that they will withdraw their rejection of plaintiff's application, give full and fair consideration to his application, and refrain from discriminating against him because of his grandmother's citizenship status, pending further order of the Court. If Defendants will not so stipulate, then we will apply for a TRO and order to show cause why a preliminary injunction should not issue on plaintiff's behalf. Plaintiff's TRO application would request that the Court order defendants to give full and fair consideration to plaintiff's application for the UTP, and restrain defendants from discriminating against him based on the fact that he currently resides with a family member who is not a U.S. citizen.

The suit was filed using the pseudonym "Edward Doe" rather than plaintiff's true name so that his name is not disclosed to the general public. This was done to protect the NSA as much as plaintiff, based on our assumption that plaintiff may be placed in some sort of sensitive position if and when he is ultimately admitted to the UTP. We wished to avoid any possible argument on NSA's part that the publication of plaintiff's true name in this lawsuit precludes him from pursuing a career with the Agency.

The suit was filed as a class action on behalf of the plaintiff, and all others similarly situated, since the NSA's documents reveal that the rejection of his application was pursuant to a policy that all applicants presently living with a family member who is a non-U.S. citizen are rejected.

On February 4, 2000, the NSA agreed to review plaintiff's application "fully and fairly;" later that month, plaintiff was named a scholarship semifinalist. Plaintiff subsequently decided that he had accomplished his principal objectives in the lawsuit, and therefore voluntarily dismissed his appeal in December 2000. (Dan Tokaji, Mike Small, Peter Eliasberg)

39. Donahue v. Fair Employment and Housing Commission (California Supreme Court)

In 1987, Verna Terry and Robert Wilder, an unmarried couple, sought to rent an apartment

in a 5-unit building in Downey owned but not occupied by Agnes and John Donahue. The Donahues refused to accept a rental application from Terry and Wilder, contending that renting to the couple would compromise the Donahues' religious belief that fornication outside marriage and its facilitation are sins. On November 27, 1991, the California Court of Appeal ruled in the marital status housing discrimination case that followed that the California Constitution provides a "free exercise of religion" exception to enforcement of the California Fair Employment and Housing Act which outweighs the state's interest in protecting unmarried cohabiting couples from discrimination in housing. On December 11, 1991, a petition for rehearing was filed with the Court of Appeal on behalf of Ms. Terry. On the same date, we filed an amicus letter in support of this petition, arguing that the decision misapplied the California Constitution and seriously would undermine the state's anti-discrimination laws. The petition for rehearing was denied December 30, 1991. Petitions for Review were filed with the California Supreme Court by the Fair Employment and Housing Commission on January 3, 1992 and by Ms. Terry on January 6, 1992. On January 27th, we filed an amicus letter in support of the petitions for review. The Supreme Court unanimously granted review on February 27, 1992. On May 19, 1992, we filed an amicus brief with the Supreme Court, on behalf of the three California ACLU affiliates, the Employment Law Center, the Lawyers Committee for Urban Affairs, the California Association of Human Rights Commissions and the National Lawyers Guild; arguing that the California constitutional right of free exercise of religion does not overcome the state's interest in prohibiting discrimination in this context. On September 30, 1993, without explanation, the Supreme Court dismissed the appeal and remanded the case to the Court of Appeal. The effect of the Supreme Court's order is to vacate the opinion of the Court of Appeal (so that it has no precedential effect). On October 22, 1993, Amicus Loma Linda University requested the Court to order the publication of the Court of Appeal's opinion. The Fair Employment & Housing Commission filed opposition to this request on November 2, 1993. The request was denied and thus the case remains depublished. A similar question subsequently was raised in the Smith v. Fair Employment and Housing Commission case, in which we also filed an amicus brief. (Carol Sobel, Jon Davidson with ACLU of Northern California and San Diego and other public interest organizations)

40. Flanagan v. United States (United States Court of Claims)

Suit filed on behalf of estate of a Thomas Flanagan, who in 1942 was forced out of the Navy for reporting acts of racially motivated violence against Black sailors. Our initial suit on his behalf was dismissed on statute of limitations grounds several years ago. Last November Congress passed a private bill (sponsored by Congressman Mervyn Dymally and Senator Alan Cranston) permitting him to file a claim for damages in the U.S. Court of Claims in Washington. Unfortunately, Mr. Flanagan died shortly before the bill was signed into law. In late October, 1989, we filed a Petition pursuant to the private bill seeking damages for Flanagan's heirs. The Government has admitted liability. The main dispute is whether the estate is limited to lost back pay or whether the value of lost Navy benefits should be included in the damage calculation. In May 1992 the court awarded $2,000 in damages based on the government's view of damages. No appeal was taken. (Danna Cook, Gary Williams, Paul Hoffman)

41. Frias v. Los Angeles County Metropolitan Transportation Authority, et al. (U.S. District Court)

This case grows out of one of the underlying claims in the Miller case. Angel Frias, the plaintiff in this case, is the male sergeant who grabbed the breast of Janice Hart, one of the plaintiffs in Miller. He sued the department and several employees of the department, including Janice Hart and another female sergeant, Shari Barberic, for his termination based on grabbing Sgt. Hart's breast. His original complaint against Hart and Barberic, whom we represent, alleged numerous constitutional and statute-based claims for race and reverse gender discrimination, as well as state tort claims. The first complaint against Hart and Baberic was dismissed with leave to amend. A First Amended Complaint was filed, alleging only three torts based on invasion of privacy, malicious prosecution and intentional infliction of emotional distress. The amended complaint was dismissed without leave to amend on March 17, 1997. We have filed for attorney's fees. Judge Real reduced our fees by half and we are now preparing an appeal arguing abuse of discretion.

Briefing was completed on all appeals and cross-appeals. Oral argument was held and Judge Real took the matter under submission and has not issued a ruling as of April, 2000. In the meantime, Frias filed for bankruptcy, which was approved. The attorney fee debt was eliminated as part of the bankruptcy proceeding. (Carol Sobel)

42. Gonzalez, et al v. LAPD (U.S. District Court)

The ACLU/SC filed a lawsuit on February 10, 2000 on behalf of five black and Latino men, alleging that the Los Angeles Police Department engages in unlawful racial profiling of motorists.

The consent decree that the LAPD entered into with the U.S. Department of Justice to resolve the federal government's claims that the LAPD has engaged in a pattern and practice of unconstitutional conduct requires the LAPD to implement measures designed to prevent racial profiling of motorists. Those measures track the injunctive relief that the ACLU sought in bringing this lawsuit. Thus, the decree resolved the injunctive piece of our case. The lawsuit was settled, including payment of damages to the plaintiffs, in July, 2001 after the consent decree was entered. (Catherine Lhamon, Sidley and Austin, Loyola Law School Professor Gary Williams)

43. Herman v. Los Angeles County Metropolitan Transportation Authority,et al. (U.S. District Court)

Similar to the Frias case, above, this case also grows out of the underlying claims in the Miller case. Lt. Herman, the plaintiff in the case, sued the department and Sgt. Shari Barberic for his termination based on Berberic's complaint of sexual harassment against him. The case was dismissed in April, 1997. Defendant appealed the district court's order

awarding attorney's fees. The appeal was dismissed, with prejudice, pursuant to a settlement agreement and the final award of attorneys fees were negotiated. (Carol Sobel)

44. Hi-Voltage Wire Works, Inc. v. City of San Jose (Ca. Supreme Court)

The California Supreme Court granted review in Hi-Voltage Wire Works, Inc. v. City of San Jose, a case concerning the legality of San Jose's affirmative action program for public contracting. This is the first case the California Supreme Court has taken regarding the scope of Proposition 209. The ACLU filed as an amicus and as co-counsel for amici civil rights organizations, along with the ACLU of Northern California, Equal Rights Advocates, the Lawyers' Committee for Civil Rights, the Employment Law Center, and probably others. Because the case originated in Northern California, these groups have participated as amici from the beginning.

The case involves a modest good-faith outreach program that San Jose adopted after Proposition 209 was enacted. The goal of the program is to remedy past and ongoing discrimination, by comparing the race/ethnicity/gender of those who actually received contracts with the availability of minority- and women-owned businesses in the local market. To the extent that there are disparities between the availability of MBEs or WBEs and actual recipients of contracts, good faith efforts to recruit are required.

Unfortunately, this modest approach was held to violate Proposition 209 in both the Superior Court and the Court of Appeal. The Court of Appeal's opinion takes a very broad view of Proposition 209's ban on "preferential treatment," construing it to mean that any consideration of race or sex is off-limits, even where needed to redress past and ongoing discrimination in public contracting. The Court of Appeal's opinion also rejects the argument that Title VI of the Civil Rights Act ever requires public entities to engage in race-conscious outreach in order to redress discrimination. If the California Supreme Court were to adopt the Court of Appeal's reasoning, it would effectively mean that all race- and gender-conscious affirmative action – at least in the area of public contracting, and perhaps beyond – violates Proposition 209.

Our amicus brief focused on the evidence demonstrating that San Jose's narrowly tailored program is necessary to redress documented discrimination in San Jose, and on federal law requiring voluntary compliance with civil rights obligations. ERA and Lawyers' Committee had principal responsibility for drafting the brief, which was filed in January, 2000. Oral argument was held in September, 2000 in the California Supreme Court. On November 30, 2000, the California Supreme Court rejected the modest outreach program adopted by San Jose in the wake of Prop 209. (Dan Tokaji, Michael Small, ACLU of Northern California, Equal Rights Advocates, the Lawyers' Committee for Civil Rights, the Employment Law Center, and others)

45. Juarez v. City of Los Angeles, et al. (U.S. District Court)

Cynthia Juarez is a thirteen-year veteran of the Los Angeles Police Department who has been subjected to pervasive sexual harassment from the time that she entered the Academy. In 1986, she sued the department after a series of particularly egregious incidents while she was

the first female working Central Vice. These incidents included posting by male officers of photographs of naked women with Cindy's face pasted over those in the picture. On one occasion, two male officers accosted her and dragged her into the elevator in order to expose her breasts. For period of a year, she was subjected to these and similar incidents on a daily basis. Eventually, she left on stress leave and sued the city for sexual harassment. After three years, she returned to the LAPD in a gang suppression unit and was immediately subjected to retaliatory action for having filed her earlier harassment lawsuit. This pattern repeated itself several times over the next several years.

In the summer of 1992, Officer Juarez returned to a position as a detective-trainee at Northeast Division. Shortly after her return, she was informed by a male officer that another male officer had been making disparaging remarks about her. Officer Juarez was already aware of a hostile attitude from this officer and his friends. She approached a supervisor to complain and was told that she did not have enough to make a complaint. The hostility and ostracism continued. Juarez then approached the male officer directly. He informed Juarez that he should have done what the Lieutenant told him to do: take her to lunch.

Shortly after Juarez confronted the male officer who was engaging in the hostile conduct toward her, he beat up the male officer who first told her about the harassing comments. Juarez and another female officer immediately reported the assault to a supervisor. The department still did nothing to respond to this situation, leaving Juarez working in an hostile environment. After two months of inaction, Juarez reported the incident to Internal Affairs, which investigated and found wrongdoing on the part of the male officer and the supervisors involved.

The case challenges the failure of the Los Angeles Police Department to have in place proper procedures and policies for responding in a timely and appropriate manner to complaints of a hostile work environment. It also challenges the failure of the department to monitor the work environment of an individual who has made a complaint of harassment to ensure that retaliation and further harassment does not occur. In February, 1996, Juarez elected to go with the class action suit in Tipton-Whittingham. The independent lawsuit on behalf of Juarez was dismissed. (Carol Sobel with Paul Hoffman).

46. Karlozian v. Clovis Unified School District (Ninth Circuit Court of Appeals)

The ACLU/SC was appointed *pro bono* counsel by the Ninth Circuit Court of Appeals for the limited purpose of handling the appeal in a Title VII employment discrimination case. An Armenian-American substitute teacher was fired by the Clovis USD and sued the district *pro se* for employment discrimination on the basis of national origin. He was allegedly told by the assistant superintendent that people of his "culture" did not belong in Clois public schools. The district court granted summary judgment to the district, even though the plaintiff's version of the facts, if believed, would be sufficient to prove a violation of Title VII.

The ACLU argued on appeal that: 1) the district court erred in adopting the defendant's version of the facts, and disregarding the plaintiff's, because of a *pro se* plaintiff's failure to

comply with technical requirement of the Local Rules; 2) the district court erred in granting summary judgment on the basis that the plaintiff failed to make a prima facie case of employment discrimination, because the evidence was sufficient to establish a prima facie case; and 3) the district court erred in holding that plaintiff had failed to rebut the defendant's allegedly non-discriminatory reason for firing him, because there were genuine, disputed issues of fact as to whether this reason was pretextual. The ACLU's opening brief was filed on November 1, 2000 and our reply brief was filed on January 12, 2001. Oral argument was held March 8, 2001. The Ninth Circuit issued an unpublished decision affirming the district court's order granting summary judgment on May 8, 2001. (Martha Matthews, Dan Tokaji)

47. L. Tarango Trucking v. Contra Costa County (formerly Lucy's Sales v. Contra Costa County) (U.S. District Court, Northern District)

Plaintiffs in this suit, filed July 29, 1998, are minority and women business enterprises. They are challenging the contracting practices of Contra Costa County as discriminatory under Title VI of the Civil Rights Act and the Equal Protection Clause.

Contra Costa County contracts with private companies for roughly $100 million in goods and services each year. Minority and women owned business enterprises (MBEs and WBEs) have been almost entirely excluded from this system. Data from the County itself reveals that almost all the contracting dollars for purchasing and professional services go to white male-owned firms. In addition, there is a high degree of residential segregation within the County; the central part, which is largely Caucasian, is where the seat of the County government is located and where most of the bidding and advertising takes place.

A 1992 study commissioned by the County found that MBE and WBE were systematically underutilized in County contracting. A 1995 progress report issued by the County showed that MBEs and WBEs received less than 1% of professional service contract and no purchasing contracts. 1996 and 1997 reports showed MBEs and WBEs received less than 2% of the total contracting dollars.

Nevertheless, dispite these shocking disparities, the County's written affirmative action policies were repealed in the wake of Prop. 209.

Plaintiffs have argued that the County is violating the nondiscrimiantion requirements of Title VI. In addition, we argue that the County's practices — particularly its persistent failure to remedy discrimination in which it has participated — amount to intentional discrimination in violation of the Equal Protection Clause. The district court in February , 1999, denied defendants' motion to dismiss the action, concluding that plaintiffs had stated claims for violation of federal civil rights laws.

After intensive discovery Defendants' motion for summary judgment was denied in February, 2001. The Court found that Plaintiffs had introduced sufficient evidence of intentional discrimination to go to trial on their Equal Protection claim, although it found that Plaintiffs could not state a claim directly under Title VI or its regulations, because they were not the intended beneficiaries of the County's contracts.

Trial was held in the Summer of 2001. Plaintiffs filed a motion for sanctions in July 2001, after the County failed to disclose, until close to the end of trial, highly relevant documents regarding the County's discriminatory contracting practices. In late August 2001, the district court reopened the trial as the result of the County's discovery violations, allowing for additional discovery and the introduction of new evidence.

In November 2001, the court ruled that Plaintiffs had failed to prove intentional discrimination. The court did, however, award approximately $656,000 in sanctions for the County's discovery abuses, which allowed us to recover costs incurred.

(Mark Rosenbaum, Dan Tokaji, with Wilson Sonsini, Lawyers' Committee for Civil Rights of S.F. Bay Area, ACLU of No. California, Employment Law Center)

48. Lane v. Hughes Aircraft (California Supreme Court)

The ACLUF/SC filed a *amicus* letter brief with the California Supreme Court urging the court to deny review of a Court of Appeal decision upholding a race discrimination verdict against Hughes Aircraft. The trial judge, who has a history of alleged racial bias, overrode the jury's finding of serious racial prejudice on the part of defendants, explicitly citing the jury's "minority" makeup to suggest that the jury could not be fair to defendants but were biased in favor in of the plaintiff, an African-American aerospace engineer. The plaintiff had been held back from promotions and raises for over a decade. The trial judge had granted Hughes' motion for a judgment notwithstanding the verdict, or in the alternative a new trial. To our disappointment, the Supreme Court granted review. Our substantive *amicus* brief, which made similar arguments, was filed the beginning of May, 1998. On March 10, 2000, the California Supreme Court reversed the Court of Appeal, holding that great deference must be given to the lower court's order granting a new trial. Plaintiff filed a motion for a rehearing; the Court denied the rehearing. (Rocio Cordoba)

49. Miller, et al. v. Metropolitan Transportation Authority Police Department (U.S. District Court)

On December 6, 1995, we filed a class-action sex discrimination and sexual harassment lawsuit in U.S. District Court against the Los Angeles County Metropolitan Transportation Authority on behalf of women officers in the MTA police department. The lawsuit alleges that the department has failed to discipline male officers who engage in sex discrimination and sexual harassment; has failed to develop proper and adequate training and investigation procedures to prevent and respond to complaints of discrimination and harassment; has failed to promote and assign women on an equal basis with men; and, has deliberately failed to recruit and hire women, causing the percentage of women on the MTA police force to drop from a high of approximately 20% in the mid-1980s to a current low of approximately 3% of the workforce.

The defendants filed their answer to the complaint on April 6, 1996, and discovery is pending. The MTA announced it would transfer its police functions to the LAPD and LASD after the lawsuit was filed. Class certification on injunctive relief was made moot by the transfer.

The case is now ready for trial. On May 4, 1998 the court took under submission the motion for summary judgment and the motion in limine. The judge requested that the parties file a joint memorandum by May 8 in the application of Judge Wright's decision in the Paula Jones case and the decision of the Supreme Court in Oncale to this case.

The Court approved settlement and fees in April, 2001. Plaintiffs received monetary damages. (Carol Sobel, ACLU cooperating counsel, John R. White)

50. Ramirez v. Plough, Inc. (California Supreme Court)

This case arises out of a situation in which a young boy suffered permanent disability because of Reyes syndrome after being given an aspirin. There was no warning in Spanish on the aspirin box. The aspirin manufacturer took the position that under no circumstances may a manufacturer ever be held liable for failure to warn in a language besides English. The trial court granted summary judgment for the defendant aspirin manufacturer, holding essentially that there can be no legal duty to warn in any language other than English. The Court of Appeal held that granting summary judgment to the defendant was improper because the plaintiff's evidence that the manufacturer undertook an advertising campaign in Spanish language TV and radio raised material questions of fact as to the reasonable foreseeability of the injury. It also held that the status of English as an official state language does not immunize a manufacturer of a defective product from liability when an English-only warning does not adequately inform non-English literate persons likely to use the product. The manufacturer's position speakers would effectively exclude non-English from the protections ordinarily afforded by tort law. Amici briefs were filed by the Cosmetic, Toiletry, and Fragrance Association and the Product Liability Advisory Council, Inc., on behalf of Plough, the aspirin manufacturer. Oral argument took place on October 6, 1993, in Los Angeles. Former Supreme Court Justice Joseph Grodin argued for the ACLU as amicus. On December 9, 1993, the California Supreme Court handed down its unanimous decision against our position, concluding that "a manufacturer may not be held liable in tort for failing to label a nonprescription drug warning in a language other than English." The opinion was authored by Justice Kennard, and Justice Mosk wrote a separate concurring opinion to emphasize that the court was not foreclosing the possibility that "a manufacturer would be liable to a consumer who detrimentally relied upon foreign-language advertising that was materially misleading as to product risks and who was unable to read English language package warnings that accurately described the risks." (Robin Toma, with Ed Chen of ACLU/NC, Steve Lizardo of MALDEF, Trial Lawyers for Justice, Public Citizen - Health Research Group).

51. Scott v. Pasadena Unified School District (Ninth Circuit Court of Appeals)

The ACLU/SC filed an *amicus* brief on July 13, 2000 on behalf of the Pasadena Unified School District (PUSD). For the 1999-2000 academic year, the Pasadena PUSD adopted procedures – Board Policy 0460 (BP O460) -- for admitting students to three voluntary schools. Pursuant to these procedures, the race of applicants to the three schools could have been considered by the PUSD if necessary to foster an integrated and diverse learning environment.. The District Court invalidated BP 0460. The undisputed evidence in this case conclusively demonstrates, however, that the PUSD did not consider race in student admissions to the voluntary schools the prior year. The evidence also showed that it was uncertain whether race ever would be considered in the future. The District Court did not find otherwise. Thus, plaintiffs lacked standing to challenge BP 0460.

The ACLU's *amicus* brief focused on the profoundly troubling declaration by the District Court that the PUSD was barred forever by the U.S. and California Constitutions from "giving any 'consideration' of any sort to the race . . ." of applicants to the voluntary schools "under any circumstances." In short, the District Court imposed a complete ban on the use of race in the student selection process. That edict is squarely at odds with Supreme Court and Ninth Circuit precedent that make plain that both the U.S. and California Constitutions permit -- and in some instances, even require -- school districts to consider race in the student assignment process to ensure an integrated learning environment.

The District Court neglected an impressive array of recent social science literature that lends support to the proposition that underpinned Justice Powell's opinion in Bakke: efforts to promote diversity in the educational setting help to break down racial stereotypes by exposing students to peers from a wide range of backgrounds. In turn, the literature concludes, this enables our public schools to carry out their central mission of preparing students to understand and make contributions to our diverse nation.

Because race never actually was considered during the one year that BP 0460 was in effect, the parties had no occasion to build a factual record in the proceedings below that would speak to how race actually was, or ever might be, used in practice in the student assignment process at the three voluntary schools. In the absence of any semblance of a record, the ACLU argued on appeal to the Ninth Circuit that the District Court had no basis to issue a blanket prohibition on the consideration of race in the student assignment process in any and all circumstances. The case was argued on October 17, 2001. On September 4, 2002, the 9th Circuit reversed the district court, dissolved the permanent injunctions and remanded the case to the district court with instructions to dismiss the action without prejudice. (Dan Tokaji, Peter Eliasberg, Catherine Fisk)

52. Smith v. Fair Employment & Housing Commission (U.S.Supreme Court)

Evalyn Smith refused to rent an apartment in one of the duplexes she owns (but does not occupy) in Chico, California to Ken Phillips and Gail Randall because they were not married

to one another. After the California Fair Employment and Housing Commission found that Ms. Smith's refusal violated California's Fair Employment and Housing Act and Unruh Civil Rights Act, Ms. Smith filed an original writ proceeding in the Court of Appeal, claiming that the Commission's action violated Ms. Smith's freedom under the California and federal Constitutions because Ms. Smith's refusal to rent was based on her belief that it would be a mortal sin for her to "facilitate fornication." The Court of Appeal agreed with her and the California Supreme Court subsequently granted review. On December 19, 1994, we filed an amicus brief before the California Supreme Court. Our brief argues that, even if Ms. Smith's refusal to rent constituted the exercise of religion and even if the Commission's order imposed a substantial burden upon Ms. Smith's religious freedom, that order is narrowly tailored to meeting compelling state interests. We argue that this is the test mandated under the California Constitution, but that it is met by both the state's interest in curtailing invasions of tenants' rights of privacy and association and in eradicating all forms of prohibited housing discrimination.

In a remarkable exercise of judicial activism, however, the court of appeal granted Ms. Smith's petition and issued a writ of mandate directing the FEHC to vacate its decision and dismiss the accusation and complaint against Ms. Smith with prejudice. (Smith v. FEHC (1994) 25 Cal.App.4th 251, 280.) The court held that, as a matter of constitutional law, our state is powerless to prevent discrimination squarely prohibited by our state's remedial laws so long as the discrimination is motivated by religious beliefs. (Id., at p. 276.)

Through this brief, amici American Civil Liberties Union of Southern California, American Civil Liberties Union of Northern California, and Anti-Defamation League of B'nai B'rith ("Amici") seek to suggest to the Court a narrower way of resolving this case that does not require deciding all these sensitive constitutional questions. Oral argument was held January 10, 1996. The California Supreme Court held that the landlord violated the state's fair housing law in April, 1997. On appeal, the U.S. Supreme Court denied cert on June 27, 1997. (ACLU Foundation of Southern California, ACLU Foundation of Northern California, Inc. and Anti-Defamation League of B'nai B'rith)

53. Tavelman v. City of Huntington Park (U.S. District Court, Central District)

Complaint filed by Huntington Park police officer alleging repeated and sustained acts of harassment and retaliation due to plaintiff's religious beliefs. From 1983 to the present, Tavelman has been subjected to a variety of discriminatory remarks and jokes regarding his ethnicity and religion (Judaism). During his employment, Tavelman was never given a training on discrimination or harassment or told of any policy against discrimination or harassment and was discouraged from filing complaints or grievances. The Department of Fair Employment & Housing issued a right-to-sue letter in June, 1992, a prerequisite to bring a court action. After the filing of the complaint, plaintiff's superiors and co-workers ceased speaking or greeting plaintiff and some co-workers were afraid to talk to him because they did not wish to upset the "brass." As a result of their conduct, defendants have made it intolerable for plaintiff to work and have constructively discharged him from his position.

The complaint alleged violation of the equal protection and due process clauses of 42 U.S.C. §1983; unlawful religious discrimination, harassment and retaliation for failure to prevent such acts under 42 U.S.C. §2000e; and violation of California Civil Code §52.1, interference with exercise of civil rights). Judge Real entered an order of dismissal upon pending settlement of the matter on November 23, 1993. Settlement talks were finalized, with a positive result for the plaintiff, Officer Tavelman, and the lawsuit was dismissed in January 1994. (Robin Toma, with Litt & Marquez and ADL)

DRUG TESTING

54. Loder v. City of Glendale (Court of Appeal, Second District, Ca. S.Ct., U.S. S.Ct.)

Taxpayer suit challenging the mandatory drug testing policy adopted in 1986 by the City of Glendale. The policy requires all new hires and all candidates for promotion to submit to a drug test. Anyone who refuses is automatically disqualified from taking the employment or promotional examination involved for an unspecified period of time. The suit alleges that the program violates the right to privacy and to be free from unreasonable searches and seizures guaranteed by the Fourth Amendment, California Constitution, and the provision of the Medical Confidentiality Act (Civil Code §56 et seq.).

On September 8, 1987, the court granted our motion for a preliminary injunction finding, inter alia, that the City's program violated the California Constitution. The City filed an appeal in early October, 1987. Oral argument took place on December 12, 1989. On December 18, 1989, the Court overturned the preliminary injunction on the ground that the taxpayer plaintiff had not shown a threat of irreparable injury sufficient to justify interim injunctive relief. We filed a Petition for Rehearing, which was denied with a few modifications made to the opinion. The court denied cross-motions for summary judgment and requested more information (in the form of factual stipulations) about descriptions of various job categories. We proposed that computerized tests which measure actual impairment on the job be used instead of the urinalysis test currently in use. This argument was not accepted.

After trial in 1991, Judge Williams issued a decision which upheld Glendale's program in almost two-thirds of the job descriptions but declared testing for more than 50 categories of workers to be unconstitutional under both the Fourth Amendment and Article 1, Section 1 of the California Constitution. Our attorneys fees motion was heard on May 18, 1992 and was denied on the grounds that we were not the "prevailing" party. An appeal was filed on the fee issue and on the merits. Oral argument was heard in June, 1994.

In September 1994 we received a largely favorable ruling from the Court of Appeal striking down Glendale's drug testing policy as overly broad. The California Supreme Court granted review. In January, 1997, in a plurality decision in which only three California Supreme Court Justices agreed, the Court held that drug testing of hires is constitutional, but the City

may not test current employees who seek promotion. The ACLU filed a cert petition with the U.S. Supreme Court which was denied on October 6, 1997. (Marvin Krakow)

55. Pearson v. Lincoln Property Company

We were approached by plaintiff and two other employees of property company asking us to represent them in a challenge to the company's new drug policy program. Lincoln is a national apartment and commercial buildings management company. Lincoln's drug programs requires all employees to consent to random drug testing and physical searches ("of vehicles, items or personal effects brought onto company premises or work sites by an employee, and of Company property such as closets and desks, for alcohol and prohibited or illegal drugs or drug paraphernalia"). Potential plaintiffs have been told that they will be terminated if they refuse to consent to the program. In response to a demand letter, the company stayed the policy and negotiated a settlement which was finalized in January 1994. (Alan Friel, Marvin Krakow)

DUE PROCESS

56. Des Verney v. Alliance Housing Management (U.S. District Court, Central District)

The ACLU of Southern California filed a lawsuit in federal district court November 21, 1997 on behalf of three low-income tenants of a U.S. Housing and Urban Development (HUD) subsidized development in Venice. These tenants faced imminent eviction because they refused to sign an unconstitutional lease agreement that would hold them responsible for the alleged criminal activities of visitors, even if the activities occur three blocks away from the property.

The ACLU lawsuit charges that the new mandatory lease agreement violates current federal statutes and regulations concerning federally-subsidized housing, is unconstitutionally vague, and violates the Fifth Amendment's guarantees of due process of law and freedom of association. The ACLU seeks declaratory and injunctive relief to stop enforcement of the new lease agreement.

Plaintiffs are residents of Holiday Venice Properties, which include 256 units in fifteen buildings in Venice, California. Defendants are the Alliance Housing Management, Inc., which manages the facility, and HUD, which is requiring tenants of HUD-subsidized facilities to sign the new lease addendum.

In September, Holiday Venice Properties residents received the new lease addendum--which Alliance Housing said was required by HUD--that would subject them to one-strike evictions if they, or any member of their household, guest or other person under the resident's control, were to "engage in or facilitate criminal activity...*within a three block radius of the*

property."

All of the plaintiffs strongly support drug-free housing and a crime-free environment. They have worked to promote these goals. They refused to sign the lease addendum because it would penalize them for the conduct of other persons over which they have absolutely no control.

On September 25, plaintiffs received a memo from Alliance threatening eviction because they had not signed the new rental lease agreement. On December 8, 1997, plaintiffs filed a motion for a preliminary injunction with a supporting brief and declarations. The court scheduled the preliminary injunction hearing for January 12, 1998. Plaintiffs responded through attorneys in writing that they objected to the new agreement because it violated their basic civil liberties, but received no response. On November 3, Alliance Housing sent plaintiffs another memo threatening eviction as of December 1, for failure to sign the new mandatory rental agreement. On December 10, the housing company sent the ACLU a letter saying it will withdraw its requirement that residents of its government-subsidized housing located in Venice, California, sign a lease agreement which would hold them responsible for crimes committed by visitors.

The case was successfully settled on February 9, 1998. The settlement prohibits the housing management company from retaliating in any way if residents do not sign the addendum and awards plaintiffs attorneys' fees. The company also agreed not to enforce the addendum against any other tenants. (Rocio Cordoba, Dan Tokaji)

57. Johnson v. Calvert (California Supreme Court)

This case involves an attempt by a woman to retain parental rights with the child to whom she gave birth but to whom she is not genetically related. In this instance, the surrogate pregnancy was a result of the implantation in the birth mother of an embryo that was the product of an egg and sperm donated by the defendants. We filed an amicus brief with the Superior Court in this case arguing two main points. First, we argued that both the genetic parents and the birth mother have parental rights and obligations to which the court should give legal recognition and protection. Second, we argued that a waiver of parental rights is not effective unless it is knowingly and voluntarily given and occurs after birth. This principle should not depend on whether the birth mother is also the genetic parent of the child. On October 22, 1990, the trial court ruled that the Calverts, the genetic parents of the child, are entitled to full custody and parental rights both because, in the court's view, a non-genetic surrogate mother has no parental rights and because, even if she did, she waived such rights through the surrogacy contract she entered. Judgment was so entered November 21, 1990. The birth mother, Anna Johnson, filed an appeal. Johnson's opening brief was filed February 22, 1991. We filed an amicus brief with the Court of Appeal on August 12, 1991, rearguing points we had presented to the lower court. The Court of Appeal affirmed the lower court's decision on October 8, 1991, ruling that because the birth mother was not genetically related to the child, she had no rights whatsoever. The court did not reach the

contract issues involved. The California Supreme Court granted review. We filed an amicus brief with the high court reasserting our position on December 29, 1992. Oppositions to our brief were filed by the genetic parents and the attorney appointed to represent the child. Oral argument was heard on February 2, 1993. On February 3, 1993, the supreme Court directed the parties to file briefs by February 23, on the issue of whether enforcement of the surrogacy contract used in this case could violate the public policy of California. The Supreme Court issued its decision on May 20, 1993. It ruled that the Calverts were the child's legal parents and that Anna Johnson had no rights because this was the parties' original intention. The Court rejected our position that a child could have two mothers, although it conceded that the Family Law Act yields two answers to the question of who is the child's mother in this case. The Court also held that the surrogacy contract in this case was not against public policy and was enforceable. On October 4, 1993, the U.S. Supreme Court denied Johnson's Petition for Cert. (Jon Davidson, Carol Sobel, Rebecca C. Klipfel and Suzanne Madison of Rogers & Wells, Meir Westreich)

58. Lopez v. Superior Court (Ca. Supreme Court)

An *amicus* brief was filed in the California Supreme Court in September, 1997 on behalf of a criminal defendant. The District Attorney in the case has withheld the identity of key witnesses from both defense counsel and defendant, claiming they are part of the Mexican Mafia and would be killed if their identity were known. In this case of first impression, the ACLU brief alleges serious breaches of the defendant's right to due process. Oral argument was held on June 6, 2000. On August 17, 2000 the Supreme Court unanimously held that prosecutors could not refuse to disclose to the defendants or their counsel the identities of critical witnesses whom the prosecutor intended to call at trial, on the ground that disclosure would pose a significant danger to their safety. (Paul Hoffman and Dilan Esper)

59. Los Angeles Countywide Coalition for the Homeless v. City of Los Angeles (L.A. County Superior Court)

This is a taxpayer action challenging the constitutionality of the arrests of homeless people for violating the City's curfew ordinance during the emergency. We also challenge the notice given by Mayor Bradley in announcing the curfew. Our amended complaint was filed and served on August 18, 1992. The City had removed the case to federal court. On September 4, 1992, the City filed a Notice of Concession and, on their own motion, remanded the case to state court. We are proceeding with discovery. The City's Demurrer was sustained on December 1, 1992, on the grounds that the case was not "ripe." No appeal was taken. (Paul Hoffman, Cathy Dreyfuss, Lise Anderson, Mark Silverstein, Silvia Argueta)

60. Macias v. The State of California (California Supreme Court)

In November, 1994, the ACLU filed an amicus brief in the California Supreme Court urging that several chemical companies that sold malathion to the state be held liable for the injuries suffered by a 14 year old boy who was blinded when he went outside to help his father cover

the family car while the area was being sprayed with the pesticide. The state had issued warnings that there were no health hazards associated with the spraying while encouraging residents to cover automobiles to avoid paint damage. The ACLU argued that the highly regulated and licensed chemical companies, aware of the state's inadequate warnings, were obligated to act affirmatively to avoid the possibility of injury. The S.Ct. held the chemical companies were not liable, on grounds not argued by the ACLU. (Mark Rosenbaum, Stuart Miller)

61. Manduley v. Superior Court (California Supreme Court)

The ACLU filed an *amicus* brief in the case of eight teenagers charges as adults with the hate-crime beatings of five elderly farm workers. The brief challenges the constitutionality of Prop. 21, the voter-approved initiative that allows prosecutors to charge teenagers as adults. The ACLU argues that the initiative violates the principles of equal protection, and separation of powers and due process. The ACLU takes no position on the guilt or innocence of the defendants. The case was argued on January 9, 2001; the Court of Appeal struck down a key provision that allowed prosecutors to decide whether or not to charge juveniles as adults. In April, 2001, the California Supreme Court agreed to hear argument on the case. Our *amicus* brief was submitted in September, 2001. The case was argued before the California Supreme Court on December 5, 2001. On February 28, 2002, the Supreme Court upheld the constitutionality of the initiative. (Howard Rice Nemerovski Rabkin & Falk, ACLUs of Southern California, Northern California, and San Diego and Imperial Counties)

62. People v. Banks (California Supreme Court)

The Court of Appeal found that advance publicity was required to sustain the constitutionality of a DUI roadblock. In reaching this decision, the court interpreted Ingersoll v. Palmer (241 Cal.Rptr. 42 (1987)) and Michigan State Police v. Sitz, 110 L.Ed.2d 412 (1990)), as requiring that advance publicity be part of the state's roadblock plan. We filed an amicus brief in support of a Court of Appeal's decision requiring notice of proposed roadblocks with the ACLU/NC. In December 1993 the Court rejected our arguments and found that advance publicity was not required for roadblocks. (Alan Friel, Amitai Schwartz of ACLU/NC)

63. People v. Maxwell (California Supreme Court)

The ACLU is co-counsel on a Petition for Review to the California Supreme Court, on behalf of a criminal defendant who was excluded from his trial after refusing to wear a "REACT" restraint belt that the trial judge ordered him to wear. "REACT" stands for "Remote Electronically Activated Control Technology." As described in People v. Garcia (1997) 56 Cal. App. 4th 1349, 1354: "The belt will deliver 50,000 volts of electricity if activated by a remote transmitter .... This shock will immobilize the wearer and may create a '[p]ossibility of self-defecation' and a '[p]ossiblity of self-urination[.]" The belt is activated by any outburst or quick movement, or if the user tampers with the belt.

The defendant in the case is Clifton Maxwell, who was prosecuted for and ultimately convicted of first-degree murder in Riverside Superior Court. Two other men were also prosecuted for the same murder. Mr. Maxwell suffers from a severe mental illness. Although he was on a suicide watch and was compelled to take psychotropic medication during the trial, he was nevertheless found competent to stand trial by the trial judge.

Because of defendant's mumbling of obscenities and incoherent thoughts during pretrial proceedings, the trial judge ordered that the REACT belt be placed on Mr. Maxwell. The court ordered that leg braces, invisible to the jury, to be placed on the other two defendants during trial. Mr. Maxwell refused to wear the REACT belt during the trial and, in response to the trial court's question whether he would disrupt the trial, stated, "I'm not keeping this belt on." As a result, he was excluded and was not present during any portion of his trial. The record shows that Mr. Maxwell was aware of a friend who had been forced to wear the REACT belt, which was subsequently activated through the negligence of an attending officer, throwing the friend to the ground "in a fit of anguish and pain." This knowledge of his friend's experience, along with a warning regarding the above-described effects of the REACT belt, caused Mr. Maxwell to refuse to wear it and therefore to be excluded from his trial.

Mr. Maxwell was convicted of first-degree murder. As to his two co-defendants, both of whom were present during the trial, one was convicted of second-degree murder and the other was acquitted.

On appeal and in a contemporaneously decided habeas petition, Maxwell challenged the REACT belt's use on the grounds that : (1) it violated his constitutional rights to due process and confrontation under the state and federal constitutions; (2) it violated California Penal Code 668 which states that criminal defendants should not be "subjected before conviction to any more restrain than is necessary for his detention to answer the charge," and (3) the trial court erred in assigning discretion for use of the REACT belt to the sheriff's department. Defendant further argued that the trial court erred in failing to consider the less restrictive alternative restraint of leg braces invisible to the jury, which were used for his co-defendants. In addition to challenging the use of the REACT belt, Mr. Maxwell appealed based on the trial court's failure to conduct a competency hearing and the involuntary administration of psychotropic drugs. The Court of Appeal rejected all Mr. Maxwell's claims.

There is a published Court of Appeal decision, People v. Garcia (1997) 56 Cal. App. 4th 1349, 1354, which upholds the use of the REACT belt, concluding that it was not a "psychological restraint" on the facts presented. We argue both that this case was wrongly decided and, alternatively, that it is distinguishable. That case did not involve a severely disturbed Defendant like Mr. Maxwell -- even assuming that he was competent to stand trial, there is evidence in the record that he does have a severe mental illness which makes it difficult for him to control his impulses. Mr. Maxwell was understandably fearful of having more than 50,000 volts of electricity discharged through his body if he made any outburst or quick movement or if he attempted to remove the restraints. It is precisely because of this threat that Mr. Maxwell refused to wear the REACT belt, and was consequently excluded

from his trial. In any event, the trial court should have considered the less restrictive alternative or leg braces under the circumstances of this case. Mr. Maxwell will also raise the issue of the trial court's failure to conduct a competency hearing in his Petition for Review, and possibly the involuntary administration of psychotropic drugs, although it appears less likely that either of these issues will cause the Court to grant review. The ACLU's brief was filed November 17, 1999. The California Supreme Court denied review. (Dan Tokaji, Patrick Ford)

64. People v. Marks (California Supreme Court)

Amicus brief filed on behalf of a former death row inmate whose conviction was overturned because of the failure of the trial judge to hold a competency hearing (See People v. Marks, 45 Cal.3d 1335 (1988)) and because the jury failed to specify the degree of murder for which he was convicted. Because the jury failed to specify the degree of murder, Penal Code §1157 operates to reduce the degree to second degree as a matter of law. The brief contends, based on the double jeopardy clauses of the state and federal constitutions, that Marks' acquittal because of the operation of §1157 precludes the state from seeking the death penalty in a retrial after the Supreme Court invalidated his entire conviction because of the failure to hold a competency hearing. Douglas Young of CACJ was the author of the brief. The case was argued in early October 1991. In late December 1991, the Supreme Court in a unanimous decision agreed that Marks could not be retried for the death penalty because of the Double Jeopardy clause. (Paul Hoffman, Michael Subit, with California Attorneys for Criminal Justice)

65. People v. Mower (California Supreme Court)

Together with the ACLUs of Northern California and San Diego, in August, 2001 we submitted an *amicus* brief to the California Supreme Court in *People v. Mower*. The Court will be deciding whether Prop. 215 provides an immunity or only an affirmative defense in marijuana possession or cultivation cases in which the defendant claims the protection of the Compassionate Use Act. The issue is important because it affects who has the burden of proof both at the pre-trial stage and at trial as to whether the requirements of Prop. 215 have been met. It also affects whether the standard of proof is preponderance of the evidence or reasonable doubt.

We argue that the burden of proof (at least once the existence of a physician's recommendation has been established) is on the prosecution and that the prosecution must prove beyond a reasonable doubt that the conditions of Prop. 215 have not been satisfied.

In a unanimous decision, in July, 2002 the California Supreme Court agreed that defendants have limited immunity from prosecution for using and cultivating marijuana pursuant to the Compassionate Use Initiative. (Cliff Gardner)

66. Villaraigosa v. Reiner (L.A. County Superior Court)

Taxpayer action challenging enforcement of City of San Fernando's ordinance prohibiting gang members from entering Las Palmas Park in San Fernando. We contend that the ordinance unconstitutionally imposes criminal penalties on gang members, or suspected gang members, based on that status and their innocent presence in the park. The ordinance expired on June 30, 1992 and the case was dismissed as moot. (Robert Malley, Paul Hoffman)

67. Wilkinson v. United States (U.S. Court of Appeals, Eleventh Circuit)

Petition for Writ of Coram Nobis seeking to overturn Frank Wilkinson's conviction for contempt of Congress based on his refusal to answer questions at a HUAC meeting in Atlanta in 1958 based on a First Amendment privilege. We received a document in late 1988 as a result of the FOIA and discovery in Wilkinson v. FBI which revealed that the key witness in the contempt of Congress criminal case was known by the FBI to be unstable. The petition contended that the suppression of this information by the government was a due process violation requiring the overturning of the conviction. In early July 1991 the district court dismissed the case. In early April 1992 the 11th Circuit affirmed without opinion. (Doug Mirell, James Damon III, Michael Stein, Michael Axelrod, Paul Hoffman with ACLU of Georgia)

68. Williams v. Reiner (California Supreme Court)

Taxpayer action to challenge the facial constitutionality of Penal Code §272, as amended by the 1988 Street Terrorism Enforcement and Protection Act (the so-called "gang mother" law). The District Attorney and City Attorney filed demurrers which were heard on September 20, 1989. The Court dismissed our §1983 claims. Settlement discussions were not successful. On November 2, 1990, Judge Sohigian granted defendants' motion for summary judgment finding that the 1988 amendment to Penal Code §272 was neither unconstitutionally vague or overbroad. We appealed. The appeal was argued on November 26, 1991, in Division One. On December 19, 1991, the Court of Appeal reversed Judge Sohigian and ruled that the amendments to Penal Code § 272 were unconstitutionally vague and unenforceable. In March, 1992, the Supreme Court granted the City's Petition for Review. On July 1, 1993, the Supreme Court unanimously reversed the appeal court and found the parental liability statute not vague on its face. (Paul Hoffman, Carol Sobel, Gary Williams, Sharon Robinson)

EDUCATION

69. Molina v. LAUSD (Superior Court, Los Angeles)

On January 11, 2000, a class action suit was filed in state court on behalf of all children attending Rosemont Avenue Elementary School, in the Los Angeles Unified School District. The suit challenges, on constitutional, statutory, and regulatory grounds, school administrators' decision to conduct five separate classes–four classes of third-graders, and one class of second-graders–simultaneously in the Rosemont school auditorium, without sound barriers, floor-to-ceiling visual barriers, adequate space for learning and safety, and

sufficient numbers of electrical outlets for varied instructional methods.

Beginning in the 1998-1999 school year, Rosemont Avenue Elementary School conducted three third-grade classes simultaneously in the school auditorium. Last July, when the 1999-2000 year-round school year began, and continuing currently, four third-grade classes and one second-grade class, totaling 100 students, coexist in the Rosemont Avenue Elementary School auditorium. The school provided no sound or visual barriers between the classes. Instead, teachers obtained donations of cloth partitions from the United Farm Workers Union to use to separate the classes. But these cloth partitions do not run from floor to ceiling and so do not provide complete visual barriers for the students. And, more troubling, the partitions provide virtually no sound barriers between the classes. The students often cannot hear their teachers, each other, or school loud-speaker announcements because the noise level in the auditorium runs so high. There is only one electrical outlet that students in all four of the main-floor classes must share, so teachers must choose between instructional methods for classes and some classes may not use any electrical materials at all.

The primary theory of the suit is that the second- and third-grade children attending Rosemont Avenue Elementary School are being denied their right to equal protection of the law because they must learn under conditions that fall fundamentally below prevailing tatewide standards. In addition, the suit challenges, in both state and federal causes of action, the conditions of the school for having a racially discriminatory effect on these children, 99.5% of whom are children of color.

Two weeks after the lawsuit was filed, the LAUSD supplied four individual protable classrooms; one class remained in the auditorium. The LAUSD also agreed to set up a new system to monitor schools for similar complaints, and to correct problems promptly. The court entered an order accepting the ACLU's voluntary dismissal of the case on March 24, 2000 after the parties entered into a settlement agreement. (Catherine Lhamon, Mark Rosenbaum, Peter Eliasberg)

70. Rodriguez v. Los Angeles Unified School District (L.A. County Superior Court)

Suit challenging the unequal allocation of resources among students and schools within the District. Students disproportionately affected attend predominantly Latino and black community schools. The defendants' demurrer, based in part on the Crawford decision, was overruled. On October 19, 1990, Judge Sohigian granted the school district's motion for summary adjudication as to plaintiffs' inability to recover on the third and eighth causes of action alleging, respectively, violation of state equal protection guarantees re general disparities in the allocation of resources, and in the allocation of instructional staff. The rest of defendants' motion was denied. On November 21, 1990, a Petition for Writ of Mandate was filed on behalf of plaintiffs, asking the Court of Appeal to reverse the trial court's decision granting summary judgment resulting in dismissal of the third and eighth causes of action. Plaintiffs argue that the arbitrary allocation of school resources is a violation of the equal protection clause of the California Constitution even when it is not based upon race or wealth. The writ was denied. After weeks of intensive settlement negotiations a Consent Decree has been agreed to by the parties, except for the teachers' union and a group of Valley

parents. There was a hearing on the proposed consent decree starting June 22, 1992. In early July, 1992, Judge Nutter affirmed the settlement. He issued his written opinion in mid-August. On May 3, 1993, the LAUSD Board voted 5-2 in support of the fee settlement in the amount of $1,114.896. We agreed to allow the LAUSD that the fee payment could be stretched over the next two fiscal years. A group of parent intervenors filed an appeal to the settlement agreement. On July 22, 1994, a unanimous panel affirmed our position, upholding the settlement in its entirety. (Mark Rosenbaum, Robin Toma, with several other public interest organizations)

CIVIL RIGHTS IN FAMILY LAW

71. Buzzanca v. Buzzanca (California Court of Appeal, 4th District)

Luanne and John Buzzanca engaged the services of a reproductive agency in 1994. The surrogate mother was implanted with a sperm and an egg from anonymous donors. The Buzzanca's are not the biological parents of their daughter. The couple divorced a month before their daughter was born in 1995.

Mr. Buzzanca sought to waive all responsibility for the child, and asked the Superior Court to declare that neither he nor his ex-wife were the legal parents of the baby girl. In September, 1997, Superior Court Judge Robert Monarch agreed with Mr. Buzzanca and ruled that the daughter, Jaycee, had no parents. The case was appealed, and the ACLU submitted an *amicus* brief on behalf of Luanne Buzzanca to ensure her legal status as the mother of the child, whom she has raised since birth and is now two years old.

The California Court of Appeal ruled on March 10, 1998 that a man and woman who contracted with a surrogate mother are the child's legal parents, even though the baby was born after the couple divorced. In overturning the Superior Court ruling from last September, the California Court of Appeal for the Fourth District said, in part, "The trial court then reached an extraordinary conclusion: Jaycee had no lawful parents. . . We disagree. Let us get right to the point: Jaycee would never have been born had not Luanne and John both agreed to have a fertilized egg implanted in a surrogate."

The Court of Appeal sent the case back to the Superior Court ordering the lower court to declare Luanne the lawful mother and giving her legal custody of her daughter. The Court also ordered the lower court to declare John Buzzanca the legal father and to establish appropriate permanent child support from him for his daughter. The California Supreme Court denied cert in the case. (Taylor Flynn)

72. ACLU Inland Empire Chapter v. City of Redlands (U.S. District Court)

The ACLU sought a temporary restraining order barring the City of Redlands from endorsing May 17 as "March for Jesus Day." The judge granted the TRO on May 14, 1997, as violative of both the federal and state constitutions which prohibit a government agency from endorsing a religion. The ACLU did not object to private parties holding the march without government endorsement. The parties later entered into a stipulated judgment on the merits, which included recovery of attorneys fees. (Peter Eliasberg)

73. Alliance for Survival v. City of Los Angeles (U.S. District Court, Central District; 9th Circuit Court of Appeals)

Plaintiffs filed for a preliminary injunction on September 11, 1997 against a Los Angeles city ordinance that claims to ban aggressive solicitation. The ACLU charges that the ordinance violates the First Amendment's protection of free speech as well as the California Constitution's free expression guarantees. The law is so broad that it would apply to solicitors from the Salvation Army, the Soldiers of the Cross of Christ, Greenpeace, or members of the Bus Riders Union, as well as individuals seeking support from passers-by.

The ordinance (No. 171664) was passed on July 2, 1997 and went into effect on August 15, 1997. The vague language would criminalize something as benign as approaching a person and making a second request after that person has already indicated s/he does not want to be solicited — without dictating that the person being solicited be intimidated or be made fearful by the solicitation.

The law also would completely ban any type of solicitation in many public places, including near any public transit stop or on a public transit vehicle. Thus the Bus Riders Union, for example, could not solicit memberships on a bus or anywhere near a bus stop. Any solicitation near banks or ATMs would also be completely prohibited. Public forums such as Union Station and Pershing Square (which has a Metro stop) would suddenly be off limits to significant free speech activity.

One of the inconsistencies in the ordinance is that it does not prevent individuals from aggressively trying to collect signatures for a petition, or to win converts for any cause on public streets or near public transportation facilities. Yet as soon as a person asks for support in some way, whether money or goods, that person would suddenly risk violating the law.

The law also empowers a variety of private, public and quasi-public employees to determine whether or not certain free speech activities will be permitted in a public forum. The

ordinance offers no guidelines as to how these decisions would be made, thus creating an entirely capricious system for allowing or disallowing free speech activities. The ordinance authorizes bus drivers to restaurant operators to police officers the power to grant or deny permission to solicit without setting any standards for such authority whatsoever.

A hearing was set on the preliminary injunction on October 17, 1997. Judge Richard Paez issued the injunction on October 30. Defendants appealed the preliminary injunction decision to the 9th Circuit and requested certification of three questions to the Ca. Supreme Court. Argument was held on August 3, 1998. On September 15, 1998, the 9th Circuit issued an order requesting certification of one question from the Ca. Supreme Court while keeping the preliminary injunction in place. In March, 1999 the ACLU filed its brief on the certification issue with the California Supreme Court. Oral argument was held in December, 1999.

On March 6, 2000 the California Supreme Court held that under the state constitution, restrictions on solicitation are to be treated as content-neutral restrictions on speech, rather than content -based, as the ACLU argued. The case was returned to federal court, which will adjudicate our federal constitutional challenges to the ordinance. Oral argument was held before the Ninth Circuit Court of Appeals on July 25, 2000 on the question of whether to keep the preliminary injunction in place. In September, 2000, the Ninth Circuit upheld the preliminary injunction. The case returned to the District Court for further action. In January, 2001, the City re-wrote its anti-solicitation statute in response to the lawsuit. The new ordinance deletes the ban on solicitation near restaurants and bus stops. The motion for attorneys fees was heard in July, 2001. The Court issued a ruling in our favor and fees were paid in November, 2001. (Peter Eliasberg, Carol Sobel)

74. Alliance for Survival v. Los Angeles City Council (L.A. County Superior Court (West Division)

This is a lawsuit seeking to have declared unconstitutional an ordinance in the City of Los Angeles which prohibits all solicitation and the sale of any goods along the Venice Beach area in Los Angeles. In particular, the police have recently started targeting the Venice Boardwalk area and the wide assortment of performing artists, political activists and others for whom the Venice Boardwalk has become a central gathering point. The lawsuit was initiated on June 20, 1991. Since then, we have been in negotiations with the City. However, the city has recently began stepping up enforcement of other ordinances, including the City's business tax permit fee, in order to rid the Boardwalk of solicitors and to catch them in a contradiction of telling them they need to pay a business permit fee and then telling them they cannot operate a business on the ocean side of the Boardwalk. The City has since amended the solicitation ordinance; however, it is now attempting to use other laws to harass the boardwalk artists and performers. (Richard Solomon, Carol Sobel)

75. Alliance for Survival v. Thomas (U.S. District Court, Central District)

Suit to enjoin new regulations which prohibit demonstrators from holding events or meetings in front of the federal building in Westwood. Under the regulations demonstrators must use the parking lot in back of the building and hidden from the traffic on Wilshire Blvd. The Court denied our request for a preliminary injunction concerning two demonstrations planned by the Alliance and Gender Gap just prior to the November, 1984, election but granted a preliminary injunction with respect to a demonstration held in March, 1985. New regulations were then promulgated permitting up to 1,500 people to demonstrate in front of the federal building. In November, 1986, Judge Ideman granted the Government's motion for summary judgment on the ground that the Alliance has never drawn more than 1,500 people to a demonstration and thus this could not show that the new regulations threatened their rights. Our motion for attorneys fees was heard on March 2, 1987. After the hearing the government agreed to settle the fee issue. On September 23, 1987, the GSA granted a permit to the Southern California Ecumenical Council for a Central America peace demonstration under threat of litigation based on the settlement in this case. There have been no problems with permits since 1987. (Richard Solomon, Paul Hoffman, Carol Sobel)

76. Asuncion v. Downey Unified School District (L.A. Superior Court, Southern District)

Holly Asuncion, the editor of the high school newspaper, was barred by school officials from graduation ceremonies because of a parody she published of a yearbook ad. The school alleged that the parody was anti-semitic. On June 19, 1996, the ACLU filed a TRO seeking to enjoin the Downey Unified School District from barring Holly from graduation ceremonies. Settlement was reached in the judge's chambers just hours before the graduations ceremony, and Holly was allowed to graduate with her classmates and participate in the school-sponsored post-graduation parties. (Silvia Argueta, Carol Sobel)

77. Baca v. Morena Valley Unified School District (U.S. District Court, Central District)

On August 1, 1996, U.S. District Court Judge Robert J. Timlin granted the ACLU Foundation of Southern California's motion for a preliminary injunction, and ordered the Moreno Valley Unified School not to apply or enforce its policy prohibiting persons from naming district employees during school board meetings. The school district's policy had been under a temporary restraining order since July 8, when the judge first barred it from implementing the policy.

Judge Timlin's August 1 opinion made clear that the District's policy contained content-based prohibitions on speech, in violation of the First Amendment. The rule struck down by the Federal court is widely applied throughout California and was drafted by the California School Boards Association.

The District's policy prohibited speakers at its regular board meetings from making any statements critical of any school employees. Plaintiff Victoria Baca was ejected from a meeting in late May when she referred to the principal and superintendent while addressing the Board regarding racial tensions in a local middle school.

Baca is the director of the Mexican Political Association (MPA) in the Inland Empire. She has been involved in efforts to resolve racial tensions at local public schools, including a middle school in the Moreno Valley, and has expressed disapproval at the lack of response to Latino parents.

The proposed settlement was approved by the school board on August 26, 1997. (Carol Sobel, Doug Mirell)

78. Braun v. U.S. District Court (U.S. Court of Appeals, Ninth Circuit)

We filed a Petition for a Writ of Mandate seeking to overturn a gag order against attorney Harland Braun, the lawyer for Theodore Briseno in the King trial, prohibiting him from impugning the political motivations of the Government in bringing the prosecution. We argued that the order was an unlawful prior restraint. On February 22, 1993, the Ninth Circuit overturned the gag order based on our arguments. (Paul Hoffman, Mark Silverstein, Raleigh Levine, Carol Sobel, Doug Mirell)

79. Burbridge v. Mathur (U.S. District Court)

This is a First Amendment case involving a series of student protests at Irvine Valley College. The plaintiffs in the case are the two student leaders: Deb Burbridge and Delilah Snell. The defendant is Raghu Mathur, president of Irvine Valley College. Irvine Valley College is a community college within the Saddleback Community College District.

In April and May, the students began a series of educational demonstrations directed at the improper procedures followed by the Board of Trustees in the appointment of Mathur as president of the college. One of the issues is a threat to the accreditation of the school. These matters have been widely reported in the Orange County press and there is an effort to recall one of the trustees, Fugue, for his role in this matter.

The students were originally permitted to demonstrate for 30 minutes in a smaller area located between a series of classroom buildings in a corner of the campus. If they have a speaker, they are limited on sound amplification because of all the surrounding classrooms. They asked for and were given permission to set up tables and demonstrate for one hour in the larger open area outside the Student Center building. After this event, when they next asked for permission to demonstrate in front of the Student Center, after meeting with a college president and assistant dean, they were told they would have to return to the smaller "A Quad" and would be limited to no longer than 30 minutes based on the "best interests of

the college." The area in which they seek to demonstrate is used for a variety of campus activities, including musical groups, blood drives, and sporting game fundraisers. By restricting them to the A-Quad, the school effectively cuts off the students' ability to reach a broader group of students.

In addition to the above, the students are required to submit any materials they intend to disseminate to other students to the administration for prior review. There are no written standards for granting or denying approval.

The college's policies violate the First and Fourteenth Amendment as vague rules directly impacting fully protected expressive activities. The college's policies also violate Art. I, §§ 2 and 3 of the California Constitution, guaranteeing liberty of speech and the right to petition.

The case was settled in April, 1999 and the case dismissed. The court reserved jurisdiction until May 7, 1999 to permit settlement to be completed. The college agreed to develop regulations for the exercise of protected speech by students on the campus and the parties reached agreement on attorneys fees. (Carol Sobel)

80. Burkow v. City of Los Angeles (U.S. District Court)

A lawsuit was filed on May 31, 2000 challenging the constitutionality of a Los Angeles ordinance that makes it illegal to post a for-sale or for-lease sign on a vehicle that is parked on public streets in Los Angeles. We alleged that the ordinance is an impermissible restriction on commercial speech under the First Amendment of the U.S. Constitution and corresponding guarantees in the California Constitution.

Plaintiff Edward Burkow wanted to sell his car, but did not have to place an ad in the newspaper or go through a used car dealer. He posted a for-sale sign on the car's windshield and parked the car on a Los Angeles street. He received a ticket for violating the "no-sign" ordinance. Burkow challenged the ticket in traffic court and appealed from there to the Municipal Court; his constitutional claims were rejected in both courts, and he paid the ticket. As of the date of filing, Burkow still had not sold his car.

There appears to be no legitimate rationale that would justify the ordinance's restriction on speech. Any traffic safety justification is undermined by exceptions in the ordinance that permit the posting of for-sale signs on vehicles while they are traveling on the streets of Los Angeles, and the posting of such signs on private property (including private parking lots and drive ways).

At least two other cities have identical ordinances – Santa Monica and Huntington Beach. We believe that the ordinances are the product of lobbying by used car dealers, who want to close off competition from citizen-to-citizen transactions for motor vehicles. This is a classic case of government and business teaming up to stifle the expression of ordinary people. The

ACLU filed a motion for a preliminary injunction; Judge Matz deemed the motion submitted on the papers at the end of August.

We moved for a preliminary injunction at the time we filed the complaint. On October 16, 2000, the judge entered a preliminary injunction against the ordinance. We have made a settlement offer that the City accepted. The City has agreed to cease enforcing the ordinance and paid $30,000 in fees and costs. (Peter Eliasberg, Geoff Thomas and Joanna Joyce Weiss of Paul Hastings Janofski and Warner)

81. California Fiberloft v. Marguerite Elliot, et al. (Los Angeles Superior Court)

California Fiberloft is a corporation that since 1990 has owned and operated a fiber processing plant located next to the Santa Fe Arts Colony (SFAC), a residential arts colony, in the South-East corner of Downtown Los Angeles. California Fiberloft had been generating noxious fumes for the last few years, and in response SFAC residents began complaint to the Southern California Air Quality Management District (SCAQND). The fumes made residing and working in the SFAC impossible at times, with SFAC residents complaining of severe nausea; headaches another problems.

The tenants in adjacent properties filed complaints with the SCARQND. The agency cited Fiberloft for violations of state law. On the basis of those citizen complaints, Fiberloft sued several individuals for slander, intentional interference with prospective economic advantage and other torts.

On October 15, 1993, we filed a motion to strike Fiberloft's complaint pursuant to California Civil Procedure Code section 425.16(b). This recently enacted statute places a higher threshold on plaintiff's who file lawsuits against persons who criticized the plaintiffs publicly, usually in the political or governmental process. These lawsuits are known as SLAPP suits (Strategic Litigation Against Public Participation). Our motion was heard and granted on November 2, 1993. The parties have now settled the attorney's fees issues.

82. Casper v. City of Norco (U.S. District Court, Central District)

This case involves a First Amendment and equal protection challenge brought on behalf of two residents of the City of Norco challenging the City's restriction on the display of political signs in the City. The City's ordinance permits political signs only on private property and only during the 45 days prior to, and 10 days following an election. The permitted signs are restricted to those related to a candidate or ballot measure. Mrs. Casper is currently a candidate for City Council and wants to put up a sign prior to the late September date that would be 45 days prior to the election. We have brought a facial challenge to the regulation alleging that it is an impermissible content-based restriction on protected speech under the First Amendment and that it also violates equal protection principles as it protects commercial speech more than political speech and some types of political speech more than other. After we filed the complaint, the City said it would not enforce the ordinance;

however, they continued to maintain that the ordinance is lawful and have previously vacillated on enforcement. The City voted to repeal portions of the ordinance on November 18, 1992; however, the proposed modification does not resolve all the issues raised by our lawsuit. The City failed to respond to our complaint and a default was entered. We reached a settlement on attorneys fees. (Carol Sobel with Jeffrey Tidus of Musick, Peeler & Garrett)

83. Children's Home Society of California v. Love (Los Angeles Superior Court)

Some current and former employees of plaintiff Children's Home Society (CHS), a charitable organization, were active in exposing to CHS board and auxiliary members and to a reporter for the Los Angeles Times the unethical and possibly illegal conduct of the CHS president, who purportedly used public and private funds donated to CHS for his own personal expenses, including fancy lunches, hotel rooms, and a ring for his girlfriend. Now CHS has sued defendant Michael Love, a former CHS employee, claiming that he unlawfully took from CHS certain confidential and proprietary financial information. We believe that CHS has sued in retaliation for the part Mr. Love may have played in exposing the CHS president's misconduct, and is trying to use the suit against him to discover the names of the other current and former employees involved. We think that there is a right under both California and federal law to expose hidden criminal and unethical conduct without fear of such retaliation, and for that reason, have undertaken Mr. Love's defense. Currently, the case is in the discovery stage. We have resisted CHS's attempts to discover the names of those involved in the revelation of the CHS president's alleged misuse of funds, and are prepared to oppose the motion to compel CHS is threatening. On March 29, 1993, we filed a motion to strike the complaint under C.C.P. §425.16(b), a statute that took effect on January 1, 1993. The statute permits a defendant to move to strike a cause of action "arising from" an act of the defendant "in furtherance" of his or her free speech rights "in connection with a public issue." The statute forces the plaintiff to show a "probability" or prevailing; if the plaintiff cannot, the complaint is stricken and the defendant is awarded costs and fees. Our motion is one of the first two or three to be brought under C.C.P. §425.16(b), and was heard on May 3, 1993, and denied. A settlement was reached in December 1993 with CHS agreeing to drop the action. (Paul Hoffman, Carol Sobel, Raleigh Levine)

84. CISPES v. Century City Shopping Center (L.A. County Superior Court)

In September 1989, we filed a complaint and an ex parte application for a temporary restraining order (TRO) seeking an order that CISPES be allowed to hand out leaflets to those persons waiting in line to buy tickets, entering or leaving the movie theater complex at the Century City mall where the film "Romero" opened. CISPES had applied 10 days prior to the film's premiere screening, and the mall denied their application on the day of the premiere. Judge Dzintra Janavs granted the TRO which permitted CISPES to hand out leaflets from a table set up in the general area of the theaters. The Court also granted our request for limited expedited discovery and set the preliminary injunction hearing for September 28, 1989. On October 10, 1989, we obtained a preliminary injunction order from Judge Janavs. The order struck down Century City Shopping Center's $1,000,000 insurance

requirement and held that Century City would have to allow hand-billing from a table and oral communication since these activities are protected by Robins v. Pruneyard Shopping Center and its progeny. The judge also upheld the right of persons engaged in political expression to approach people to discuss non-commercial subjects. Judge Janavs held against us on the issue of whether people engaged in political expression could approach Center patrons to offer them literature. The judge further denied the right of our client to distribute the back of its literature, which contained a request to mail in donations. A settlement agreement was reached on December 5, 1991. The agreement guarantees the adoption by the shopping center of a set of revised policies, rules and application. It provides for four areas designated for speech activities, as compared to one previously. One of the areas is located near the movie theaters to permit groups to leaflet or talk to patrons, the denial of which had originally spawned this lawsuit. The mall manager's discretion to impose insurance requirements and other pre-conditions are now limited by objective guidelines. We will continue to monitor the implementation of the settlement and the application of the new rules. (Robin Toma, Carol Sobel)

85. Crespo v. City of L.A. (U.S. District Court)

Suit was filed on August 21, 2000 against the City of L.A. and the LAPD on behalf of credentialed members of the media who were deliberately targeted by the LAPD as they covered protests and the police department's response to protesters outside the Democratic National Convention in violation of the First, Fourth, and Fourteenth Amendments and the California Constitution. The complaint was amended on September 5, 2000 to add more plaintiffs. We are now representing seven credentialed media members.

For example, plaintiff Al Crespo, a resident of the state of Florida, is a free-lance photojournalist. Crespo traveled to Los Angeles to take photographs of the protests at the Democratic National Convention for a photographic project on which he is working entitled "Protest in the Land of Plenty." Crespo had gone 20 feet when he heard gunshots from behind him. He turned around to see a large number of police officers on foot in riot gear, crossing the intersection on Olympic from east to west. Crespo took several photographs of the officers, including one of an officer firing rubber bullets at individuals on the roof of a building from which a Los Angeles radio station had been broadcasting. A few seconds later, Crespo took a photograph of an LAPD officer who was pointing a gun directly at him. There was nobody between the officer and Crespo. The nearest protestors were at least twenty feet away from Crespo, heading away from him on Figueroa. Crespo had two 35 mm cameras, one draped around his neck, the other around his shoulder. He was wearing a white t-shirt and several bright, laminated media passes. While taking photographs, Crespo was shot three times by an LAPD officer with rubber bullets. Other plaintiffs were also shot or beaten by the LAPD while trying to cover the LAPD's dispersal of the crowd.

The lawsuit alleges that, in addition to violating the First Amendment of the U.S. Constitution and the Liberty of Speech Clause of the California Constitution, LAPD officers used excessive force in violation of plaintiffs' rights guaranteed by the Fourth Amendment

of the United States Constitution and in violation of their rights to due process of law guaranteed by the Fourteenth Amendment of the United States Constitution. The suit seeks exemplary and punitive damages, and an injunction requiring the LAPD to develop policies and procedures that will ensure that members of the media are able to exercise their constitutional rights, free from unwarranted attacks and other interference from the LAPD, to report on demonstrations, especially in circumstances in which the LAPD orders demonstrators to disperse. In the Fall, 2000, the City filed a motion to dismiss the claims for declarative and injunctive relief. The court denied the motion. Final settlement was reached in October, 2001. The City agreed to pay $60,000 in damages to the plaintiffs, and the LAPD is required to recognize that the media has the right to cover public assemblies, even if police have declared them unlawful. (Peter Eliasberg)

86. D2K Convention Planning Coalition, et al v. Parks (U.S. District Court)

The ACLU/SC filed suit on August 10, 2000 on behalf of the Community Arts Network, the D2K Convention Planning Coalition ("D2K"), and the Direct Action Network ("DAN"), with respect to First Amendment and Fourth Amendment issues arising from the "Convergence Center," a building near MacArthur Park where plaintiffs were planning for expressive activities surrounding the Democratic National Convention.

By lease dated June 27, 2000, the Community Arts Network leased the four-story building located at 1919 W. Seventh Street, Los Angeles, California ("Convergence Center") for the period from July 8, 2000, to August 25, 2000. Pursuant to their lease, the Community Arts Network was in lawful possession of the Convergence Center. As authorized by its lease, the Community Arts Network provided D2K and DAN with the right to use the Convergence Center.

From the very beginning of their lawful use of the Convergence Center, these groups were subjected to a series of unlawful actions by the City of Los Angeles and the Los Angeles Police Department. During the evening hours of Saturday, July 15, 2000, Los Angeles Police Officers entered the Convergence Center without permission and without a warrant. They demanded to see the lease for the building. They indicated that fire inspectors were on call and wanted to arrange an immediate fire inspection. They made clear that their presence was in connection with the Democratic National Convention, indicating that they wanted to ensure that the event was peaceful.

This action by the Los Angeles Police Department was part of a clear pattern of singling out political protestors. Other actions included:

- On July 15, 2000, at 2nd and Main Streets, Los Angeles police officers surveilled a location where a skill training workshop was being held. An officer acknowledged that he was present because of anticipated protests at the Democratic National

Convention.

- On July 30, 2000, Los Angeles police officers selectively enforced traffic laws against activists who were leafleting the neighborhood in the vicinity of the leased premises.

- Los Angeles police officers have requested that adjacent parking lot operators alert the police when the Convergence Center is in use.

- On August 2, 2000, a fire inspector attempted to enter the building. He was told that he needed an inspection warrant to enter the building without permission. He indicated that he did not need an inspection warrant and asked whether the occupants wanted him to call the police. He was again told that he could not enter without an inspection warrant and finally left.

- Following the attempted fire inspection on August 2, 2000, police officers were seen videotaping the Convergence Center.

- Police officers have been recording license plate numbers of cars used by political protestors, and photographing the Convergence Center from across the street.

The ACLU argued that the police and other City officials and employees crossed the line from lawful surveillance to harassment in violation of the activists' First and Fourth Amendment rights. "State action designed to retaliate against and chill expression strikes at the very heart of the First Amendment." *Gibson v. United States of America*, 781 F.2d 1334, 1338 (9th Cir. 1986); *accord, Sloman v. Tadlock*, 21 F.3d 1462, 1469 (9th Cir. 1994). Taken together, it appears that the City engaged in efforts "to inhibit both the group's operations and the activities of its members." *Mendocino Environmental Center v. Mendocino County*, 192 F.3d 1283 (9th Cir. 1999). This interference with protected political activities is a violation of First Amendment rights.

Moreover, the tactics deployed by the City also demonstrated that the City was violating and threatened to continue violating the Fourth Amendment rights of the activists. The repeated attempts to enter the Convergence Center, without warrants, was a clear infringement of the right to be free from unlawful searches. *See Benigni v. City of Hemet*, 879 F.2d 473 (9th Cir. 1988); *Freeman v. City of Santa Ana*, 68 F.3d 1180 (9th Cir. 1995). The City may not circumvent the constraints of the Fourth Amendment by substituting other city employees for Los Angeles police officers. The same Fourth Amendment protections apply to the execution of administrative search warrants. *See Alexander v. City and County of San Francisco*, 29 F.3d 1355 (9th Cir. 1994). Absent ***legitimate*** exigent circumstances, which did not exist here, no government agent may enter the building without a judicial warrant. Cal. Code Civ. Pro. § 1822.50 *et seq.*

The ACLU wrote to Chief Parks and the City Attorney to request written assurance, to be

delivered no later than Wednesday, August 9, 2000, that:

1. Surveillance of the Convergence Center be discontinued and that no further surveillance occur during the occupancy of the center.

2. The Chief and City Attorney issue directives that no police officer, whether in uniform or undercover, enter the Convergence Center.

3. The Los Angeles Police Department will not in any way attempt to interfere with the use of the Convergence Center for the purposes of conducting meetings, holding trainings, or making signs, banners, and puppets.

4. The Los Angeles Police Department will not confiscate any sign, banner, or puppet while it is in the Convergence Center or while it is being used in any lawful protest activity.

On August 11, 2000 the ACLU won a temporary restraining order to stop the Los Angeles Police Department from continuing its pattern of harassment and intimidation of protesters. Judge Dean Pregerson enjoined the LAPD from: 1. Seizing from the Convergence Center or destroying any puppets or printed material; 2.entering the Convergence Center on the basis of purported administrative violations, including building and safety, zoning, and fire code violations, in the absence of a prior order issued by this court. Plaintiffs and defendants have settled the issue of attorneys' fees and costs. (Dan Tokaji with co-counsel Carol Sobel, Robert Myers, and Karl Manheim)

87. Davis v. NAACP Legal Defense and Educational Fund, Inc. (Los Angeles County Superior Court)

We have joined in an amicus brief filed in support of the NAACP Legal Defense and Educational Fund, Inc. ("LDF"). LDF was sued for defamation by the defendant in one of their cases after they included a description of the case in a piece of fund-raising literature they sent out to their members and supporters. The fundraising materials did not name the individual, although the court papers -- all of which are public documents -- did do so. The amicus brief, joined in by a number of public interest law offices, contends that the communication to members and supporters about the work of the group is privileged under California law, Civil Code § 47(c), as a communication to interested parties. In early January 1994 the Court sustained the demurrer with leave to amend. The brief was written by Jeffrey Thomas of Paul, Hastings, Janofsky and Walker, on behalf of all amici. (Paul Hoffman, Carol Sobel)

88. Del Rio, et. al. v. Jetton, et. al. (Cal. Supreme Court)

The ACLU is an amicus in a case before the California Supreme Court involving two civil

rights attorneys, Robert Mann and Donald Cook, who represented an unsuccessful plaintiff in a police brutality case. The police officer-defendants have sued Mann, Cook and the original plaintiff for malicious prosecution. Paul Hoffman represents Mann and Cook in the malicious prosecution case.

In November, 1990, Anthony Jetton was mauled by a police canine during his arrest by members of the Downey Police Department. Through his mother, he filed a civil rights action under 42 U.S.C. §1983 against the City of Downey, its police chief, two arresting officers, and four other officers. In October of 1993, the trial court dismissed Jetton's actions against the respondents and after the remainder of the case was tried, respondents brought a malicious prosecution suit against Jetton and his attorneys, The appellants demurred, arguing that a malicious prosecution action brought by a police officer violated Jetton's right to petition, guaranteed by the First Amendment, and furthermore was preempted by 42 U.S. C. §1988 and Rule 11 of the Federal Rules of Civil Procedure. The trial court sustained the demurrer without leave to amend, and the judgment was entered. The court of appeals then reversed, in a published decision that will undoubtedly discourage civil rights plaintiffs and attorneys alike.

A petition for review in the California Supreme Court was filed in July, 1997. The ACLU filed an amicus letter brief in support of the petition. Review was denied in August, 1997. (David Schwartz)

89. DeSargent, et al. v. City of Long Beach (U.S. District Court, Central District)

South Central L.O.V.E., a group of ex-gang members now involved in promoting peace in South Central Los Angeles applied for a permit to hold a large picnic/rally in a park in Long Beach. The group had previously held a large event in the same park with no violence attributed to the group. When they applied for a permit in June, their request was denied after a local councilperson found out they wanted to use the park. We filed for an emergency TRO on their behalf on June 18, 1993. Unfortunately, we lost on the basis that our clients had asked for an "exclusive use permit," which the judge erroneously believed was subject to a lower standard of review. The City, however, would not issue a "non-exclusive use permit" to the group. The City contended there had been violations of a previous permit, by failing to pick up the trash after the earlier event a nd allowing people to drink alcohol at the event. The group had, as a condition of this second permit, paid the City a clean-up fee and had issued "no alcohol" notices on its handbills announcing the event. There was also an allegation about a gun confiscated by the police outside the park from the trunk of a car; however, no violence was involved, no arrest was made for the gun and no allegation was made at the time that the person was with South Central LOVE.

This spring, we won on appeal in a long-standing challenge to another portion of the Long Beach Municipal Code which had been used to impede the Long Beach Lesbian and Gay Pride Parade from taking place. We have reviewed the ordinances under which the City purported to act in denying this permit. Like the ordinance recently declared

unconstitutional, the regulations at issue here have no criteria for deciding the grounds on which to grant or deny a permit. In addition, there is no time by which City officials must act to grant or deny a permit and no opportunity for judicial review of the City's decision. These failures deny applicants a fair process and render the City's policies automatically unconstitutional. We filed an amended complaint to add a claim that the policies are unconstitutional for all purposes, not just as applied to our clients, and to seek a preliminary injunction. The City has now agreed to revise the ordinance and settlement of all issues has occurred, including atttorneys fees. (Sharon Robinson, Carol Sobel, Robin Toma)

90. Doe v. Anaheim Union High School District (U.S. District Court)

Suit was filed on December 21, 2000, against the Anaheim Unified High School District alleging violation of the First Amendment for its censorship of a series of nine books called "Lives of Notable Gays and Lesbians." The school library at Orangeview Junior High School, which is in the Anaheim Unified High School District, ordered the books. These are biographies, written for students 14 and up, of people like Martina Navratilova, John Maynard Keynes, Willa Cather, etc. They have a similar format to other series from the same publisher on "Lives of Notable Asian-Americans," "Lives of Notable African-Americans," etc.

The books were removed from the library by the school principal before they got shelved, and sent to the district offices, where they were reviewed by several assistant superintendents. For over two months, the librarians tried to get the books back, or at least have a formal decision made about them. The school district has a process by which a teacher or parent can "challenge" library materials, but this process was never invoked.

In early November, ACLU staff spoke to the superintendent; she said the books were removed because the librarian failed to follow the proper procedure in ordering them, in that the librarian had not read the books before ordering them. In fact, the policy does not include a requirement that librarians read books before ordering them. Also, these books were ordered along with many other library books, which were not removed from the library.

Our suit argues that students' First Amendment rights were violated by removal of the books from the library. Courts have recognized that schools can limit material in school libraries to what is age-appropriate and consistent with the curriculum -- but they cannot censor school library materials because of the ideas or viewpoints expressed in the books, and that is what appears to be going on here. Our plaintiffs, both of whom attend Orangeview Junior High, are the sibling and cousin of an openly gay Anaheim high school student. Both students allege that there is anti-gay bias on the Orangeview campus.

In March, 2001, settlement was reached between the parties. Ten books from the series "Live of Notable Gays and Lesbians" which were taken out of Orangeview Junior High School library will be placed in a library at one of the district's school campuses. Because of concern that the reading level may be too difficult for some junior high students, the books

may be placed in one of the high schools, and the junior high will be able to purchase another set of books dealing with gay and lesbian issues for its school library. In addition, district officials promised that books will never be removed from school libraries merely because parents or teachers objet to subject matter dealing with sexual orientation. The district will also send out a letter to all schools encouraging librarians to include "materials discussing controversial ideas... representative of the student population in terms of religion, race, ethnicity, disability, gender and sexual orientation." The settlement agreement was approved by the Court on March 29, 2001 and fees were received in August, 2001. (Martha Matthews)

91. Duren v. City of Compton (L.A. County Superior Court, Court of Appeal, Second District)

In the wake of the 1992 civil disturbance, Compton passed City Ordinance #1,871, which prohibited the carrying, displaying and distributing of any political material on any property owned or leased by the City of Compton or the Compton Redevelopment Agency. Plaintiff B. Kwaku Duren, a Legal Aid attorney active in community affairs, was threatened with arrest following a city counsel meeting at which he attempted to distribute some written material relevant to a public debate about Compton's proposed entertainment center. Mr. Duren filed a constitutional challenge to the ordinance In Pro Per. After losing a motion for a temporary restraining order, Mr. Duren called the ACLU for assistance. On December 21, 1992, we argued and won a preliminary injunction against Compton's enforcement of the ordinance. We expect the City to repeal the ordinance. The judge arbitrarily reduced the fees requested, and an appeal of the fee ruling has been filed. We have resolved the fee issue. (Sharon Robinson, Carol Sobel)

92. Eakins v. Daniels (U.S. District Court, Nevada)

This case is another in our series of challenges to state laws that chill citizen complaints against police officers, by allowing civil or criminal actions to be filed against those who make "false" complaints. In three published opinions since then, federal district judges have held these laws unconstitutional on their face: Gritchen v. Collier, 73 F. Supp. 2d 1153 (C.D. Cal. 1999)(striking down California Civil Code §47.5 which allows civil defamation actions based on false citizen complaints of police misconduct); Haddad v. Wall, 107 F. Supp. 2d 1230 (C.D.Cal. 2000)(same); and Hamilton v. City of San Bernardino, 107 F. Supp. 2d 1239 (C.D. Cal. 2000)(striking down California Penal Code §148.6 which criminalizes false citizen complaints of police misconduct). We are counsel of record in Gritchen and Hamilton. We are *amicus* in two other cases, People v. Stanistreet/Atkinson and Walker v. Kiousis.

The ACLU of Nevada asked us to participate as co-counsel for intervenors in this case, which challenges the constitutionality of Nevada Revised Statute §199.325 – a statute functionally identical to California Penal Code §148.6, struck down in Hamilton. The case arises from a charges brought against a man who had written a letter of complaint regarding the conduct of two Reno police officers. On September 26, 2001, the ACLU Nevada moved to intervene on its own behalf and on behalf of five citizen complainants whose speech has

been chilled by the threat of prosecution under NRS §199.325. Among the intervenors is Kathleen Van Tobel, a conservative Republican member of the Nevada legislature, who complained about an incident of police abuse that she witnessed and was threatened with prosecution under the statute unless she retracted her complaint, something she has refused to do. The ACLU/SC filed a brief in the case in October, 2001. On June 24, 2002 the district court struck down the statute and the State of Nevada did not appeal. (Dan Tokaji, ACLU of Nevada)

93. Equilon Enterprises, LLC v. Consumer Cause, Inc. (Ca. Supreme Court)

The ACLU/SC, together with the ACLUs of Northern California and San Diego and the California Anti-SLAPP Project, filed an *amicus* brief on behalf of Consumer Cause, Inc. on October 15, 2001.

The issue before the Court is whether a defendant who seeks to invoke the anti-SLAPP statute must show that the plaintiff brought the action with the intent to chill defendant's exercise of First Amendment free speech or petition rights, before the burden shifts to the plaintiff to establish a probability of prevailing on the merits. We argue that the requirement is contrary to the plain language of the statute, the Legislature's intent in enacting, and later strengthening, Code of Civil Procedure §425.16, and fundamental principles of statutory construction. Imposing such a requirement would severely undermine the effectiveness of the statute. The case was argued before the Supreme Court on June 6, 2002. In a unanimous opinion issued in August, 2002, the Courtheld that the sate's anti-SLAPP law did not require defendants to prove the litigation had a chilling intent or effect, as long as the underlying basis for the suit was the defendant's exercise of protected rights. (Peter Eliasberg, ACLUs of Northern California and San Diego, California Anti-SLAPP Project)

94. Finley, et al. v. National Endowment for the Arts, et al. (U.S. Dist. Court, 9th Cir., U.S. S.Ct.)

This is an action challenging the denial of NEA grants to four performance artists, all of whom had been unanimously recommended for grants in the current funding cycle by Peer Review panels. The complaint, filed against the National Endowment for the Arts and John E. Frohnmayer, Chairperson of the National Endowment for the Arts, seeks a determination that the defendants' denial of funding was based on political grounds and failed to follow procedural safeguards, all of which is in violation of the plaintiffs' First Amendment rights. In addition, the lawsuit seeks a declaration by the court that the action violated the plaintiffs' statutory rights under the National Foundation on the Arts and the Humanities Act, 20 U.S.C. § 954-55.

The basis for this allegation is that the decision to reverse the Peer Review recommendation was based on criteria other than those enumerated in the statute and failed to follow the procedural safeguards established in the statute. The lawsuit also includes a cause of action under the Privacy Act for plaintiff Finley on the grounds that the confidentiality of her application was breached.

A First Amended Complaint was filed on March 18, 1991, challenging the newly adopted "decency" standards for NEA grants. The government released a group of confidential documents concerning the deliberative and political processing of our clients' grant applications. The government also rescinded the confidential classification of the NEA documents. The hearing on cross-motions for summary judgment was held on the "decency" standard February 3, 1992. On June 9, 1992, the District Court entered a decision on the Summary Judgment motion striking down the NEA's decency provision. The Court also found that the artists' privacy claim was valid and should be litigated.

A settlement was reached on the privacy claim issue. The NEA paid approximately $225,000 in damages and attorneys' fees. The government appealed the "decency" language invalidation contending that the statute was not self-executing but rather, required the NEA Chair to develop regulations. Until that is done, the government contends a facial challenge to the constitutionality of the statute is premature. We contend that the regulations must be vague, because the required "decency" criteria to be addressed by the regulations are unavoidably vague.

Oral argument was held before Judges Browning Ferguson and Kleinfeld on February 3, 1994. The Ninth Circuit has requested additional briefing based on the recent decision of the U.S. Supreme Court in Rosenberger v. University of Virginia. Cross-briefs were filed in September. In November, 1996, the Ninth Circuit ruled in favor of the ALCU, holding the decency review unconstitutional. The government has appealed. On May 1, 1997, the 9th Circuit denied the petition for rehearing. The government sought an extension of time from the date of the denial to file a cert petition with the U.S. Supreme Court; the extension was granted to August 29, 1997. On August 29, the government filed a cert petition. The S. Ct. granted cert. Argument was held on March 31, 1998. In an 8-1 decision, the S.Ct. upheld the federal law. Justice O'Conner, writing for the Court, emphasized that the federal law allowd the nEA to consider "decency and respect for values," but it did not require the use of these criteria or the denial of funds to any artists. The Court's ruling gives the government great license to make choices restricting speech when it is the funding source. (Paul Hoffman, Carol Sobel, David Cole [Center for Constitutional Rights], Mary Dorman [National Campaign for Freedom of Expression], Marjorie Heins [ACLU], Ellen Yaroshefsky [National Campaign for Freedom of Expression])

95. Food Not Bombs v. City of L.A. (Federal District Court)

On January 4, 2000, the ACLU filed suit in federal court on behalf of Food Not Bombs of Los Angeles, and its volunteers who serve meals to homeless people in Pershing Square each week, against the City, the LAPD and the Department of Recreation and Parks. The suit sought a temporary restraining order to prevent City employees from interfering with the activities of Food Not Bombs, its volunteers, and its observers during the holiday season, up to and including January 17, 1999.
Food Not Bombs of Los Angeles is a not-for-profit group dedicated to raising public awareness of homelessness, hunger, and poverty in Los Angeles and to providing free food to those who need it. They have served free food to homeless and low-income people in

Pershing Square Park for the past two years, peaceably and without incident – except during the "Downtown on Ice" activities which started in November, 1999.

In December 1999, city authorities arrested eight people for feeding homeless people in Pershing Square Park, including seven Food Not Bombs volunteers and one observer. The volunteers were arrested on December 19, 1999 and December 26, 1999, because they would not relocate from the area where they have served food and engaged in free speech for the past two years, to a less visible part of the Park to which authorities ordered them to move. Because of these eight arrests, Food Not Bombs and its members have temporarily been forced to stop their speech and feeding activities in Pershing Square Park. Food Not Bombs' message is that homelessness, hunger, and poverty are issues that should not be swept under the rug.

On January 6, 2000, the district court judge granted a TRO to prevent City employees from interfering with the activities of Food Not Bombs, its volunteers, and its observers during the holiday season, up to and including January 17, 1999. The District Court approved the settlement on April 17, 2000, allowing volunteers to continue feeding homeless people and speaking out on issues of poverty, hunger and homelessness in Pershing Square. The settlement also provided for the payment of damages to plaintiffs and attorneys fees. (Dan Tokaji)

96. In the Matter of Frank Swan (U.S. Court of Appeals, Ninth Circuit)

We are representing on appeal an attorney, Frank Swan, who has been subjected to discipline for (1) engaging in gender discrimination, (2) impugning the integrity of the court and (3) interfering with the administration of justice. The attorney wrote a letter to a female Assistant U.S. Attorney after she successfully moved to disqualify him from representing clients in a criminal tax prosecution. Attached to his letter was an excerpt from a bar journal story on the stereotyping of female attorneys in television and movies. Upon receipt of the letter, the U.S. Attorney moved for imposition of a penalty on the lawyer. The court found that the lawyer was "unrepentant" and needed to be disciplined to impress upon him the seriousness of the gender bias he had displayed by the attachment to his letter. The court also found that, because the judge was a female as well as the Asst. U.S. Attorney, the lawyer's remarks implied that the judge, too, had acted unfairly in granting the motion to disqualify him from the case. From this inference, the court concluded that the lawyer had "impugned the integrity of the court." The specific provision of the State Bar disciplinary procedures which the lawyer is alleged to have violated is a prohibition on displaying an "offensive personality" and unnecessarily advancing a fact that is adverse to a party of witness. Our argument on appeal is that the state disciplinary provision is unconstitutionally vague and overbroad, in violation of the First Amendment. We also plan to argue that, in every other employment context, a solitary, private comment, even if was gender discriminatory in content, would be insufficient to support a violation of the law. Absent some compelling state interest, such as prejudice to jurors or witnesses, there is no reason why individuals engaging in the practice of law should be granted some greater protection from discrimination than other persons. On August 3, 1993, the Ninth Circuit heard oral

argument. A decision was issued on April 24th, overturning all discipline against Swan and declaring California's "offensive personality" statute unconstitutional. The State of California intervened and filed a petition for rehearing, which was granted. The case was reargued in mid-December, 1995. In June, 1996 The Ninth Circuit once again ruled the California's Business and Professional Code statute requiring attorneys to abstain from "all offensive personality" is unconstitutionally vague. (Carol Sobel, Paul Hoffman, Jenny Skoble and Susan Wendorff).

97. Gaede v. City of Los Angeles (U.S. District Court, Central District)

This action, brought on behalf of an individual who shouted comments at the police critical of their handling of gay rights protestors, challenges whether the police may use the citizen's arrest procedures at the behest of a private person, to circumvent the law and arrest and detain a person for protected expression. Mr. Gaede was arrested as he entered the USC/UCLA game in November, 1991. The charge was using offensive words in public. The City filed a motion to dismiss, which was heard and denied on September 28, 1992. We have reached a settlement in this case. (Carol Sobel, Sharon Robinson)

98. In The Matter of Greater Los Angeles Radio, Inc. (Federal Communications Commission)

We filed a comment brief before the Federal Communications Commission opposing the proposed imposition of a $105,000 fine against a Los Angeles radio station that broadcast several programs by Howard Stern, which the FCC found to include "indecent" language. The comment filed by the ACLU presents four arguments. First, we argue that the FCC has issued contradictory rulings as to what is "indecent," creating an unconstitutionally vague standard for licensees. In addition, we argue that the FCC has failed to comply with an earlier directive of the federal appeals court to conduct a "full and fair hearing" on "the times at which indecent material may be broadcast." Second, we urge that the forfeiture is not narrowly tailored to address the FCC's concern with protecting unsupervised children from hearing the Stern broadcasts because unsupervised children do not listen to Stern and, in any event, would not be harmed by the words. Third, we contend that the popularity of the Stern show is evidence that it is not patently offensive under contemporary community standards as applied to the broadcast medium. Finally, we argue that the comments of Howard Stern, which the FCC has singled out as indecent, must be considered in context as commentary on matters of public interest and concern. Our comment was filed on December 17, 1992. The lawyers for Greater Los Angeles Radio, Inc. have filed their response to the Notice of Apparent Liability. There is no specific time by which the FCC must consider the comments and issue the forfeiture. In early September, Infinity Broadcasting settled the action by agreeing to pay nearly 2 million dollars in fines. (Raleigh Levine [George Slaff Fellow], Carol Sobel and Paul Hoffman, with Marjorie Heins [ACLU Arts Censorship Project] and Robert Peck [ACLU National Legislative Office].

99. Greenpeace v. City of Glendale (California Court of Appeal, Second Appellate District)

Suit challenging Glendale's requirement that those seeking to solicit funds door to door

provide fingerprints with their applications for permits. Greenpeace, which raises most of its funds by door to door canvassing, objected to the requirement because its canvassers wouldn't agree to provide fingerprints on privacy grounds. In October, 1986, Judge Deering denied our motion for preliminary injunction. One ground for his decision was that the First Amendment was not relevant because Greenpeace was soliciting money. A hearing on cross-motions for summary judgment took place on January 31, 1990. On April 2, 1990, the trial court granted the City's motion for summary judgment and took our motion for summary judgment off calendar. We appealed and on February 3, 1992, the court unanimously reversed the trial court, finding the fingerprinting served no significant purpose and that the exemption for groups headquartered in Glendale for 3 years violated equal protection. The court denied defendants' Petition for Rehearing. The Supreme Court ordered the Court of Appeal's opinion depublished. Our motion for attorney's fees was referred to Judge Huss for decision. On June 22, 1992, Judge Huss denied our motion for fees, finding there was no substantial benefit to the public in enforcing these First Amendment rights! The Court failed to sign the order despite constant reminders. (Dean Hansell, David Henry, Peter Eliasberg, Paul Hoffman, Erwin Chemerinsky)

100. Gritchen v. Collier (Ninth Circuit Court of Appeals)

In October, 1998 the ACLU filed suit on behalf of a citizen who complained about police misconduct, and then was threatened with a defamation suit by the police officer. The suit challenges the constitutionality of California Civil Code §47.5, which creates a special right of action allowing police officers to bring defamation lawsuits against those who file citizen complaints against them.

Mr. Gritchen, a 58-year old man, was driving in the City of Long Beach on April 16, 1998 with his mother in law. They were stopped for speeding by Officer Gordon Collier of the Long Beach Police Department. During the stop, Officer Collier behaved in a discourteous manner. When Officer Collier asked Mr. Gritchen to step out of his car, Mr. Gritchen detected the smell of alcohol on his breath. Mr. Gritchen proceeded to lodge an oral and written complaint with the Long Beach Police Department. The LBPD made a finding of non-misconduct. On July 31, 1998, Officer Collier's attorney wrote to Mr. Gritchen, threatening to sue him unless some resolution "short of litigation" could be worked out. The letter gave Mr. Gritchen 30 days to respond or be sued for defamation.

Our First Amendment argument relies primarily on R.A.V. v. City of St. Paul and other Supreme Court decisions, which prohibit laws selectively targeting speech on particular subjects -- or speech critical of particular individuals or groups. In order to avoid a preliminary injunction, Officer Collier agreed not to proceed with his lawsuit, except on at least 60 days notice. We filed a motion for summary judgment to have Section 47.5 declared unconstitutional on July 21, 1999.

On October 18, 1999, the district court issued a published decision holding that Section 47.5 is unconstitutional under the First and Fourteenth Amendments. The district court adopted our argument that this statute is an impermissible content-based regulation of speech, and

that no compelling justification for the statute existed. Officer Collier appealed to the Ninth Circuit; the ACLU's answering briefs were filed May 3, 2000. Oral argument was held on May 7, 2001.

Without reaching the merits, the Ninth Circuit reversed the lower court, holding that there was no state action and, therefore, that Mr. Gritchen could not bring suit to challenge the state law giving police officers the right to file defamation lawsuits based on citizen complaints of police misconduct. The Court did not rule on the constitutionality of California Civil Code 47.5, which means that Mr. Gritchen can still argue that the law violates the First Amendment if he is sued in state court. We filed a petition for rehearing with the Ninth Circuit in June 2001 which was denied in August 2001.

Since the original decision in Gritchen, another district court has reached the same conclusion. The published decision in Haddad v. Wall, like the district court decision in Gritchen, holds that Civil Code § 47.5 is unconstitutional on its face. Another case that we are involved in Walker v. Kiousis, has also held 47.5 unconstitutional on its face. (Dan Tokaji)

101. Hispanic Christian Communications Network, et al. v. Nuevos Horizontes (L.A. County Superior Court)

This case involves a defamation suit filed by a Hispanic televangelist group against a small publication directed to the Hispanic evangelical Christian community in Southern California. The publication questioned the fund-raising efforts of the televangelists in light of the fact that their request to have a specific minority-owned broadcast license assigned to them had been rejected three times by the FCC. The televangelists sued the publication, claiming that contributions to the television ministry had dropped off after the defendants published reports of their difficulties with the FCC and suggesting that the televangelists were unlikely to obtain the license. We filed a demurrer to the complaint, arguing that the defendant's writings were protected as expressions of opinion. At a scheduled hearing on the demurrer on June 26, 1990, the court requested additional briefing on the effect of the U.S. Supreme Court's decision in Milkovich v. Lorain Journal (June 21, 1990) on the facts of this case. On November 5, 1990, the judge overruled our demurrer. The matter was taken under submission by the judge. A motion for summary judgment was heard on March 13, 1991. In July, the court denied the motion for summary judgment. The case has now settled. Plaintiffs agreed to dismiss and bear own costs. (Carol Sobel)

102. Hood Rat Records v. City of Inglewood (U.S. District Court, Central District)

This is a suit in against the City of Inglewood for prohibiting a commercial bench company from displaying an ad for an album by rap artists, the Watts Gangstas. The ad shows the two members of the group turning their backs to a scale holding white powder, an image, the group says is designed to discourage people from drug use. On August 1, 1995, the ACLU sent a letter to the Inglewood Mayor asking the city to withdraw the ban on the ads immediately. No response was received, so a second letter was sent on October 23, 1995 to

the Inglewood City Attorney. The city failed to respond; on November 3, 1995, the ACLU filed suit alleging violations of free speech under the California and federal constitutions. Judge Tagasuki signed a preliminary injunction on January 26, 1996 which prohibits the city from enforcing any of the challenged provisions of the Municipal Code. In April, the City agreed to a permanent injunction, but refused to agree on attorneys' fees. The Court awarded full fees on the ACLU's motion. (Taylor Flynn, Carol Sobel)

103. Johnson v. County of Los Angeles (United States District Court, Central District)

We represent Los Angeles County Fire Captain Steven Johnson in his challenge to LAFD regulations prohibiting the reading or possession of sexually explicit materials in private areas and during private time in fire stations. Johnson seeks to possess and read Playboy. We filed a motion for a preliminary injunction. At the February 3, 1994, hearing Judge Wilson expressed the view that the case raised important and difficult first amendment issues that should be resolved at an early trial. After trial in June, we won a judgment enjoining the County from prohibiting the quiet reading of Playboy magazine in fire stations. We are currently in negotiations with the County over broadening the scope of the injunction. (Paul Hoffman, with David Ogden, Ann Kappler and Burton Joseph)

104. Johnson v. Los Angeles Unified School District (United States District Court)

The ACLU filed suit in 1993 on behalf of Astrianna Johnson, a Mary McLeod Bethune Middle School student who was forbidden by school officials from wearing condom packages pinned to her clothes with the words "safe sex" emblazoned on them. Johnson was suspended from school for one day. She filed suit, claiming the school's actions violated her First Amendment rights to free speech and self-expression. School officials claimed that although Johnson's actions did not violate written school rules, it was "distasteful to the administration" and she was "not old enough to make a choice to wear condoms ... or make a personal statement about safe sex." The federal district court judge ruled in 1994 that school officials had the right to curb Johnson's actions, and held that society's interests in teaching students the boundaries of "socially appropriate behavior" weigh more heavily than her right to advocate her views on controversial issues. (Amos Dyson)

105. Kaldani v. Gibson (U.S. District Court, Central District)
Suit was filed on October 28, 1997, against a California Highway Patrol Officer, Richard Gibson, who threatened to sue a deaf motorist in small claims court for filing a citizen's complaint against him following a January, 1997 highway stop. The lawsuit charges that the officer's threat violates the deaf motorist's free speech and petition rights under both the federal and state constitutions, as well as the Americans With Disabilities Act.

Plaintiff Jason Kaldani complained about Officer Gibson's unprofessional behavior and failure to accommodate his disability. He also complained that the officer searched his vehicle without his consent and grabbed his walled. Only after a second officer was called to the scene was plaintiff told, in writing, that he had been stopped for speeding. At that point, plaintiff immediately produced his license and the car's registration. Defendant wrote the registration address on the ticket, although plaintiff tried to explain that the address was not his because the car was borrowed.

In May, plaintiff telephoned the CHP through the TTY system to make a citizen complaint. On June 28, the commander wrote a letter to plaintiff advising him that the matter had been investigated and Officer Gibson's conduct appeared to be proper.

On September 8, defendant wrote a letter to plaintiff threatening that he would sue Kaldani in Small Claims Court in the amount of $5,000 for defamation of character unless he settled out of court.

The lawsuit seek injunctive relief to stop Officer Gibson from proceeding with his threatened small claims suit, and a judicial declaration that Gibson's actions violate both the federal and California constitutions, and the Americans with Disabilities Act.

On December 24, 1997, the ACLU filed a First Amended Complaint challenging the constitutionality of California Civil Code §47.5. Under California law, public officials cannot sue for defamation based on statements made in the course of an official proceeding. Prior to 1982, this provided absolute protection from defamation suits to members of the public who complained to law enforcement agencies about officer conduct. In 1982, Civil Code §47.5 was enacted to create a special exception allowing peace officers to bring such defamation suits. The ACLU alleges that this law violates the First Amendment by discriminating against speech on the basis of content (speech about police officers, as opposed to other officials) and viewpoint (speech *critical* of police officers). Defendant filed a motion to dismiss.

On April 29, 1998 the parties entered into a settlement agreement resolving all complaints between them. Plaintiff dismissed his federal lawsuit, and defendant agreed not to pursue his defamation claim against plaintiff. (David Schwartz, Dan Tokaji)

106. Kaufman v. Hemet Unified School District (U.S. District Court, Central District of California)

This case was filed in cooperation with Marvin E. Krakow alleging violations of Kaufman's religious and First Amendment rights on March 21, 1995. The suit names Board of Trustees, Hemet USD; individual members of the Hemet USD Board of Education; school principal Marcy Savage and Lori Masiel.

Plaintiff alleges that he has been targeted for retaliation because of those times he expressed opposition to defendant Marcy Savage. Plaintiff questioned the principal's plans to buy new computers and protested defendant Savage's berating other teachers in front of an entire faculty.

Plaintiff believes he has been targeted for revocation of his teaching rights by defendant Masiel because of his Jewish religion and ethnicity. At meetings between plaintiff and individual defendant Masiel, Masiel stated that she would not have a Jew teach her child. Although school board members knew of Masiel's anti-Semitic remarks, they testified during discovery that they did not investigate her motivation in bringing charges against Mr.

Kaufman.

Defendants' motion for summary judgment was denied. Defendant prevailed at trial in fall, 1997. (Marvin Krakow, Steven Kaplan, Claudia Ribet, Carol Sobel, Mark Rosenbaum)

107. Keenan v. Superior Court (California Supreme Court)

The ACLU/SC filed an *amicus* brief on December 21, 1999 with the California Supreme Court challenging California's so-called "Son of Sam" law. The law allows the state to seize the proceeds from any work that contains more than a passing mention of a crime committed by the author. A similar statute in New York was struck down by the U.S. Supreme Court as an unconstitutional infringement on free speech. Oral argument was held in December, 2001. On February 21, 2002 the Court unanimously held the statute was unconstitutionally broad and violated free-speech rights guaranteed by the U.S. and state constitutions. (Paul Hoffman, Dilan Espar, Peter Eliasberg)

108. Kline v. City of Burbank, et al. (California Court of Appeal, Second Appellate District)

We filed an amicus brief on behalf of an individual seeking release of information contained in police investigatory files records concerning the death of the person's former girlfriend. The police had concluded that there was no evidence of foul play in the case. The request for the records was made pursuant to the California Public Records Act ("CPRA"). The City denied the request, claiming the records were completely exempt from disclosure under the CPRA and that Kline, who had a Power of Attorney from the victim's mother, was not an "authorized representative" within the meaning of the statute. Kline filed a lawsuit in Superior Court in Burbank to compel disclosure. His request was denied after the judge heard testimony from a Burbank Police Department detective that release of the materials could endanger the likelihood of success of any future reopening of the investigation. Our brief argues that, consistent with the public policy, legislative intent and decisional law of this state, all favoring disclosure of public records, the court did not engage in the proper balancing of interests. In particular, we argue that the judge erred in accepting the mere assertion of a remote "endangerment" to a law enforcement investigation and that, at a minimum, a review of the records should be made to determine whether some materials are "segregable" and can be released. The Court of Appeal rejected this appeal, because the wrong procedure had been used to challenge the decision and because the City claimed it might reopen the case if new evidence were ever found. (Carol Sobel, David S. Grunwald)

109. Kvederis v. Claremont McKenna College (L.A. Superior Court)

Suit was filed on March 27, seeking a temporary restraining order, on behalf of Brad Kvederis, a student at Claremont McKenna College, who was scheduled for a disciplinary proceeding on March 28, 1997. The proposed disciplinary hearing is based solely on expressive activities by plaintiff which is protected by the First Amendment to the U.S. Constitution and Article I, sec. 2 of the California Constitution.

Kvederis is the writer, editor and publisher of a series of dorm newsletters which the college alleged were lewd, indecent and obscene, and violated the college's sexual harassment policy, among other things. The newsletters in fact were totally devoid of any depiction of sexual conduct. They contain a variety of commentary on everything from the Ninth Circuit's handling of death penalty appeals to the quality of McDonald's cuisine to relationship problems. They also contain a great deal of profanity and a few hyperbolic references to sex. The judge denied the TRO on March 28, 1997. On March 31, 1997 the ACLU filed a writ in the Court of Appeal, which was denied April 1. A writ was filed with the California S. Ct. against the Court of Appeal seeking an immediate stay on April 3, 1997. It, too, was denied. The judge granted plaintiff's motion to file a supplemental complaint on April 16, 1998. On March 10, 1999 the case was settled in a confidential agreement. (Carol Sobel, Peter Eliasberg)

110. Los Angeles Gardens Community Association v. Coalition for Economic Survival (Superior Court, Los Angeles County) [see also Sanchez v. De Santis (U.S. District Court) in Closed Docket]

The landlord in a HUD-subsidized building brought a state court action against two non-profit tenant-rights organizations (Coalition for Economic Survival and L.A. Center for Affordable Housing) and two tenant-organizers of a five-building housing unit in the Pico Union area of Los Angeles. The landlord had two tenant organizers arrested during a tenant meeting, although they were invited by residents to a meeting held inside a tenant's apartment. The ACLU entered the suit on behalf of the defendant tenant organizers, and filed counterclaims alleging violations of free speech, associational and privacy rights, as well as other state law claims. On February 19, the ACLU opposed a motion for a preliminary injunction sought by the landlord against the organizers. The injunction, which was denied by the Superior Court judge the next day, would have restricted tenants from organizing to improve conditions. The ACLU filed a special motion to strike on the grounds that the landlord's claim for damages and injunctive relief is a SLAPP (Strategic Lawsuit Against Public Participation) suit. The judge ruled against the ACLU on March 25, and the Court of Appeal denied a petition for a writ of mandate.

On May 18, 1998, a state Superior Court judge rejected a landlord's attempt to dismiss the ACLU's constitutional and civil rights cross-claims. The judge agreed with the ACLU's arguments that the tenants have a constitutional right to invite whomever they want into their own homes, and the tenant organizers who have been invited also have a constitutional right to meet in the homes of tenants who have invited them. The parties have reached a settlement as of March, 1999. (Rocio Cordoba, Peter Eliasberg)

111. LSO, Ltd. v. Stroh, et. al. (9th Circuit Court of Appeals)

The Lifestyles Organization was scheduled to hold its annual convention at the Palm Springs Convention Center starting July 30, 1997. The Seventh Annual Sensual and Erotic Art

Festival was to be included as part of the Convention. More than 170 works by 38 artists were to be displayed. The Alcohol Beverage Control Board (ABC) contacted the Convention Center, which holds a liquor license, and told it that the Art Show will violate certain administrative regulations that appear to be aimed at preventing nude dancing and similar activities at bars or clubs that serve alcohol. ABC threatened the Center with loss of its liquor license if the Art Show were held, even if no alcohol were served in the area where the art exhibit is held and even if LSO forgoes serving alcohol at any time anywhere in the Convention Center.

The ACLU filed suit against the ABC on July 28, 1997, alleging violation of the First and Fourteenth Amendments of the U.S. Constitution. Judge Tevrizian granted a temporary restraining order on July 29, specifically saying that ABS was misusing its authority to suppress free speech. The art show went forward as scheduled, eliminating the need for a preliminary injunction. Plaintiffs amended the complaint to address the probability of future infringement on LSO's First Amendment rights. The district court granted summary judgment to defendant's on the ground that there was no longer a live controversy, but granted plaintiff's attorneys' fees for the TRO. The parties have cross-appealed. In January, 1999 the briefing was completed. Oral argument before the 9th Circuit was held in December, 1999.

On March 6, 2000 the Ninth Circuit reversed the district court's decision, holding that LSO can seek a court order preventing ABC officials from interfering with future non-obscene erotic art exhibitions on the premises of an ABC licensee. The Court also held that ABC officials were not entitled to qualified immunity, since no reasonable officials could have believed that the ABC's authority to regulate alcohol allowed it to restrict artistic expression. Settlement negotiations are now taking place.

In September, 2000, we reached a settlement agreement under which ABC ceased enforcing Cal. Admin Code 143.4 and 143.3 with respect to any painting, sculpture, photography or other "pure" speech. In addition, ABC paid LSO $12,000 in damages and the ACLU attorneys' fees. ABC was using the regulations to prohibit the display of any art that contained things such as depiction of "the touching of a breast" on any premises that had a liquor license, regardless of whether any liquor was actually being served. (Peter Eliasberg, Dan Tokaji)

112. Malibu Citizens for Less Traffic on Pacific Coast Highway v. Superior Court (Court of Appeals, 2nd District)

The ACLU filed an amicus brief in June, 1999 in support of a group, Malibu Citizens for Less Traffic On Pacific Coast Highway, that was being investigated by the Fair Political Practices Commission (FPPC) in part because of ads that it ran in a local newspaper concerning proposed development in Malibu. The FPPC contends that the ads are campaign ads, and thus Malibu Citizens should have filed a campaign report pursuant to Government Code Section 81000, et seq. The ads do mention the fact that one member of the City Council, who was up for election around the time the ads were run, supported the

development. The FPPC issued subpoenas to get Malibu Citizens' bank records. Those records would reveal the names of Malibu Citizens members/contributors.

Our brief argues that the ads should be considered issue advocacy ads, not campaign ads, and therefore the subpoenas violate the right of freedom of association which protects against compelled disclosure of the identity of a group's contributors. The ACLU took no stand on whether the record supported the issuance of subpoenas on the ground that Malibu Citizens were engaged in secret coordination with the campaign committee for Jennings' opponent. Our concern was not only with this case, but with protecting groups like the ACLU, NARAL, or the NRA, all of which run ads on issues they care about, and should not be forced to reveal their contributors anytime they run an ad that mentions a politician's voting record around the time the politician might be up for election. In July, 1999, the Court of Appeals denied the writ. (Peter Eliasberg, Barbara Antonio)

113. Martin v. Rison (U.S. Court of Appeals, Ninth Circuit)

Suit on behalf of an inmate journalist, Dannie Martin, at Lompoc Penitentiary who was first held in isolation for two days and then transferred to a prison in Arizona in retaliation for an article which the prisoner had published in the San Francisco Chronicle. The inmate, Dannie Martin, has been a regular contributing writer to the newspaper for two years. However, after the publication of an article critical of the Warden, prison officials invoked a regulation which bars any inmate from receiving compensation as a by-line journalist for a news entity. Payment for other types of writing is not prohibited, including uncompensated anonymous news writing. The suit, brought on behalf of the inmate and the newspaper, charged that the regulation violates the First Amendment rights of the inmate and the Chronicle to publish, as well as the First Amendment rights of the Chronicle's readers to receive the information. Trial began December 4, 1989, and plaintiffs' case in chief included testimony from experts concerning the lack of penalogical purpose of the regulation at issue, and testimony from Dannie Martin and other prisoners. Defendants' case began December 15, 1989 and concluded January 4, 1990. Closing arguments were heard on February 8, 1990. A decision was issued on June 28, 1990, denying all our requests for relief and dissolving the injunction. We have appealed to the Ninth Circuit. The case was heard on August 23, 1991. On November 6, 1991, the government filed a request to dismiss the appeal as moot because Martin has now been released to a half-way house. Just a few weeks ago, and subsequent to the argument at the Ninth Circuit, however, they advised the Chronicle that the regulation applied and Martin would be punished if he wrote for the Chronicle. Martin was released from the half-way house in late February. In April, 1992, the Ninth Circuit dismissed the appeal as moot. We filed a Petition for Rehearing which was denied. On March 22, 1993 the Supreme Court denied a Petition for Cert. brought by the San Francisco Chronicle in the case. Martin together with Peter Sussman, his editor at the Chronicle has since written a book entitled "Committing Journalism" (William Turner, Jeff Leon, Carol Sobel)

114. McKenna v. U.S. Veterans Administration and the Regents of California (U.S. District Court)

Terrance McKenna, the "Timothy Leary of the 90's," had been scheduled for 5 months to speak at the VA Hospital's Wadsworth auditorium on Friday, May 10, 1996. The booking was arranged through UCLA. On May 3, the L.A. Times ran a feature on McKenna, detailing some of his views on drug legalization and use. The VA canceled his speech, invoking a clause in its contract with UCLA which prohibited the university from renting its theater for any purpose deemed by the VA to be "adverse to the interest of the U.S. government or contrary to the mission and program responsibilities of the Veterans Administration." Acting on one day's notice, the ACLU sought a temporary restraining order (TRO). May 10 -- the day of the scheduled event -- Consuelo Marshall entered a TRO directing the VA to permit McKenna's lecture to go forward as originally scheduled at the Wadsworth Theater. The Justice Department, which represents the Veterans Administration, refused to defend against the ACLU's application for the TRO. (Carol Sobel)

115. Molloy v. Regents (California Supreme Court)

This lawsuit was filed on February 16, 1996, on behalf of the UCSB Daily Nexus and Tim Molloy, one of the paper's reporters. It challenges the Regents' adoption of SP-1 and SP-2, which abolished affirmative action in University of California's admissions, employment, and contracting practices. We have alleged that the actions of Pete Wilson and other U.C. Regents violated the Bagley-Keene Open Meeting Act and the Public Records Act.

The Bagley-Keene Act requires that state bodies deliberate and take action in proceedings open to the public. It prohibits members from forming "a collective commitment or promise...to make a positive or negative decision" ahead of time. Any interested party may commence an action to have an action taken in violation of this requirement declared "null and void."

Information obtained by the Nexus indicates that Gov. Wilson's office talked to at least 11 members of the Board of Regents prior to the July 20, 1995 meeting, for the purpose of locking up the vote ahead of time. By forming a collective commitment to approve SP-1 and SP-2, the Regents violated the Bagley-Keene Act. For this reason, the Board's approval of the anti-affirmative action resolutions should be declared null and void. Mr. Molloy has also challenged the failure of Mr. Wilson to provide him with telephone records that he has requested under the Public Records Act.

Gov. Wilson and the other Regents both filed demurrers, arguing that plaintiffs' claim under the Open Meeting Act should be dismissed on the ground that the 30-day statue of limitations had run. In a decision issued on April 15, 1996, the court overruled their demurrers, holding that this statute of limitations must be tolled where a defendant fraudulently conceals his own wrongdoing from plaintiffs. Because plaintiffs have alleged that Governor Wilson fraudulently concealed his own illegal acts, the court concluded, the Complaint states a claim for relief. In reaching this conclusion, the court squarely rejected the Governor's argument that the statute of limitations is absolute, noting that this argument was "antithetical" to the Open Meeting Act's purpose, since it would leave the public without a remedy if the government took action in secret and then concealed its wrongdoing for a mere 30 days. The

court also rejected Gov. Wilson's argument that the records requested by plaintiffs were absolutely privileged from disclosure under the Public Records Act.

On July 10, 1996 the California Supreme Court upheld the Superior Court's ruling denying Governor Wilson and the Regents' attempt to dismiss the case on statute of limitations grounds.

On March 24, 1997, the Superior Court issued a tentative ruling denying the defendants' motion for summary judgment. On May 16, the judge denied the motion outright and granted plaintiffs' motion to depose several of the Regents, including Ward Connerly, and the Governor's Press Secretary.

Depositions began in June, 1997. Among those deposed were Regent Ward Connerly and the Governor's Press Secretary Sean Walsh. During these depositions, however, counsel for the defendants refused to let them answer key questions regarding plaintiffs' claims. In particular, they refused to permit responses to questions regarding pre-vote conversations between Governor Wilson and other members of the Board of Regents.

Plaintiff's filed a motion to compel answers to the deposition questions that the Regents refused to answer. That motion, and other proceedings in the Superior Court, were held in abeyance, while the Court of Appeal considered a writ petition filed by defendants that sought to challenge the Superior Court's decision denying their motion for summary judgment.

On March 11, the California Court of Appeal issued a decision allowing the lawsuit to go forward. The Court also said there is information to support plaintiffs' claim that the Governor and the Regents broke the law. The Court of Appeal decision protects the ability of citizens and newspapers to challenge official wrongdoing in the future, although the court ruled the plaintiffs in this case cannot obtain nullification of the Regents' vote because suit was filed after the 30-day statute of limitation had run.

The case was appealed to the California Supreme Court; the ACLU's briefing was completed on August 17, 1998. The issue before the California Supreme Court is whether under the Open Meetings Act plaintiffs will have an adequate remedy when public bodies form secret agreements to agree. The case was argued on March 3, 1999. On June 1, 1999, the Court unanimously rejected the ACLU's argument that the 30 day statute of limitation to file suit be tolled when fraud prevents discovery of the violation, and held that the Open Meetings Act may be used to prevent only present or future violations of the law, not past violations. Still in question, and unresolved by the Court's decision, is whether then-Governor Wilson violated the Public Records Act by refusing to turn over telephone records of his conversations with other members of the Board of Regents.

On September 15, 1999, Governor Davis signed a bill that explicitly supersedes the Supreme Court's decision in this case. In particular, the bill allows declaratory relief for past violations of the Open Meeting Act and extends the statute of limitations for nullification

actions from 30 to 90 days. (Mark Rosenbaum, Dan Tokaji, Peter Eliasberg and Karl Manheim with the ACLU of Northern California, the First Amendment Project, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, and Equal Rights Advocates.)

116. Moore v. City of Pasadena (U.S. District Court, Central District)

Suit was filed on September 11, 1998 on behalf of three Pasadena residents and one resident of Altadena, all political activists within their communities. These individuals regularly distribute handbills to their neighbors' homes and businesses, publicizing political issues and events. The suit challenges a recently-enacted Pasadena ordinance, titled "Distribution of Unsolicited Written Material," which establishes a "refusal register," making it unlawful to distribute unsolicited written material unless he or she has, upon his or her person, a copy of the register.

Our brief argues that the ordinance violates the First Amendment in any number of respects. To cite a few: (1) it is a content-based regulation in that there are exceptions for "neighborhood organizations" which distribute "newsletters" or "fliers;" (2) it permits landlord to prevent tenants from receiving handbills; (3) it prevents individuals from distributing written materials of an urgent nature on Saturdays, Sundays, holidays or evenings when the register is not available from city offices, (4) it requires individuals seeking to distribute handbills to pay a fee to obtain a copy of the register. The suit seeks injunctive and declaratory relief. A motion to dismiss was filed by the City of Pasadena in December, 1998, and denied by the judge. On October 25, 1999 the judge declared the ordinance unconstitutional on First Amendment grounds. The City has abandoned efforts to adopt a new Handbill Ordinance and has paid all of the attorneys fees and costs incurred by the plaintiffs' lawyers. (Stephen Rohde, David Fertig, Michael Small

117. Nathan v. Hanna, et al. (Riverside County Superior Court)

This case involves a SLAPP suit filed by a former public official against a local political group active in the City of Norco in the campaign to defeat the plaintiff, then an incumbent member of the City Council. The case involves the same election and the defendants include three of the same defendants named in Cobbe v. Hanna, et al.. The political group charged in their campaign flyers that the council-person had expended city funds for his personal use and that he had led an "illegal" parade during an earlier election to recall two other members of the City Council. The allegation was based upon personal phone charges and fees for collision damage waivers with regard to car rentals which the elected official had charged to the City and for which he was ultimately required to reimburse the city. Just prior to the election date, and based solely on these two allegations, the council-member filed a lawsuit for defamation. The case is presently in discovery. An arbitration hearing was held July 23, 1991. The arbitration judge essentially found the statements true, but said the defendants should have said plaintiff "fudged" his expenses rather than "misused." We requested a trial de novo. The trial concluded May 19, 1992. Post-trial briefing was submitted May 22, 1992. On August 14, 1992, the trial court entered formal judgment for the defendants. Plaintiff has now appealed the decision. The Court of Appeal heard oral argument on April 6, 1994. The

decision of the trial court was affirmed. The Supreme Court denied Nathan's Petition for Review. (Carol Sobel)

118. Navejas v. Zermeno (L.A. County Superior Court)

A City Councilperson in Hawaiian Gardens has sued the proponents of a recall effort against her for defamation, infliction of emotional distress and conspiracy. We have agreed to represent the defamation suits by public officials because of political criticism. The suit is a SLAPP suit (Strategic Lawsuits Against Public Participation). The case is in the discovery phase. A mandatory status conference was held for April 6, 1992. The arbitration set for July 12, 1992 has now been vacated as the Court struck the "at-issue" memorandum on July 8, 1992. On August 5, 1992, the Court granted plaintiff's motion to amend the complaint. A settlement was reached. (Carol Sobel, Silvia Argueta, Paul Hoffman)

119. Neal v. Bassett Unified School District (U.S. District Court)

Student Joe Neal, a 17-year old high school senior, was suspended for publishing and distributing a flyer criticizing the school principal. The student was questioned over several weeks by a school district investigator, who eventually read Neal his Miranda rights. The flyer was distributed April 18, but the school waited until mid-June to suspend him (during the five days he was to take final exams), and then it threatened to expel him. Several teachers and the Honor Society President all wrote declarations on Neal's behalf. The ACLU alleged violations of the First Amendment, state free speech guarantees, and provisions of the California Education Code regarding free speech, discipline, and due process. The ACLU secured a temporary restraining order on June 17, 1997 permitting Neal to take his exams and graduate with his class. The school district moved for reconsideration, and opposed the application for a preliminary injunction. On June 19 the ACLU prevailed just hours prior to the graduation ceremony. The motion for attorneys fees was granted. (Peter Eliasberg)

120. Newport Diversified, Inc., et. al v. McQuistan (L.A. Superior Court)

The ACLU represented defendant in a SLAPP suit brought by the operators of the swap meet at L.A. City College in September, 1998. McQuistan is a planning representative for the E. Hollywood Community Association, and monitors code violations at the swap meet which he reports to city authorities. The swap meet operators sued him, alleging interference with their economic relations and trespass. In a settlement agreement, plaintiffs agreed to pay damages to McQuistan, and also agreed to attorneys fees and costs. The case was dismissed in April, 1999. (Jans Kepke)

121. People v. Amaya (Orange County Superior Court)

This civil action was filed in Orange County Superior Court in June, 1993, against 59 alleged members of the West Trece gang. The suit, which is being handled by a gang prosecutor in the DA's office, alleges that the activities of the gang constitute a public nuisance, that each

defendant is a member of the gang, and that each defendant therefore should be enjoined. The DA asked the court to grant a preliminary injunction that would prohibit each defendant from associating with any other defendant within a 50-block area of the City of Westminster. The ACLU appeared initially as amicus curiae to argue that each defendant had the right to appointed counsel. Invited by the court to brief additional constitutional issues, the ACLU argued that the proposed ban on association violates the First Amendment; that mere membership in an organization cannot be a basis for legal liability; and that the DA's criteria for classifying individuals as gang members were not sufficiently reliable. On August 30, 1993, the trial court denied the City's request for a preliminary injunction, and the DA appealed. On appeal, the ACLU represents Jose Saldana, whom the City classified as an "active fully participatory member" of the gang because he was seen on one occasion talking with another individual whom the City classified as a known gang member. This case has now been dismissed pursuant to an early 1997 decision by the California Supreme Court affirming broad injunctions against gangs. (Carol Sobel, Mark Silverstein.)

122. People v. Mearra (California Court of Appeal, Second Appellate District)

This case is substantially similar to In Re Joshua Richard H. as it tests the constitutionality of the Bane Act, California Penal Code § 422.6 and 422.7. In Mearra, the defendant joined with three others in kicking the victim. The victim had been targeted because of the fact he was gay. There was no communication involved in the assault. Our brief argues that an act of physical violence against an individual is not expressive conduct protected by the First Amendment. Even if the violence is somehow considered to be with the range of expressive conduct, it may still be prohibited consistent with the First Amendment. The brief also presents the remaining arguments made in Joshua Richard H. concerning the need for careful evidentiary weighing to ensure that it is conduct and not expression which is being punished in each individual case. (Edward M. Chen of ACLU of Northern California, with Paul Hoffman, Erwin Chemerinsky and Mary Ellen Gale)

123. People v. Sara Jane Olson (L.A. Superior Court)

An *amicus* brief was filed on behalf of the defendant, a.k.a. Kathleen Soliah, seeking modification of the court order banning pre-trial statements by the defense. Media organizations, including CNN and Court TV, along with Ms. Olson's defense team, had requested that the trial, scheduled to begin in February, be televised.

California's constitution guarantees that both the defendant and the people have the right to a public trial. It is especially problematic for Judge Ideman to have denied the media's request to televise these proceeding in the face of Ms. Olson's support for such TV coverage.

Judge Ideman was quoted in news accounts as saying, "I believe, along with most of my colleagues, that televising trials can be a bad thing. I'm ag'in it. I admit my bias."

The judge claimed that cameras in the courtroom change the way witnesses and lawyers act. Judge Ideman also said that he based his reluctance to televise the trial on the effect it might

have on the prosecution's key witness, Patricia Hearst Shaw. The judge indicated he was reluctant to have Ms. Shaw relive her experiences, including claims of rape and torture, on live television.

Olson was indicted in 1976 on charges that she conspired with other members of the Symbionese Liberation Army to plant a bomb under a police car; she was arrested in Minnesota in June, 1999. The ACLU argued in its brief that the judge's order is too broad, forbidding, for instance, comments on public statements made by Patricia Hearst prior to the defendant's arrest.

At a hearing on March 21, 2000, Judge Ideman advised the parties at the outset that he had read the briefs and agreed that the order was too broad. He ordered the defense and the prosecution to submit proposed orders limiting extrajudicial statements in the case. The ACLU drafted a proposed order which was submitted to the court on March 24, 2000. On April 11, 2000, the judge issued a global gag order barring the defendant, lawyers and witnesses from commenting on any of his rulings, including the gag order itself. His order also declares eight other areas off-limits for discussion anywhere in the world. They include "character, credibility, criminal record or reputation of any party, attorney or witness." It bars discussion of the strength or weakness of the case, opinions regarding Olson's guilt or innocence or any plea bargaining that might occur. On June 30, 2000 the judge reversed himself and lifted his gag order. (Carol Sobel, Doug Mirell)

124. People v. West (L.A. Superior Court)

The ACLU filed an *amicus* letter on October 24, 2000 on behalf of Tony Capozzola, who represents defendant Marie Elise West. Ms. West is charged with murder and hate crimes for allegedly using her car to run down and kill a Latino man; she could face the death penalty. Ms. West suffers from a serious mental illness. The court issued a gag order preventing the attorney from discussing the case or related issues with the media, including his client's illness and her attempts to receive help from the county's mental health system. The gay order was lifted on October 30, 2000, following oral argument. (Peter Eliasberg)

125. People v. Wiener

We filed an amicus brief in this case, challenging the constitutionality of California's obscenity statutes as violative of the California constitutional right of privacy. The case is on appeal from an order of the Municipal Court in San Diego, holding that California Penal Code § 311.2, criminalizing the possession of obscene material with the intent to distribute it, is unconstitutional. Our brief argues that the California right to privacy is both explicit and broader than the analogous federal right and that California protects the possession of obscene matter, regardless of the reasons for that possession. We also argue that the right of possession is meaningless if the right to purchase or sell the material is criminalized. Because this case arises on a demurrer, and because the court may then affirm the demurrer on any grounds, whether or not raised by the prevailing party, we also contend that obscenity is protected under California's state Constitution's free speech provision. Several state supreme courts reviewing similar claims have concluded that the various state constitutions -- Hawaii, Washington and Oregon, among them -- provide greater protection for obscene matter than is provided under the federal Constitution. Our brief seeks to have the California

Constitution similarly interpreted to protect obscene matter. The Court rejected our argument. (Carol Sobel, with Jordan Budd (ACLU/San Diego, and the law firm of Luce, Forward)

126. People for Community Empowerment v. Long Beach (U.S. District Court)

People for Community Empowerment (PCE) planned a series of rallies and a march in Long Beach for July 4, 2001. PCE is an unincorporated association of individuals and organizations who have come together to petition around the current energy crisis in California. The July 4 event was scheduled to begin with a rally in El Dorado Park, at which there were to be speakers, music, literature displays, and displays of energy efficient products, such as solar-powered resources. Plaintiffs sought to obtain a permit to reserve the bandshell and adjacent picnic area. After the rally, the group planned a "Power to the People Parade" down Studebaker Road to the Alamitos power plant.

The City told plaintiffs that no permit would issue for the exclusive use of any area of the park because the City does not issue permits for use of the public parks on holidays. In addition, plaintiffs were told that the permit could not be processed within the five weeks between the application and the event.

In June 2001, plaintiffs posted notes about the event in the Internet, including mention that an anarchist group arrested on May Day in Long Beach might want to have a table. The notes also referred to a draft set of action guidelines concerning non-violence and non-discrimination, which all people involved in the event would be asked to sign as a condition of participation. The Long Beach Police Department (LBPD) contacted members of the organizing group and questioned them about possible participation by the anarchists. Plaintiffs requested and held a meeting at the LBPD with several PCE organizers and the executive director of the National Lawyers Guild. Again, the issue of the anarchists was raised. Plaintiffs explained their plan to have "harmony keepers" and experienced monitors.

At the end of the meeting, the LBPD said the event could go forward if the group obtained a permit from "Special Events." The Special Events department informed plaintiffs that there would be a variety of charges for permit fees, department resources, uniformed police and liability insurance. In addition, plaintiffs were told that because the anarchists might be present, the City would have to deploy additional police officers at an overtime rate of $55/hour for a four hour minimum, which plaintiffs would have to pay.

The suit alleges violation of the First Amendment to the U.S. Constitution and and the Liberty of Speech Clause of the California Constitution because it is an impermissible prior restraint on expression in public fora. The terms of the ordinance impermissibly invite content-based decision making and are not narrowly drawn. In addition, the ordinance is not a reasonable time, place or manner restriction, and it violates plaintiff's rights to freedom of speech, freedom of assembly, freedom of association and freedom to petition the government for redress of grievances.

In June, 2001, the court granted plaintiff's motion for a temporary restraining order. In July, a preliminary injunction was granted, and in August, a permanent injunction. The City has re-written its permitting ordinance. Attorneys fees were paid in April, 2002. (Dan Tokaji, Carol Sobel, Robert Myers)

127. Peterson v. Department of the Navy (U.S. District Court, Central District)

This case involves a challenge to a Department of the Navy regulation which penalizes all Navy personnel, both civilian and military, for engaging in activities which could be likely to create the effect or appearance of "undermining public confidence in the integrity of the government." The plaintiff is a civilian test engineer with the Pacific Missile Test Center at Pt. Mugu. His photograph and name, together with his identification as a Pt. Mugu employee, appeared in the local newspaper after he participated in a public demonstration, on his own time, against the Gulf war last December. Based on his identification as a government employee, his supervisor disciplined him under the challenged regulation. Our complaint alleges that the regulation is a restriction on the individual's right to express his views on matters of public concern. We also allege that the regulation fails to give notice of exactly what conduct is prohibited and thereby violates principles of due process. Discovery is proceeding. The case is set for a status conference in early December. We expect to file for summary judgment soon. The government has now made a settlement offer which would rescind the discipline of Peterson but leave the regulation intact. We expect to file a counter-proposal shortly. After filing cross-motions for summary judgment, the parties agreed to settle the case. The Navy expunged the warning issued to Peterson and agreed to change its policy to prevent further punishment for similar circumstances. (Carol Sobel)

128. In the Matter of Joshua Richard (California Court of Appeal, Second Appellate District)

This case involves a challenge to the constitutionality of the Bane Act, California Penal Code § 422.7, which provides for enhanced punishment of certain crimes targeted at a victim because of his or her race, color, religion, ancestry, national origin or sexual orientation. We have filed an amicus brief which urges the court to find that the Act is constitutional in that it is not directed at suppressing ideas or expression of beliefs but, rather, is directed at conduct. Specifically, it is aimed at acts of violence in which the victim has been selected on the basis of an immutable or protected characteristic. Our brief argues that the Bane Act is similar to well-established federal anti-discrimination laws which punish both civil and criminal acts directed at an individual because of his or her race, national origin, etc. The focus of this law on conduct, rather than pure expression, distinguishes this case from the overbroad regulation invalidated by the U.S. Supreme Court last term in R.A.V. v. St. Paul, the Minnesota hate-speech case. At the same time, we have urged the court to pay particular attention to the evidentiary basis for the enhancement to ensure that it is conduct and not protected expression that is being punished in each instance. Oral argument occurred on

February 17, 1993, in San Jose. The court issued its decision on March 4, 1993, upholding the constitutionality of California's "enhancements" for "hate crimes." The opinion incorporated verbatim the rationale of our brief, specifically crediting the ACLU in the body of the decision. (Edward Chen [ACLU Northern California, with Paul Hoffman, Erwin Chemerinsky and Mary Ellen Gale)

129. Richard v. City of Pasadena (U.S. District Court, Central District of California.

This suit was filed in federal district court on behalf of an outspoken and controversial African-American member of the Pasadena City Council. The suit raised a facial and as applied First Amendment challenge to a city ordinance proscribing, among other things, discourteous expression of opinion upon issues affecting the city or its citizens, or discourteous expressions of view not shared by a majority of the Council. Punishment for violation of the ordinance directly penalized the rights of constituents to full, effective and equal representation from their elected representative. By virtue of its vague and overbroad provisions, the ordinance sanctions arbitrary and discriminatory enforcement, including the revocation of non-Charter and non-statutory benefits otherwise due each councilmember, including travel expenses to meet with parties (e.g., richard was denied travel payments to a meeting with the Congressional Black Caucus, Chambers of Commerce and other groups), tickets for sporting events to distribute to needy residents, etc.

On June 9, less than three weeks after the filing of the suit, the City Council issued a resolution, characterized as a clarification of the ordinance. In truth, the resolution effectively repealed the ordinance, replacing it with a conduct-oriented measure. On this basis, and with concession that further charges would still be forthcoming, the suit was voluntarily dismissed. After a hearing on plaintiffs' motion for attorneys' fees, the court ordered payment of fees of nearly $75,000. (Mark Rosenbaum with Hadsell and Stormer)

130. Rubin, et al. v. City of Santa Monica (U.S. District Court, Central District)

This is a facial challenge to a Santa Monica ordinance restricting the use of public parks and other areas of the City to no more than twice a month by organized groups of 35 persons or more, or by persons who are likely to cause 35 persons or more to assemble in a pubic park at the same time. The ordinance allows the City's Director of Cultural and Recreation Services to exempt groups from the requirements of the permit scheme when, to the Director's satisfaction, they can show some special or unique circumstances or hardship, or when the group's aims are consistent with the City's "human services objectives." Our lawsuit claims that the City's policy violates well-established First Amendment principles regarding the rights of free speech, assembly and association in public parks because it allows the Director to make content-based decisions about whether a permit will issue and what condition will be attached to it. In addition, we claim that the lawsuit violates fundamental fairness by authorizing the recreation director to revoke or deny a permit based on the violation of any law, including litter laws and leash laws, by anyone at the site of an event. Our position is that a permit may only be revoked or denied based on the unlawful

activities of the permit holder or event organizers, or their ratification of unlawful activities by a permit participant. The Court entered a preliminary injunction finding the law unconstitutional in April 1993. The case has settled with Santa Monica agreeing to withdraw the ordinance and pay a small amount of attorneys fees. (Carol Sobel, Sharon Robinson and Raleigh Levine)

131. Rudnick v. McMillan (Court of Appeal, Second Appellate District)

On August 23, 1993, we filed an amicus brief in this SLAPP suit filed by a large rancher in the San Luis Obispo area against a local environmental activist. The lawsuit arises from a letter-to-the-editor written by the defendant to a local newspaper in response to two articles solicited by the rancher. The articles, both of which quoted from the rancher, looked at the desolate condition of a large area which had been managed by the Bureau of Land Management and long-used for cattle grazing but was now owned by the Nature Conservancy. The rancher blamed the condition of the land on the Bureau of Land Management. The environmental activist blamed it on the land use practices of the cattle ranchers. At trial, the judge refused to find that there were any First Amendment rights implicated in the case. Because he saw no First Amendment issue, the judge refused to find that the rancher was a limited-purpose public figure and, consequently, refused to apply the higher test for libel in a case involving an issue of public concern. The judge also refused to find that the rancher was required to prove special damages because the letter did not contain anything that could be understood to be defamatory without reference to extrinsic facts. The jury was instructed that if they found the environmentalist was negligent in writing the letter, they could find for the plaintiff. They did. The Court of Appeal reversed the finding that the trial court had directed a lower legal standard be applied than constitutionally required by the First Amendment. The petition for review has been filed with the California Supreme Court. We filed a letter brief opposing review in early August. The Supreme Court subsequently denied the petition. (Carol Sobel)

132. San Luis Obispo Mardi Gras v. City of San Luis Obispo (U.S. District Court)

The ACLU/SC filed suit in federal district court in January 11, 2002, arguing that the San Luis Obispo parade ordinance is unconstitutional on its face. The Mardi Gras organization is a non-profit community group in San Luis Obispo, which has sponsored a Mardi Gras parade for the last nine years. The parade lasts about 45 minutes, traverses about two miles, and attracts about 30,000 spectators. There has never been a problem with the parade, itself. When the parade is over, people simply leave the area. However, in the last two years, there have been some problems related to alcohol consumption by people who attended the parade. After the parade is over, some of the onlookers have continued to drink in local bars and have become somewhat rowdy. These problems arise several hours after the parade has concluded.

This year, the parade organizers received a letter from the City Manager, informing them that the California Highway Patrol, which has "policed" the event in the past, is unwilling to provide such services unless the City quadruples the number of officers. The response from

the City was to tell the parade organizers that no permit would issue unless they reached agreement on a law enforcement presence, almost entirely to be prepared to respond to any drunk revelers. The City Manager has informed the group that it will cost approximately $100,000 for a permit this year, if they issue one at all. In the past, the group has been required to pay $10,000 for costs related to the event, which they have done. They cannot afford $100,000.

San Luis Obispo's permit scheme is very similar to a Long Beach ordinance that we challenged successfully in Long Beach in July 2001 (*People for Communty Empowerment v. City of Long Beach*). The SLO ordinance requires a permit for any expressive activity in the City, under the rubric of regulation "local special events" and parades. SLOMC §5.76.030. It has a separate set of rules for the undefined category of "First Amendment activity," with the burden on the permittee to prove the proposed activities entitlement to First Amendment status. The City Manager has unbridled discretion to grant or deny this status, and to require such proof as s/he deems necessary in the process. SLOMC §5.76.040B,C.

The San Luis Obispo ordinance applies the parade and "local special event" permit process to any expressive activity in any public forum. SLOMC §5.76.020F,H. The license requirement in San Luis Obispo is even broader than the one just struck down in Long Beach. While Long Beach's special event permit only applied to groups of 25 or more, San Luis Obispo's would apply to a group as small as two people. San Luis Obispo's more restrictive provisions run afoul of the decision in *Grossman v. City of Portland*, 33 F.3d 1204 (9th Cir. 1994), which invalidated a permit regulation for public fora that applied to any gathering of people, no matter how small. In addition, the application of the ordinance depends upon a definition of "noncommercial" that is broader than the Supreme Court's definition. SLOMC §5.76.020G.

The San Luis Obispo Municipal Code is also unconstitutional because it does not allow for spontaneous speech in reaction to current political events. The ordinance contains an exceptionally long advance-notice requirement. Permit applications must be filed at least 60 days in advance of the proposed event. SLOMC §5.76.040A. The code section contains a blanket authorization for the City Manager to waive the time requirements on a showing of "good cause," without any standards as to what would constitute "good cause." SLOMC §5.76.040D. The City then has 10 days to conduct an initial review of the application and advise the applicant if it is complete. SLOMC §5.76.040A. The City has two weeks in which to approve or deny the permit, which is an extremely long time period, particularly when coupled with the 60-day advance notice period. SLOMC § 5.76.060. These provisions are unconstitutional under *NAACP v. City of Richmond*, 743 F.2d 1346 (9th Cir. 1984).

The ordinance also contains an open-ended provision to permit the City Attorney to impose any conditions she or he believes to be "necessary and appropriate." SLOMC § 5.76.040 H.

There are additional problems with the requirement to post an insurance bond and to pay the

departmental service charges. With respect to the latter, in particular, a permittee may be required to pay the costs of unlawful conduct by third parties that is neither sanctioned nor condoned by the group. This is an unconstitutional basis for liability under *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1983). The problem with this provision is particularly acute in this case, where the City has stated its unwillingness to issue the permit to the Mardi Gras parade committee because of problems with unruly revelers hours after the parade has concluded without incident.

The ACLU's motion for a TRO was heard on January 17, 2002. The judge granted part of the preliminary injunction, holding that the permit scheme was unconstitutional and striking the ordinance in its entirety. She held a hearing on February 4, 2002, to decide whether or not to issue the permit to the SLO Mardi Gras. The federal district court judge granted a permanent injunction against the city in March. The City enacted a new ordinance in May, 2002. (Dan Tokaji, Carol Sobel, Neil Tardiff)

133. Sanchez v. City of Santa Ana (U.S. Court of Appeals, Ninth Circuit)

Suit to obtain redress for discrimination against Chicano police officers, and to prevent reprisals for their exercise of free speech. Trial began in February, 1985. In June, 1985, Judge Kenyon granted defendant's motion for a directed verdict after the plaintiff's case. The individual defendants' motion for attorneys fees was granted. On November 1, 1985, the jury granted plaintiff Sanchez $900,000 in damages based upon a partial summary judgment issued by Judge Kenyon earlier in the proceedings. Our motion for fees was granted. All the parties appealed. On July 11, 1990, the Ninth Circuit issued two decisions which (1) affirmed $400,000 of a $900,000 award to one of the plaintiffs; (2) refused to award plaintiff's fees; (3) reversed Judge Kenyon's directed verdict concerning two of the plaintiffs' claims based on retaliation for First Amendment activities and the creation of a racially discriminatory environment in the Santa Ana Police Department; (4) affirmed the dismissal of all of one of the plaintiffs' claims; (5) denied the individual defendants' claims of qualified immunity; (6) affirmed the dismissal of the City with respect to plaintiffs' §1983 claims; and (7) overturned the award of fees to certain defendants. On balance, this was a victory. Shortly after issuing its decisions the court vacated the decision overturning the award of emotional distress damages and asked for supplemental briefs which have been filed. In late September, 1990, the Court reaffirmed its reversal of the award of emotional distress damages. In February 1991 the Court denied all remaining petitions for rehearing and denied the request for en banc review. Three Petitions for Certiorari were filed and all were denied by November 1991. A jury trial was set for November 21, 1995, but the judge suffered a heart attack and the case was put off.

The fourth trial in this matter was scheduled to begin on May 30, 2000. On the eve of trial, settlement was reached. Plaintiffs received $650,000 in damages and fees. (Meir Westreich, William Snyder).

134. Sanchez v. De Santis (U.S. District Court)

Suit was filed on February 2, 1998, on behalf of tenants of a HUD-subsidized housing unit in the Pico Union area of Los Angeles. The suit challenges the actions of a landlord who had two tenant organizers arrested, although they were invited by residents to a meeting held at the apartment complex. Defendant Frank De Santis is president of Community Partnership development Corporation and its subsidiary Los Angeles Gardens Community Association, a non-profit entity that owns subsidized housing complexes in the Los Angeles area.

In late November, 1997, plaintiffs invited organizers from the Coalition for Economic Survival to a tenant's apartment to assist in conducting a meeting to discuss tenant concerns. During that meeting, De Santis called the LAPD claiming the organizers were trespassing. The two CES organizers were arrested, although they were invited guests and were conducting tenant outreach, training and organizing activities, all actions approved and funded by HUD. On several other occasions agents of the defendant threatened to have invited organizers arrested.

Defendant has refused to accept the tenant association, even after a 1996 City of Los Angles Housing Department-monitored election confirmed the group. The ACLU alleges that he later undermined the group's efforts by rigging a 1997 tenant association election in which

only 11 out of a possible 101 ballots were cast, in part because tenants were not told of the balloting.

The ACLU lawsuit alleges that the tenants' free speech, associational and privacy rights under the federal and state constitutions were violated, as well as federal housing statutes, based on a pattern of retaliation by defendant following efforts by tenants to play an active role in the development's management and to improve conditions at the property. The ACLU's motion for a TRO was denied on February 6, 1998. The ACLU voluntarily dismissed the case, consolidating most of the claims in the related state court case.

The defendant filed a motion for attorneys fees, which the ACLU opposed. The judge rejected the landlord's attempt to assess low-income tenants $23,000 in attorneys' fees allegedly incurred in the federal suit brought by tenants against the landlord. The federal suit was voluntarily dismissed by the tenants and their claims consolidated in the already-pending state lawsuit brought by the landlord. (See also the related case, L.A. Gardens Community Assoc. v. Coalition for Economic Survival) (David Schwartz, Rocio Cordoba, Peter Eliasberg)

135. Schwarz v. Superior Court of San Francisco City and County (People of the State of California, Real Party in Interest) (California Court of Appeal, First Appellate District) This case is substantially similar to In Re Joshua Richard H. as it tests the constitutionality of the Bane Act, California Penal Code § 422.6 and 422.7. In Mearra, the defendant joined with three others in kicking the victim. The victim had been targeted because of the fact he was gay. There was no communication involved in the assault. Our brief argues that an act

of physical violence against an individual is not expressive conduct protected by the First Amendment. Even if the violence is somehow considered to be with the range of expressive conduct, it may still be prohibited consistent with the First Amendment. The brief also presents the remaining arguments made in Joshua Richard H. concerning the need for careful evidentiary weighing to ensure that it is conduct and not expression which is being punished in each individual case. On August 18, 1993, the Court of Appeal affirmed the constitutionality of the statute. (Edward M. Chen of ACLU of Northern California, with Paul Hoffman, Erwin Chemerinsky and Mary Ellen Gale)

136. SEIU Local 660, et al v. Los Angeles (U.S. District Court)

Suit was filed on June 30, 2000 challenging the plans of the Los Angeles Police Department and other law enforcement agencies with respect to the Democratic National Convention, to be held at the Staples Center. The LAPD's plan established a large "security zone" covering several blocks, that effectively prevented protestors, demonstrators, and other speakers from communicating their message to delegates.

For several weeks prior to filing suit, the ACLU was in communication with the LAPD regarding their plans for the Convention and, in particular, restrictions on First Amendment activity. While the LAPD was less than completely forthcoming about its plans, they confirmed that they will be closing off a secure zone encompassing the area bounded by Olympic Blvd. on the north, the 110 Freeway on the west, Venice Blvd. on the south, and Flower Street on the east. This area will be closed off to all those who do not have a ticket or a credential. It will therefore be unavailable to those who wish to protest or demonstrate, or otherwise to convey a message to delegates. The LAPD has developed its plan in conjunction with other government agencies, including the Federal Bureau of Investigation, the United States Secret Service, the Department of Alcohol, Tobacco and Firearms, the California Highway Patrol, and the Los Angeles Sheriff's Department.

We argued that this plan violates the First Amendment, because it prevented speakers from effectively communicated with their intended audience -- in particular, the delegates to the convention. The Ninth Circuit case law on this issue if favorable to us. Such restrictions on the location of protests are only permissible if they are (1) "narrowly tailored to serve a significant governmental interest" and (2) "leave open ample alternative channels of communication of the information." Bay Area Peace Navy v. United States, 914 F.2d 1224, 1226 (9th Cir. 1990). In Bay Area Peace Navy, the Ninth Circuit upheld a challenge to the Coast Guard's plans to keep protestors 75 yards away. In this case, the LAPD's plan calls for a considerably wider zone.

An additional claim was filed, based upon the City and LAPD's denial of -- or failure to act upon -- the permit applications of three groups who wish to conduct marches that end at or pass through the "secure area."

Argument was heard on the motion for a preliminary injunction on July 19, 2000. On July

21, Federal District Court Judge Frees issued a written order requiring the City of Los Angeles and its police department to accommodate free speech during the Democratic National Convention and prohibited them enforcing their current park use and parade permit granting schemes. (Dan Tokaji, co-counsel Carol Sobel, Robert Myers, and Karl Manheim)

137. Seven Words v. Network Solution, Inc. (Ninth Circuit Court of Appeals)

The ACLU filed an *amicus* brief in the Ninth Circuit in March, 2000. The case is a challenge under the Liberty of Speech Clause of the California Constitution to the refusal of a private company, Network Solutions, Inc. ("NSI"), to register on the Internet the domain name of an entity called Seven Words on the grounds that the name contains "indecent" words.

At the time the dispute arose, NSI was the sole registrar for domain names ending with "com," "net," and "org." Seven Words sought to register such names as "fuck.com." NSI's policy is to refuse to register any domain names that contain six of the seven words that the Federal Communications Commission considers "indecent," and that under the U.S. Supreme Court's decision in FCC v. Pacifica can be restricted on radio and television at certain times of the broadcast day.

In an earlier round in this litigation, Seven Words argued that NSI was a "state actor" because it stood in the shoes of the federal government in regulating access to the Internet, and that NSI's refusal to register Seven Words' domain names violated the First Amendment. That case was transferred from the Central District of California to federal court in New Hampshire. Seven Words apparently decided not to pursue the claim in New Hampshire. Instead, it filed another suit in the Central District of California, but this time under the Liberty of Speech Clause of the California Constitution. Seven Words argued that even if NSI is a private actor, its actions in regulating speech over the Internet are subject to the Liberty of Speech Clause of the California Constitution under Robins v. Pruneyard Shopping Center, 23 Cal. 3d 889 (1979). In that case, the California Supreme Court held that the Liberty of Speech Clause applied to a private shopping center that sought to restrict expression on the shopping center property, on the grounds that a shopping center is a type of public forum, like a public park or sidewalk. The district court in the Seven Words case (Judge Stephen Wilson) held that Pruneyard did not apply to NSI's actions. The district court interpreted decisions of the California courts to stand for the proposition that Pruneyard does not apply to entities that merely facilitate access to a forum, but whose permission is not necessary to gain access to the forum. The court concluded that NSI does not control access to the Internet, but rather, only access to certain domain names. It said that Seven Words could create a web site on the Internet, use indecent words on the site without involving NSI, and employ indecent words in its domain name so long as it did not use the com., net. or org. endings in its name.

This case raises the question of whether and under what circumstances the law of any particular state should govern the Internet. Seven Words itself is an entity with little, if any, ties to California. Our *amicus* brief seeks to avoid resolving those problems. Instead, it makes the more limited points that: (i) the Internet is rapidly becoming a major forum for

expression today; (ii) more expression takes place on the Internet than in shopping malls; and thus (iii) Pruneyard certainly should inform the analysis under California law of restrictions on expression over the Internet. The brief also argues that a domain name, in and of itself, can convey an important message, and that access to the well-known com., org., and net. domain name endings is important. In that regard, the brief argues, NSI plays a fundamental gatekeeping role in permitting access to the Internet. The appeal was argued May 8, 2001.

In August, 2001, the 9th Circuit dismissed the case. During the pendency of the appeal all the domain names were registered to third parties, rendering the case moot. The Court declined to reach the merits of the plaintiff's constitutional claims under the California Constitution. (Stephen Rohde, Peter Eliasberg)

138. Shorter v. City of Inglewood (U.S. District Court)

In October, 1995, we filed a First Amendment challenge in U.S. District Court on behalf of the administrator of a private school in the City of Inglewood, who was denied the right to fly flags atop his schoolhouse. The basis of the denial is a sign ordinance in the City that prohibits permanent flag displays outside a building by anyone other than the government or non-profit institutions without first obtaining a permit. We alleged that the ordinance impermissibly distinguished the right to fly a flag based on the speech being expressed.

The plaintiff is a Vietnam War-era veteran. He sought to put up four flag poles to display the United States flag, the California State flag, the Mexican flag and the African-American flag. His intent was to express multi-racial and multi-cultural harmony and respect for the United States and California governments. The flag display was ordered taken down and he was informed that the municipal code prohibited private parties from displaying flags outdoors. On his own, Mr. Shorter spent nearly nine months of trying to win reconsideration on the permit issuance from the City,

Prior to the hearing on the preliminary injunction, which had been set for November 6, 1995, the City agreed to stipulate to virtually the entirety of the preliminary injunction we had proposed to the Court. Subsequently, the City has informed us that they will agree to a permanent injunction. (Carol Sobel)

139. Spindler v. Simi Valley School District (U.S. District Court, Central District)

This First Amendment case was filed in October 1994 on behalf of a Valley View Junior High School honor student who was barred from attending classes when he wore a T-shirt bearing the image of a bald eagle superimposed on an American flag. The Simi Valley Unified School District's dress code bars clothes that contain "crude, vulgar, profane or sexually suggestive" words. Valley View however has implemented a more stringent dress code that forbids any writing or logos on clothing other than school "spirit" shirts. The suit alleges that the Valley View dress code is overly broad and violates the student's First and Fourteenth Amendment rights. In addition, the suit alleges violations of the California

Constitution and the California Education Code. The case has settled, including the payment of attorneys' fees to plaintiff's attorneys. (Mark Rosenbaum, Marvin Krakow)

140. Terra-Buchard, Ltd. v. Tran (Orange County Superior Court)

In February, 1999, the landlord of a store in a strip mall that has been leased by Truong Van Tran, sought injunctive relief against Mr. Tran to require him to take down a picture of Ho Chi Minh and the communist flag of the Republic of Vietnam. The court originally issued a restraining order on the ground that the flag and picture, which has caused much protest in the strongly anti-Communist community in Westminster, constituted a public nuisance, which is barred by the lease agreement between Trang and the landlord.

The ACLU believed that the Court's order interpreted the meaning of "public nuisance" too broadly, and in so doing, violated Mr. Tran's rights under the First Amendment and the "Liberty of Speech Clause" of the California Constitution. If a court is allowed to consider controversial speech, and hostile listener reaction to that speech, as a public nuisance, it could cut into the rights of lessors to exercise their constitutional rights on property which they have the possessory interest over. This case does not raise the question of the propriety of enforcing an explicit waiver of First Amendment rights – i.e, whether a court could enforce a lease provision that forbid the display of flags of Communist countries. However, allowing a vague lease provision such as "public nuisance" to be considered a clear waiver of a constitutional right is a dangerous precedent. A waiver of a constitutional right must be knowing and voluntary. In this case, agreeing not to create a public nusiance hardly appears to be a **knowing** waiver of a right to engage in basic freedom of expression.

The ACLU filed an opposition to the Order to Show Cause, contending that the Court's order violated Mr. Tran's constitutional rights. On February 10, 1999 the judge denied the landlord's request for a preliminary injunction, and held that display of the flag and the picture were protected by the First Amendment.

In response to the ruling, mass demonstrations over many weeks were held outside Mr. Tran's store, and he was assaulted on several occasions by demonstrators when he attempted to return to his store. Demonstrators not only blocked entrance to the door, but also placed chains across the doorway and plastered posters over the entire front of the store.

The landlord filed an eviction notice against Tran, alleging nonpayment of rent. On March 5, 1999 police confiscated allegedly pirated tapes from Tran's store. On March 12, Tran closed his business. He was arrested by Westminster police on March 16 for possession of the pirated tapes, which Tran alleges were legally obtained pursuant to Chinese law. (Peter Eliasberg, Ron Talmo, Nancy Kaufman)

141. Taylor v. L.A. Parks and Recreation Commission (U.S. District Court, Central District)

The ACLU filed a lawsuit on March 19, 1998 against the City of Los Angeles Recreation and Parks Commission for violating the First Amendment rights of a 23-year-old muralist. The

Commission prohibited Richard Taylor from installing a public mural at the Venice Graffiti Pit although his work had been approved by the Cultural Affairs Commission and the Social Public Art Resource Center (SPARC) which coordinated the project.

In November 1997 Taylor submitted his mural concept which shows a family, apparently immigrant, fleeing from a lurking boar while vultures holding television cameras film the scene. Speaking before the Recreation and Parks Commission, Taylor said his work embodies the tradition of Picasso and Thomas Nast in so far as it utilizes animal imagery to express their ideas.

The Venice Graffiti Pit was historically a walled area where people painted images without approval or involvement by any public or private. In 1997, during a scheduled clean up of the area by the City, the images were completely covered when the walls were painted.

The City worked with SPARC to coordinate mural projects following public outcry after the graffiti pit was painted over. Founded in Venice in 1977 by muralist Judith Baca, SPARC produces public art projects throughout Los Angeles which employ thousands of city youth. Taylor's first image was approved by SPARC last summer, but was painted over because the Recreation and Parks Commission felt it depicted Los Angeles police officers negatively. While Taylor and SPARC objected to the Commission's action, Taylor offered to submit a new image which was rejected by Recreation and Parks Commission.

The lawsuit calls the City's action a violation of free speech under the federal and California constitutions. Further, the suit says the action violates the Los Angeles Uniform Building Code which prohibits censorship of "an ideological, political or other non-commercial message on a sign," and an unconstitutional interpretation of the Code. Additionally, the suit claims that the Commission requires artists to waive their rights under the California Art Preservation Act and the Visual Artists Rights Act. The ACLU seeks an injunction to stop the City from blocking Taylor's work, a declaration that the City's action violates free speech, that the Uniform Building Code covers public and private property, and that requiring artists to waive their rights is unconstitutional. The parties reached a settlement agreement in principle in August, 1999 in which the Recreation and Parks Department has agreed to (a) adopt a regulation guaranteeing First Amendment protection for murals; (b) allow Taylor to install his mural on public property; and (c) contribute to Taylor's attorneys fees and costs. Final negotiations on placement of the mural are ongoing. Final settlement was reached in April, 2002 and attorneys fees were paid. (Stephen Rohde)

142. Tirso del Junco v. California Democratic Party (Sacramento Superior Court)

Amicus brief supporting defendant California Democratic Party's opposition to a TRO barring its support of candidate in the Los Angeles mayoral race. We contend that the First

Amendment to the U.S. Constitution supersedes a provision of the California Constitution that bars political parties from supporting candidates for nonpartisan office. The ACLU argued in its amicus brief that prohibiting political parties, acting on behalf of their members, from endorsing candidates in nonpartisan races "severely restricts" free speech rights. The ACLU added that the provision "suffocates free association rights by depriving members of political parties of the right to band together to advance their views. Endorsing or opposing candidates is a fundamental component of American political expression." Our position did not prevail and no further appeal was taken. (Raleigh Levine)

143. Union of Needletrades, Industrial & Textile Employees, AFL-CIO v. The Taubman Co., et. al. (Second District Court of Appeal)

The Union of Needletrades, Industrial & Textile Employees ("UNITE") is currently involved in a labor dispute (and related litigation) with Guess?, Inc. and several sewing contractors that produce Guess garments. UNITE has attempted to engage in informational picketing and leafletting in front of Guess stores at several LA area shopping malls. The shopping centers have rejected the applications to engage in peaceful picketing, and UNITE filed suit in Superior Court. One judge issued a temporary restraining order against the Beverly Center, but a second judge dissolved the TRO and denied a preliminary injunction.

The ACLU was asked to take over the case at this juncture, because UNITE could no longer afford to litigate the First Amendment issues of the constitutionality of regulating UNITE picketers to out-of-the-way areas of malls, as well as various restrictions and conditions the mall owners wish to place on the applications to engage in expressive activity, such as a requirement for names and addresses of all picketers; the purchase of liability insurance; and other issues.

In July, 1997, the ACLU argued an appeal of the denial of the preliminary injunction. Despite acknowledging certain serious constitutional concerns, the state Court of Appeal upheld the trial court's ruling. In March, 1998, UNITE voluntarily dismissed the case. (David Schwartz, Peter Eliasberg)

144. USSR National Touring Co. v. Southern California Theatre Association (L.A. County Superior Court)

We represent the Armenian National Committee and its present and former executive director as cross-defendants in a breach of contract claim between the original named plaintiff and defendant. In late 1989, the Soviet Red Army Dance Troupe came to California sponsored by the U.S.S.R. Touring Company. At the first night of the Los Angeles performances, the Armenian community organized a demonstration to protest the Soviet treatment of Armenian nationals in the U.S.S.R. Approximately 1,000 people showed up, far more than expected. As a result, the performance was delayed. The tour had a number of problems in various cities unrelated to protests against the Soviet Dance Troupe. Consequently, the U.S.S.R. National Touring Co. sued for breach of contract. The Southern

California Theatre Association countersued and named the Armenian National Committee, another Armenian group and three individuals as cross-defendants, alleging that the "loud and boisterous crowd" prevented one performance and discouraged people from attending performances in Los Angeles. We filed an answer on December 11, 1990, and are presently conducting discovery. We filed for summary judgment in the case based on the that the members of the Armenian community were exercising protected First Amendment rights under NAACP v. Crane Hardware and cannot be held liable on a general theory of tortious interference with contract rights. On January 18, 1991, the judge severed the cross-complaint against our clients and transferred the case to Los Angeles. On February 1, 1991, the judge granted our motion to quash the summons on the Armenian National Committee for improper service. On April 29, 1992, the parties agreed to settle the case. (Carol Sobel)

145. Valley Vote v. City of Los Angeles (U.S. District Court, Central District)

Suit was filed on August 17, 1998 on behalf of Valley Vote, which was denied access to a public area to gather signatures on a petition drive apparently in violation of the First Amendment and the California Constitution's Liberty of Speech Clause. Valley Vote was denied the ability to gather petition signatures at the City-sponsored Van Nuys air show on the weekend of July 18, 1998. Valley Vote is trying to gather signatures in order to initiate a feasibility study of Valley "secession" under the Government Code provisions concerning local government reorganization.

It is undisputed that on the weekend of July 18, 1998, volunteers who were trying to gather signatures of Valley Vote were either denied access or thrown out of the air show at the Van Nuys airport. In fact, the City Council asked that the Department of Airports and the City Attorney prepare a report on the incident. After the report was completed, the City Council adopted a motion on August 5, 1998 saying that it had erred by blocking the signature gatherers and agreeing to petition the appropriate body or court to allow Valley Vote a 30-day extension of time to file collect their signatures. Under Govt. Code Section 56705, the deadline for signature gathering is supposed to be August 27, 1998.

This action for damages was brought under the First Amendment, the Liberty of Speech Clause of the California Constitution, and for damages under 42 U.S.C. § 1983. We will argue that petitioning is a right protected under both Constitutions. Under the California Constitution, the law governing speech activities in public places is more favorable than under the federal Constitution because the government can only prohibit speech in an area

open to the public if it can show that the speech activity is "basically incompatible" with the purposes of the area. Under the First Amendment, the Air Show, which is a large gathering open to the public, probably would be considered a public forum. Airport terminals themselves are not public fora. However, the Air Show appears to be much more like the State Fair, and the City Attorney implicitly conceded that the Air Show was a public forum in his memo to the City Council.

The ACLU suit seeks injunctive relief to prevent the city from taking further steps to impede signature gathering and damages as determined by the court to allow Valley Vote to hire signature gatherers to collect the number of signatures it estimates it would have obtained at the annual airport Air Show. On August 24, 1998 the state legislature granted Valley Vote three more months to gather petitions; the bill is awaiting the governor's signature. (Peter Eliasberg)

146. Walker v. Kiousis (Court of Appeal, 4th District)

This case is another in our series of challenges to state laws that chill citizen complaints against police officers, by allowing civil or criminal actions to be filed against those who make "false" complaints. (See Eakins v. Daniels, Gritchen v. Collier, Hamilton v. City of San Bernardino, People v. Stanistreet/Atkinson). In October, 2001, we filed an *amicus* brief before the Court of Appeal, Fourth Appellate District in Walker, which also presents a challenge to the constitutionality of Civil Code §47.5. The case arose in Orange County. The trial court dismissed the case under California's anti-SLAPP statute, CCP §425.16, finding that an officer's lawsuit under Civil Code §47.5 arose from a citizen complainant's exercise of his constitutional rights and that the officer had failed to show a likelihood of prevailing at trial, in light of the absence of any damages arising from the allegedly false complaint. The Court of Appeal asked both sides to address (1) whether it is necessary to reach the question of 47.5's constitutionality and (2) if so, whether 47.5 is constitutional. Our *amicus* brief argued that it was not necessary for this Court to address the facial constitutionality of the statute in this case, since there were narrower grounds on which it could rule in the citizen complainant's favor; but that, if it did rule on the facial constitutionality of 47.5, the statute should be struck down. The Court struck down the statute as unconstitutional in November 2001, following the reasoning in the Gritchen case (see above). (Dan Tokaji)

147. Westside SANE/FREEZE, et al. v. The Hahn Company, et al. (L.A. County Superior Court; California Court of Appeal, Second Appellate District)

This suit (filed in February 1989) challenged the Hahn Company-owned Fox Hills Mall's policy of excluding persons wishing to engage in certain types of political expression, a right established in the landmark Pruneyard decision. The Mall's policy, which permitted only speech activity which involves registering voters or gathering signatures for a political petition, was used to ban SANE/FREEZE activists seeking to set up an information table and offer leaflets to interested mall patrons. Numerous shopping malls in the state use this and other rules to hamper, if not totally deny, free speech access. Our complaint alleged that this and other Mall rules violate §§2 and 3 of Article I of the California Constitution and Cal. Civ. Code §1708.

A motion for preliminary injunction was filed on February 16, 1989, to stop the Mall from excluding persons wishing to use the Mall to distribute leaflets and to engage in any other protected speech activity, and from requiring a $75 clean-up deposit and retaining it for two

weeks after the activity ended. On July 12, 1989, Judge Kurt Lewin granted our motion for a preliminary injunction. The judge's decision upheld the right to engage in political leafleting at the approximately 24 shopping centers in California owned or operated by defendants. He also ordered the malls to reduce the cleaning deposit for leafletters to $50, but upheld the malls' retention of the deposit for up to 14 days after the speech activity has ended. The defendants appealed. On October 4, 1990, the Court of Appeal affirmed the preliminary injunction. It held as a matter of law that the state constitutional rights of free speech and petitioning at shopping centers, recognized in Pruneyard, are not limited to activity connected with signature-gathering. It also held that allowing such speech activities does not result in an unconstitutional taking of private property, and that the trial court did not abuse its discretion in applying the injunction to all 26 of the Hahn Company's shopping centers in California.

On April 9, 1991, the parties announced, a settlement agreement which included broadening the scope of permitted activity to include the right to leaflet and discuss in designated free speech areas within the mall; a reimbursement provision for potential cleaning costs in lieu of an up-front cash deposit; the establishment of at least three 175-square-foot speech activity areas within the mall's common area; the designation of 25 peak traffic days in which the

mall may eliminate speech activity due to potential shopper congestion; and permitting groups to request mail-in donations and membership fees in lieu of collecting on-site cash contributions. (Robin Toma, Carol Sobel)

FREEDOM OF ASSOCIATION

148. NORML, et al. v. City of Anaheim (U.S. District Court, Central District of California

This is a challenge to an ordinance, enacted in 1993, that made it a crime for individuals with certain kinds of drug convictions to enter any public parks in Anaheim. Pursuant to the ordinance, the City posted signs warning of the prohibition at the entrances to every Anaheim park.

The National Organization for the Reform of Marijuana Laws (NORML) scheduled a rally in Anaheim's La Palma Park to support the Compassionate Use Initiative, which would expand the legal ability of physicians to prescribe marijuana for legitimate medical uses. Some members of NORML had drug convictions that made it a crime for them to attend the rally. One of them was Craig McClain, a victim of severe spinal trauma who had been growing marijuana for his personal medical use. After his conviction, McClain has become an activist working to enact the Compassionate Use Initiative. NORML invited McClain to speak at the rally. Under the terms of the Anaheim ordinance, however, McClain could not accept the invitation without committing a crime.

The ACLU sued in federal district court and asked for injunctive and declaratory relief on behalf of NORML, its members, and several individual plaintiffs, including McClain. In requesting an immediate preliminary injunction, the ACLU argued that the ordinance violated the First Amendment, the Due Process Clause, and the prohibition against bills of attainder. On May 23, two days before the scheduled rally, Judge Gary Taylor issued a preliminary injunction against enforcement of the ordinance. The court then set up an expedited schedule to resolve the case on the merits by the fall of 1995.

In June, 1995, the City of Anaheim repealed the challenged ordinance and acknowledged that the plaintiffs' are entitled to recover their attorneys' fees. The fees were paid and the case was closed in the fall of 1995. (Mark Silverstein, with Robert M. Myers of Newman.Aaronson.Vanaman)

149. People v. Blythe Street Gang (L.A. Superior Court)

In this case the City has filed a civil suit asking a judge to declare that the Blythe Street Gang and 500 unnamed members are a public nuisance. As a remedy, the City proposes that all 500 members be enjoined from engaging in a wide range of everyday lawful activities that are protected by the Constitution. The proposed order, which would apply in a large designated section of Van Nuys and Panorama City, bans non-residents form the area and confines teenagers to their homes after 8 p.m. It forbids any gang member from remaining in any public place for more than five minutes and prohibits associating with any other gang member. The proposed order also bans gang clothing or jewelry and forbids gang members from discussing or referring to the gang in any way. This case is very similar to a case filed by Hahn in 1987 against the Playboy Gangster Crips. We appeared in that action and were able to obtain a narrowing of the order issued to respond to our constitutional concerns. The ACLU has been granted permission to participate as amicus curiae. We will argue that the proposed order violates rights protected by the First Amendment, as well as the right of privacy, the right to travel, and the right to due process of law. A hearing on the City's request for a preliminary injunction was held on March 25, 1993. The judge, in early April, granted all of the City's requests. No appeal was taken. Many of the issues we raised will be litigated in the context of enforcement proceedings. (Mark Silverstein, Paul Hoffman, Carol Sobel)

150. Tsang v. Central Intelligence Agency (U.S. District Court, Central District)

Dan Tsang is a reference librarian at University of California, Irvine. One of his areas of interest and work is U.S. intelligence agencies. In this regard, he has catalogued several works by former CIA agents, and interviewed former intelligence agent Philip Agee in Europe. He recently filed a Freedom of Information Act (FOIA) request with the CIA for release of any files maintained on him by the agency. The agency responded with a blanket denial based on the mid-1980s revision to the FOIA which vested broad discretion in the CIA director to deny documents. Our review of the agency's preliminary response to Tsang suggests that the documents being withheld may demonstrate domestic surveillance of Tsang

by the agency, in violation of federal law. Tsang filed the complaint in his lawsuit pro per. The government has filed a motion to dismiss Tsang's case, which is presently scheduled to be heard on April 6, 1992. We filed an amended complaint in February. The court heard the motion for summary judgment on April 24th and has taken the matter under submission. On June 2, 1992 the judge denied the motion and ordered the government to prepare a more detailed Vaughn index. The government has released more documents showing that they disseminated information on our client to a foreign government. They had previously denied doing that. In mid-August, 1992, we filed a second amended complaint. Settlement has been reached and the case has been dismissed. (Kate Martin, Mark Srere of the ACLU National Security Project, Carol Sobel)

FREEDOM OF INFORMATION

151. Cook v. City of Los Angeles (L.A. County Superior Court)

This is a petition under the California Public Records Act in which plaintiff seeks a court order requiring the City of Los Angeles to disclose (1) arrest information regarding all persons found or bitten by the police dog handled by a single police officer in the LAPD. This case is about the right to obtain basic information on arrestees from the LAPD for the purpose of contacting those individuals about being potential plaintiffs in our ongoing litigation against the LAPD (Lawson v. Gates involving the use of police dogs as excessive force in searching and mauling suspects and bystanders). On April 24, 1992, Don Cook, co-counsel in Lawson, formally requested the City to provide information about individuals who were identified by the LAPD as having been persons detained or apprehended by the LAPD K-9 unit officer Douglas Roller. Such information is a "public record" under state law and is therefore available to the public. The City does not dispute that it is public information, but objects on the basis that it will be used for possible litigation against the City. The state public records act contains no exception restricting access to public records because they may be used in a lawsuit, and case law indicates that any inquiry into the motive for the request is improper. The City filed opposition papers on June 10th, and plaintiff filed reply papers. The motion was heard on June 17th, at which the ACLU associated in as counsel for plaintiff. Judge Kitsching denied the motion on the grounds that Judge Cooperman had already issued orders regarding these documents. The City filed a demurrer to the petition, which was overruled by Judge Kitsching on July 9, 1992. There are currently no hearings pending. The earlier motion before Judge Cooperman regarding the release of the public information on the officer/handler and dog will be renewed sometime later. The case was transferred to Judge Cooperman. We are awaiting a more opportune moment to renew the motion and for a state court of appeal decision in County of Los Angeles v. Superior Court. (Robin Toma, Paul Hoffman, with Don Cook and Robert Mann)

152. Haynie v. County of Los Angeles (California Supreme Court)

The ACLU filed an *amicus* brief in the California Supreme Court on May 21, 2001, in a case that challenges law enforcement agencies' practice of withholding as "confidential" routine

communications such as 911 and dispatch tapes. It presents vital questions regarding the public accountability of law enforcement agencies, and their obligations under California's open government laws.

The case arises from a July 1999 incident, in which Petitioner Elgin Haynie was stopped, removed from his car, and handcuffed by L.A. County Sheriff's Deputies. Mr. Haynie is an African-American man, who was driving with three Latina passengers at the time. Mr. Haynie and his passengers were held and questioned, and one of the deputies injured Mr. Haynie during this confrontation. Although all four in the car were released at the scene and no charges were filed against them, Mr. Haynie spent several days in the hospital afterwards.

Eleven days after this incident, Mr. Haynie through his attorney requested LASD records pertaining to the stop. Specifically, he requested: (1) the radio broadcast that the deputies relied on in stopping him; (2) a tape recording of the verbal communications between Mr. Haynie and the deputies during the stop; (3) the statements of the passengers in Mr. Haynie's vehicle during the stop; and (4) a tape recorded statement made by Mr. Haynie to internal affairs complaining about the deputies conduct during the stop.

Los Angeles County refused to provide any of the records sought, claiming that the materials were exempt from disclosure under Government Code §6254(f), which applies to "investigatory records.". Mr. Haynie thereupon filed a Petition for Disclosure of Records under the CPRA, which was denied by the Superior Court in December 1999. The Superior Court found that the records sought were exempt from disclosure under the investigatory records exemption. The Court of Appeal, Second Appellate District, reversed in part (80 Cal. App. 4th 603), finding that records created before or during the stop must be disclosed.

The case presents extraordinarily important issues regarding the accountability of police departments, including the necessity of making sure that law enforcement operates in the sunshine. These issues are especially timely in view of the most recent LAPD scandal, in which widespread officer misconduct went undetected for years. Without public access to records -- including tape recordings maintained by police departments -- evidence of police abuse and misconduct will remain hidden. Discovery conducted in litigation would then be the only means by which to obtain such materials. Abusive police officers, moreover, would likely be emboldened by a decision holding that the materials sought are confidential, since tape recordings of their radio transmissions and of their conversations during stops will generally be hidden from the public.

The case was argued before the California Supreme Court on September 4, 2001. In October, the Court ruled unanimously that police departments are not required by the state's public records act to disclose internal documents about certain criminal investigations – including traffic stops – even where no one has been charged with a crime. (Dan Tokaji)

153. Parachini v. County of Los Angeles

The ACLU filed a petition under the California Public Records Act to obtain information from the Office of the Ombudsman, which reviews the sufficiency of the Los Angeles Sheriff's Department's handling of civilian complaints. The judge issued a tentative order

denying the petition on the basis of an exemption the government never relied or even mentioned. We requested and were granted a chance to submit supplemental briefing. The petition was denied and we decided not to appeal. (Peter Eliasberg)

154. Roberts v. City of Palmdale (California Supreme Court)

We joined an amicus brief on behalf of the respondent, who argues that she is entitled to see a memorandum from a government attorney to the Palmdale City Council discussing the merits of respondent's claim that a land use the council approved was illegal. The claims are based on California's "open government" statutes. First, respondent claims the secret distribution of the memo to the council violated the Brown Act (the "open meetings" law). The Brown Act allows the city council to meet in "closed session" to get advice from a government attorney about litigation pending against the council only after first notifying the public. In this case, the public was not notified before the memo was distributed; respondent argues that the fact that the advice was given in written form rather than orally should not allow the council to avoid the Brown Act requirements. Second, respondent argues that the memo itself should be released under the Public Records Act, because the attorney-client privilege, which in other kinds of cases extends beyond the end of litigation, does not protect the memo here under the terms of the Public Records Act, since records of "pending litigation" are not exempt from disclosure once a case is over, and the original land use dispute that the memo addressed has long since ended. Mark Rosenbaum participated in the argument as amicus before the California Supreme Court on Wednesday, May 5, 1993. In June, 1993, the California Supreme Court unanimously held that the Public Records Act did not require disclosure of attorney opinions prepared for elected officials in this context. (Mark Rosenbaum, Carol Sobel, Raleigh Levine)

155. Wilcox v. Department of the Air Force (U.S. District Court, Central District)

Lawsuit against the U.S. Air Force to force public disclosure of details of the operations of a now-disbanded squadron of Soviet MiG aircraft that were used to train American combat pilots. We seek to make information on operations of "Constant Peg," the Air Force nomenclature for the supposedly secret MiG squadron, available to the public. The ACLU filed suit on behalf of a Los Angeles-based journalist, television and movie writer and author who is currently working on a book on fighter pilots. In 1992, the Air Force refused to release any details of Constant Peg to Wilcox, citing national security grounds, even though the unit's existence and operations had been reported extensively in general circulation news media as early as 1984. Wilcox first filed a freedom of information request in 1991, seeking details on the operation. In January 1992, the Air Force denied Wilcox' request in its entirety and, in November 1992, the office to the Secretary of the Air Force turned down -- again, in toto, his appeal of the original denial. The Government filed its Answer at the end of August. The Air Force agreed to a random sampling, which was provided June 1, 1996.

After reviewing the sampling of materials provided by defendants, plaintiff determined that the Air Force's reasons for withholding all of the materials relating to Constant Peg are

inadequate. Although the government claims that all this material is classified, some of it is already in the public domain. Plaintiff and defendant filed cross-motions for summary judgment in December 1996, and briefing was completed in January 1997. In March 1999, the district court issued a decision granting summary judgment to the Air Force in part, and requested further briefing on some of the documents being withheld by the Air Force. Supplemental briefing was filed in June, 1999, arguing that the Air Force should be required to disclose some of the information it has refused to release. On October 1, 1999, the district court issued a ruling that the Air Force was not obliged to disclose any additional materials beyond those which have already been disclosed. (Dan Tokaji, Peter Eliasberg, Mark Rosenbaum)

156. Williams v. San Bernardino Superior Court (California Supreme Court)

Petitioner, the San Bernadino County sheriff, argued to the California Supreme Court that he was not required to disclose certain documents requested under the California Public Records Act by real party in interest Daily Press Division of Freedom Newspapers. He claimed the documents requested were exempt from disclosure because they had been compiled in the course of a law enforcement investigation.

Together with the American Civil Liberties Union Foundation of Northern California, we filed an amicus brief before the California Supreme Court, arguing that investigatory records compiled for law enforcement purposes are not absolutely and permanently exempt from disclosure under the California Public Records Act, Government Code § 6254(f). Rather, once an investigation is closed and there is no real prospect of enforcement proceedings, documents compiled in the course of a law enforcement investigation must be disclosed unless there are independent reasons that justify nondisclosure, such as where revelation of the specific document requested would endanger the lives or safety of law enforcement personnel, reveal the identity of confidential informants, or violate the privacy interests of third parties. Oral argument was heard on May 4, 1993. The Court issued an opinion unanimously holding that the Public Records Act did not require disclosure of these types of investigative files. (Carol Sobel, Raleigh Levine)

FREEDOM OF RELIGION

157. Randall v. Boy Scouts of America, Orange County Council (California Court of Appeal, Fourth Appellate District; Ca. Supreme Court)

Plaintiffs, twin 10-year-old boys, were excluded from the Cub Scouts because they refused to say the word "God" as part of the Cub Scout pledge or to participate in religious activities required for advancement in Scouting. Represented by their father, suit was filed on February 21, 1991, alleging discrimination on the basis of religious beliefs in violation of the Unruh Civil Rights Act. A TRO was granted that day and a preliminary injunction was

granted April 25, 1991, barring the Boy Scouts from refusing to allow the boys to participate in Scouting, from requiring the boys to use the word "God" or from requiring them to participate in any religious events or religious requirements for advancement. The Boy Scouts filed a notice of appeal from the grant of the preliminary injunction on April 29, 1991. A temporary stay of the preliminary injunction was granted May 7, 1991. We associated in as co-counsel for purposes of defending against the Boy Scouts' appeal of the preliminary injunction. As requested by the Court of Appeal, we filed a response to the petition for writ of supersedeas on May 20, 1991. The Court of Appeal, in a split vote, issued the writ on May 30, 1991, staying the preliminary injunction pending the appeal. Although the appeal was fully briefed, the Court of Appeal denied our motion for calendar preference notwithstanding the scheduled commencement of the trial in the underlying action for November 10, 1991. Trial commenced November 20, 1991. So as to avoid questioning of the Randalls by Mr. Randall at trial, we assisted at trial on the direct and cross examination of the Randall family. On May 7, 1992 Judge Richard O. Frazee issued a tentative ruling in our favor, finding that the Boy Scouts are a business establishment subject to the Unruh Act and that permitting individuals who do not believe in God to be members of Cub Scouts "would not interfere to any significant degree with the purposes of scouting." Judgment was so entered on June 30, 1992. The Boy Scouts appealed and petitioned for a writ of supersedeas staying the permanent injunction pending their appeal. After we filed opposition, the Court of Appeal denied the request for a stay on June 9, 1992. The Boy Scouts thereafter petitioned the California Supreme Court for a writ of supersedeas, which was also denied. The Randall boys are therefore participating in scouting again pending the appeal. The Court of Appeal affirmed the trial Court's decision on February 28, 1994. The California Supreme Court decided to hear the case on June 2, 1994. Briefing was initially deferred pending decision of Warfield v. Peninsula Golf and Country Club, in which we are also counsel. Taylor Flynn argued the case before the California Supreme Court on January 5, 1998.

The boys, meanwhile, have completed their projects to attain Eagle Scout rank. The Boy Scouts sought to overturn the injunction and deny them Eagle Scout rank. The ACLU argued on February 5, 1998, in favor of keeping the injunction in place. A hearing on an Order to Show Cause why the injunction should not remain in effect was held on February 23, 1998; the court continued the injunction. On March 15, the Orange County Council Eagle board of review voted unanimously (6-0) to award the twins their Eagle badges. In addition, they were recently voted into the Order of the Arrow, a Scout honor society, to which fewer than 5% of all Scouts belong.

On March 23, 1998, the California Supreme Court held that the Unruh Civil Rights Act does not apply to the Boy Scouts because the Court does not recognize the organization as a business. The ruling applies only to California. While the outcome was disappointing, the announcement of the outcome has sparked debate nationwide, including much discussion aimed at convincing those who support scouting to withhold funds until the organization agrees to drop its discriminatory policies. (Taylor Flynn, Mark Rosenbaum)

158. People v. Pratt (California Court of Appeal, 2nd District)

Elmer ("Geronimo") Pratt spent nearly 27 years in prison on a conviction which violated his fundamental right to a fair trial under the long established principle of Brady v. Maryland. In May 1997, after a 4-week hearing, Judge Everett W. Dickey ruled that the prosecution had suppressed evidence that its central witness, Julius (a/k/a "Julio") Butler "had been, for at least three years before the trial, providing information ... to law enforcement agencies on a confidential basis" – agencies that included "the Los Angeles District Attorneys' Office which prosecuted this case" – in order "to extricate himself from his own legal difficulties and/or to ingratiate himself with prosecution and law enforcement agencies in Los Angeles on an ongoing basis for his own personal benefit." This information had been withheld from the defense for 25 years, through the original trial and appeal and all the subsequent habeas corpus proceedings before this one. Judge Dickey found that, "[t]he above information, if properly and timely disclosed to competent defense counsel, would have permitted potentially devastating cross examination" of Butler.

The jury was deprived of the truth about Butler: For nearly five years, starting over three years before the trial and continuing at least a year and one half after, Julio Butler carried a virtual "get out of jail free" card from the Los Angeles District Attorney's office ("LADA"), as a reward for extensive informing activities that culminated in his testimony pinning the Santa Monica tennis court murder on Geronimo Pratt. Evidence that came to light as a result of this habeas petition establishes that Butler was an informant for the LADA's Bureau of Investigation, Intelligence Division, and was entered into that agency's "CI" (confidential informant) index. In close cooperation with the Los Angeles Police Department ("LAPD"), Butler provided intelligence on the Black Panthers, turned over illegal weapons, and acted as an "agent provocateur." As was known or surmised by both LAPD and LADA investigators, Butler was an informant for agents of the FBI, with whom he met or spoke on approximately 30 occasions prior to Pratt's trial, providing such information as intelligence on the Black Panthers and naming at least eight individuals as having committed crimes. In exchange for these extensive informing activities from 1968 to 1972, Butler was allowed to escape jail for one felony and prosecution for at least three others.

It may be merely unsavory that Butler, a convicted felon striving to ingratiate himself with law enforcement, was effectively immunized from punishment and prosecution for a period of nearly five years. What is unconstitutional and fundamentally unjust, however, is that the same prosecuting agencies that immunized Butler from prosecution also immunized him from cross-examination at Geronimo Pratt's trial by suppressing this information about Butler.

Despite the enormity of this Brady violation, the District Attorney seeks in this appeal to overturn Judge Dickey's grant of a new trial, by making three arguments that would be

laughable -- but for the fact that they seek to return Geronimo Pratt to prison, where he has already spent 27 years on an unconstitutional conviction.

The ACLU's respondent's brief was filed on July 1, 1998. The District Attorney's office received an extension until September 19 to file its reply.

On December 15, 1999 Mark Rosenbaum and Stuart Hanlon argued before the 2nd District Court of Appeals. On February 22, 1999 the Court unanimously ruled that the District Attorney's office and the LAPD wrongly withheld evidence which denied Pratt his right to a fair trial. The next day, the D.A.'s office announced it would not pursue the matter any further, ensuring that Pratt will remain free. (David Schwartz, Mark Rosenbaum, Robert Garcia, Stuart Hanlon, Anthony Amsterdam, George Kendall, Robert Weisberg, James Liebman, Johnnie Cochran)

HEALTH RIGHTS

159. Galanty v. Paul Revere Life Insurance Company (California Supreme Court)

The ACLU filed an *amicus* brief on March 24, 1999 to reverse the Court of Appeal's decision in this case and to resolve a critical issue affecting disabled persons throughout California: whether an insurance company can, after more than 2 years have lapsed from its sale of a policy, deny benefits based on a purported pre-existing condition, notwithstanding the Legislature's express directive to the contrary. See Cal. Ins. Code §§ 10350.2 (disability policies), 10201 (group life insurance policies), and 10113.5 (individual life insurance policies).

The ACLU argued that the Court of Appeal's decision below is particularly troubling in light of recent medical progress which could be crucial to preventative health care: under the lower court's ruling, it may be argued that insurance companies would be free to deny benefits to persons who, for instance, had taken a genetic test for susceptibility to breast cancer or had received early diagnosis and treatment of high blood pressure. Moreover, the ruling below creates an absurd result which flies in the face of unambiguous legislative intent: even though the California legislature explicitly placed a two year limitations period on an insurer's ability to deny coverage based on a pre-existing condition, Cal. Ins. Code §§ 10350.2(b), and even though the legislature at the time the policy at issue here was sold prohibited insurers from asking about an applicant's HIV status, Health & Safety Code § 199.21(f), HIV positive persons who – in good faith and in accordance with the law – paid insurance premiums for years, will not only be denied coverage but will lose their premiums and risk dependence on government support in the event they become disabled years after the policy went into effect.

The case at hand demonstrates precisely what is at stake. After truthfully answering all questions asked and paying his premiums in full for more than five years, Mark Galanty was

diagnosed with AIDS. After Mr. Galanty filed a claim for benefits, and long after the two year limitations period of the incontestability clause had passed, the insurer initiated a comprehensive search for information which might undermine his claim. Even without discovering any information, the insurer terminated Mr. Galanty's benefits based on mere suspicion, and then formally denied his claim when Mr. Galanty truthfully informed the company that, years earlier, he had received an unconfirmed reaction to an HIV antibody test – information which the insurer had never requested originally and, in fact, was legally prohibited from asking when the policy was issued.

At the time Paul Revere Life Insurance Co. made the decision to issue a policy to Mr. Galanty, insurers were prohibited by California law from eliciting or relying upon the results of an HIV antibody test to determine insurability. The provision, which recognized the unreliability of such tests at the time, was amended after the date on which Mr. Galanty's policy took effect. Significantly, the amended provision allowed an insurance company to inquire directly about a prospective insurance holder's HIV status and to rely upon a positive HIV test result only if the first result was confirmed by a second test, the "Western Blot Assay," a test which Mr. Galanty never took. See Stats. 1989 ch. 824 § 1.5; Stats. 1991 ch. 963 § 2. Thus, even had the amended provision been in place at the time Mr. Galanty purchased the policy, Paul Revere still would have been prohibited from denying him benefits.

It is important to recognize that, under the medical criteria then in force, Mr. Galanty would not have been diagnosed with AIDS. At the time, in order to diagnose an individual with AIDS, the Center for Disease Control ("CDC") policy required a positive HIV test associated with at least one specified symptom or clinical condition. Mr. Galanty was not suffering any illness, disease or symptoms that would have led to an AIDS diagnosis in 1989. Reflecting the state of medical knowledge at the time, Mr. Galanty was not prescribed any course of treatment. It was not until 1993 that the CDC modified its criteria for an AIDS diagnosis, four years after Mr. Galanty's policy took effect, and Mr. Galanty still was not diagnosed with AIDS until August, 1994. Paul Revere's argument that Mr. Galanty should have disclosed his HIV status – although the insurer was barred by law from requesting this information, although Mr. Galanty's infection was never confirmed by a Western Blot Assay, and although he at the time had no AIDS diagnosis nor even a prescribed course of treatment – defies common sense.

The Court of Appeal's ruling in Galanty will require courts to speculate regarding the probable course of a particular disease in a given patient. Approximately ten percent of all persons testing positive for HIV never become ill; likewise, many with high blood pressure never suffer from heart attacks. Rather than allowing speculation as to whether an individual's particular condition will later turn out to have been a precursor to a subsequently disabling disease – a question whose answer may change as medical knowledge progresses – the ACLU argued that the Court should effectuate the clear intent of the Legislature when it required the inclusion of incontestability clauses in disability policies. The California Supreme Court heard argument on the case on April 4, 2000. On July 19, 2000 the

California Supreme Court ruled that an insurance company many not deny disability benefits to an AIDS patient just because the policyholder had tested HIV-positive before he bought the insurance. Under the ruling, insurance companies will no longer be able to refuse benefits on the grounds that the policyholder had a preexisting condition; the company must show that the policyholder committed fraud in filling out the application, and can only do so if the policy contains a specific exception for fraud. (Taylor Flynn)

160. Hernandez v. Chin (U.S. District Court, Central District)

The ACLU joined HIV and Aids Legal Services (HALSA) in preparation for a jury trial on behalf of Ruben Hernandez, an HIV-positive man who was discriminated against by the defendant, a dentist. Mr. Hernandez went to see the defendant in November of 1997 after he was informed that he was eligible for dental care as part of his Medicare coverage. His purpose in going to see Dr. Chin was simply to interview her to see if he wanted to choose her as out of a small group of "preferred providers" whose office was close to his home. According to Mr. Hernandez, when he interviewed with Dr. Chin he told her of his HIV status. At that point her whole demeanor changed and she informed him that she was not taking new patients and that he should look elsewhere for a dentist. Mr. Hernandez asked two of his friends to call Dr. Chin in the next few days. Both of them were informed that Dr. Chin was taking new patients.

Dr. Chin claims that Mr. Hernandez demanded an appointment within the next week and she told him that none was available, but that she could see him in a few months. We believe that Dr. Chin's story is false in a number of ways. First, Mr. Hernandez' insurance did not become effective until January, 1997, so it is unlikely that he would have demanded an appointment within the week. Second, he had been receiving free dental care at Aids Project Los Angeles. Third, he did not receive any dental treatment between November, 1997 and January 1998, so it is unlikely that he demanded an immediate appointment from Dr. Chin. Finally, the dentist he eventually did choose, who saw him in January 1998, will testify that she simply gave him a routine check up and cleaning when he saw her. She will also testify that he had no need for emergency treatment.

Plaintiff sought damages for pain, suffering and humiliation. He also sought an injunctive order requiring Dr. Chin to take certain steps to ensure that there is no future discrimination in her office on the basis of HIV status. A few days before trial the parties settled. Defendant agreed to pay $45,000 in damages, take a course at USC in dentistry and infectious diseases, and place a statement on patients' health questionnaire stating that she does not discriminate on the basis of HIV or AIDs. (Peter Eliasberg, Dan Tokaji, Mark Rosenbaum, and Brad Sears)

161. Matthews v. Kizer (U.S. District Court, Northern District)

This suit was filed in federal court for the Northern District of California. It alleges that the State of California has failed to comply with a federal mandate regarding lead poisoning

testing for low-income children. The action seeks to compel the State to make both lead screening and testing available for all children in the Children's Health and Disability Prevention Program as part of April 1989 amendments to the federal Medicaid Act. After the federal government (HCFA) filed an amicus brief in support of our position, the State intensified its interest in settlement. The accord reached and approved by Judge Lynch commits the Department of Health Services to set up within 30 days the most comprehensive lead screening program for children anywhere in the country. The program calls for venous blood lead screens to be administered to all low income children below the age of 6, typically at the age of 1. Follow-up protocols consistent with CDC guidelines are also defined. (Mark Rosenbaum with Natural Resources Defense Council, National Health Law Project, NAACP Legal Defense and Education Fund, ACLU of Northern California)

162. Tailfeather, et al. v. Los Angeles County Board of Supervisors (Los Angeles Superior Court)

This is an action to require Los Angeles County to adopt standards concerning the timely provision of necessary medical services to the poor at the County's hospitals and health centers. Interminable delays in delivering essential medical care have become the norm at the County's facilities. Under state law, the defendant has the mandatory duty to provide necessary medical care to indigent residents of Los Angeles County and to adopt standards to ensure the adequacy of such care. Although defendants have adopted standards governing the eligibility and scope of care, they have failed to adopt any corresponding standards on the timely provision of medical care. The complaint was filed May 13, 1993, seeking declaratory and injunctive relief or, alternatively, a peremptory writ of mandate, under §§ 17000 & 17001 of the Welfare & Institutions Code, § 450 of the Health & Safety Code, and Article I, § 1 of the California Constitution, requiring the defendants to promulgate reasonable and non-arbitrary standards on the timely delivery of health care to the poor and to administer the County's hospitals and health centers in accordance with such standards. The case is on appeal. (Mark Rosenbaum, with Western Center on Law & Poverty, National Health Law Program, LAFLA, and Legal Services Program for Pasadena and San Gabriel-Pomona Valley)

163. T.L. v. Belshe (U.S. District Court, Eastern District of California)

Civil rights lawsuit against the California Department of Health Services for its failure to provide low-income, Medi-Cal eligible children with necessary medical treatment. Plaintiffs in the suit are four seriously ill children who are unable to receive medical treatment due to the state's violation of federal law. The suit contends that the state has failed to meet federal requirements to provide medically necessary procedures for determining and treating children with special needs through the Medicaid Act's Early and Periodic Screening Diagnosis and Treatment (EPSDT) program. The federal program provides eligible children with individualized interventions to correct or ameliorate physical or mental defects. Among the kinds of services currently and routinely denied these children are in-home care, psychological services and behavior therapy. After extensive discovery was undertaken by plaintiffs, the State announced that it would revise its regulations. Those revisions have been

promulgated, and they appear to respond to many of our concerns. The case has now settled. (Mark Rosenbaum, with Mental Health Advocacy Services, Protection & Advocacy, Inc., and numerous other public interest law firms)

164. U.S. v. Oakland Cannabis Buyers Club (U.S. Supreme Court)

The California affiliates together with the National ACLU filed an *amicus* brief in the U.S. Supreme Court in support of the use of medical marijuana. In 1996 Californai adopted Prop. 215, a measure that authorized patients to obtain marijuana if they had a doctor's recommendation; the federal government has continued to enforce laws against distributing the drug. The government appealed a 9th Circuit decision that it is legal to give marijuana to patients based on "medical necessity." Eight states in addition to California have compassionate use statutes. On May 1, 2001 the U.S. Supreme Court reversed, ruling 8-0 that there is no medical necessity exception under federal law (ACLU of Southern California, ACLU of Northern California, ACLU of San Diego, ACLU National, ACLU Drug Reform Litigation Project)

IMMIGRATION RIGHTS

165. Bureerong v. Uvawas (U.S. D.C. Central District of California)

On October 25, 1995, we filed our amended complaint on behalf of 68 Thai garment workers who were forcibly confined for years inside a razor-wire ranged compound in El Monte California. Our complaint alleges the following: inside the El Monte facility, our clients were compelled to sew garments that were later sold by some of this country's top manufacturers and retailers. The workers often labored for over eighteen hours per day. When they were paid at all, they received wages well below the minimum and were not paid overtime. They were frequently threatened with harm, both to themselves and their families, if they attempted to escape.

Our lawsuit names as defendants both the operators of the El Monte compound and the manufacturers that purchases goods from this facility and allegedly profited from the violations to which the workers were subjected. Our complaint contains claims for damages and equitable relief under the Thirteenth Amendment, the Fair Labor Standards Act, and state labor laws.

Several of the manufacturers who we sued, including Mervyn's and B.U.M. International, filed motions to dismiss the complaint. On March 22, 1996, the district court issued a decision denying the bulk of the manufacturers' motions to dismiss. The court ruled that the workers were entitled to pursue their claim against the manufacturers under both the Fair Labor Standards Act and California law. In so holding, the Court rejected the manufacturers' argument that they are shielded from liability because they employed the workers through

a contractor, concluding instead that the "economic reality: of the relationship governed. This is the first decision we know of expressly holding that garment manufacturers can be held liable for back wages as a "joint employer," even when they employ workers through an intermediary. Significantly, the court also held that the Department of Labor's pending action against the compound operators did not preclude the workers from bringing suit against the manufacturers under the Fair Labor Standards Act.

The only claims dismissed were those for violation of California's Industrial Homework Act and Garment Registration Act. The court held that only the state has authority to enforce these provisions and, therefore, that plaintiffs have no private right of action. However, the court's decision made clear that the workers can raise a claim for these same violations on a negligence per se theory.

The district court's decision was a significant victory because it sets an important precedent on the scope of responsibility of garment manufacturers for sweatshops run by their subcontractors.

On July 9, 1996, the district court granted our motion to amend our complaint to include claims against two additional defendants: Miller's Outpost and Montgomery Ward. In addition, we have added as plaintiffs several Latino workers who were working for the sweatshop operators and were paid wages below the minimum. We are currently proceeding with discovery against the manufacturers.
On March 3, 1997, the plaintiffs won a second legal ruling with potentially far-reaching implications. The court rejected a motion by Miller's Outpost to dismiss claims for false imprisonment, invasion of privacy and negligent sale of tainted goods. The ruling was significant not only for holding that a retailer/manufacturer may be liable for intentional and even malicious wrongs of its contractors in operating a sweatshop, but also for holding that a retailer can be held responsible for sweatshop conditions by negligently acquiring sweatshop-made garments, even if the retailer was not directly responsible for the sweatshop operation.

In December, 1997, the clients personally received their distributions of the $2 million settlement with defendants Mervyn's, LF Sportswear, B.U.M. and Montgomery Ward, and a confidential additional sum from settlement with Hub Distributing/Miller's Outpost.

Plaintiffs settled their case against another manufacturer, Tomato, Inc. on the eve of trial for $1.2 million. (Mark Rosenbaum, David Schwartz, Dan Tokaji and Rocio Cordoba, with Asian Pacific American Legal Center, Asian Law Caucus, ACLU Immigrant Rights Project, Rothner, Segall, Bahan & Greenstone, Hasdell & Stormer, and Bird, Marella, Boxer and Elkind)

166. Flores v. Reno (U.S. District Court, Central District)

Class action challenging two aspects of INS policy towards the detention of minors: 1)

conditions of detention; 2) the INS policy of not releasing children who can bond out unless they are released to their natural parents-who are often still in the country of origin or are in detention themselves. In late 1987, after extensive discovery, the conditions issue was resolved by settlement, wherein the INS has agreed that for every child that it must confine, the child will be placed in a foster home environment within 72 hours after detention. In addition, in May 1988, the Court also granted our motion to adjudicate the INS practice of strip searching children as unconstitutional. Finally, in June 1988, the Court also granted our motion to allow children to be released to any responsible adult, including church groups and other organizations. The government filed an appeal relating to the court's equal protection order. The appeal was argued in April, 1989. In late June, the Court of Appeals overturned the District Court's order finding that the INS policies regarding detention of juveniles was constitutional. In late November the Ninth Circuit granted our Petition or Rehearing En Banc. In the summer the en banc panel ruled 7 to 4, in a splintered decision, to reverse the original panel decision and to affirm our victory below. Flores v. Meese, 942 F.2d 1352 (9th Cir. 1991). In late February 1992 the U.S. Supreme Court granted the government's Petition for Cert. The Government's opening brief was filed on May 7, 1992. Our brief was filed on June 29, 1992. The oral argument took place on October 13, 1992. Carlos Holguin of the Center for Human Rights and Constitutional Law is the lead counsel in the appeal. In March, 1993, the Supreme Court rejected all of our arguments and reversed the Ninth Circuit's decision upholding the INS regulation we challenged. We will try to make alternative arguments to challenge the regulation in district court on remand if the Clinton Administration does not change this policy. In August 1993, we had a hearing before Judge Kelleher in which he appeared to accept our argument that we could still pursue an "as applied" challenge to the current regulations. All substantive issues in the case have been settled. After negotiations with the U.S. Attorney's office, plaintiffs have agreed to a settlement of $374,110.09 in attorneys fees. Settlement has been approved by the judge. (Paul Hoffman, Silvia Argueta, with other public interest groups)

167. Gregorio T. v. Wilson, et al. (U.S. District Court, Central District of California)

This class action was filed November 9th, 1994, immediately upon passage of Proposition 187. The lawsuit challenged the implementation of Proposition 187 which purported to amend California statutes to prohibit undocumented persons from receiving publicly-funded services, including social services, health care services, and education. To enforce these prohibitions, the amended statutes would direct health care and social service providers to deny services to anyone who they "determine or reasonably suspect" to be undocumented, to notify suspect that he or she must obtain legal status or "leave the United States," and to notify the head of the state agency, the state Attorney General, the INS, and "any other public entity" of the "apparent illegal status" of the individual. Elementary and secondary schools would also be directed to verify the legal immigration status of each student and each parent and/or guardian. If the school "reasonably suspects" a pupil or parent to be undocumented, it is to notify the parents that their child cannot continue to attend school unless legal status is established, and to report any suspected person to the state Department of Education, the state Attorney General and the INS.

In Decembe 1994, Judge Pfaelzer issued a preliminary injunction against all but three of the Proposition's provisions. One of these provisions, prohibiting undocumented persons from receiving post secondary education, was enjoined in a separate state court case filed in San Francisco. In January 1995, the State filed an appeal of the preliminary injunction. On February 3, 1995, the State filed a motion requesting the district court abstain by either dismissing or staying the case until pending state court actions are decided, or in the alternative to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Judge Pfaelzer denied the State's motion after a hearing on March 13, 1995. We moved for summary judgment on May 1, 1995, on our Supremacy Clause claim.

The Court heard arguments on July 26, 1995, and requested further briefing from the State on the issue of severability. On November 20, 1995, Judge Pfaelzer issued an opinion granting in part our motion for summary judgment. This opinion held Proposition 187's immigrant classification, notification, and reporting schemes to be preempted by federal law. It also held the denial of a primary and secondary education based on immigration status to be preempted. In addition, the opinion states that the state is prohibited from conditioning receipt of any federally funded benefits on immigration status and that, to implement any part of Proposition 187, the state must develop regulations that rely solely on federal immigration determinations.

Subsequent efforts by the State to have the District Court reconsider its earlier rulings enjoining the initiative were denied, as well as efforts by Prop. 187 proponents (the Alan C. Nelson Foundation of Americans for Responsible Immigration) to intervene. Pfaelzer's denial of the much belated motion to intervene was appealed to the 9th Circuit. The Court of Appeals unanimously affirmed the denial.

Judge Pfaelzer issued an opinion on November 14, 1997 finding the substantive provisions of Prop. 187 preempted by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. On March 13 Judge Pfaelzer issued a final judgment, confirming the federal government's exclusive authority over immigration and permanently enjoining enforcement of virtually all of Prop. 187. With this ruling, trial is unnecessary. The ruling declares that the benefits denial, classification, verification, notification and reporting provisions of the measure are unconstitutional. The state filed an appeal, and we cross-appealed on those provisions dealing with false documents (repetitive of federal law) upheld by the court.

The Governor called for mediation, and the initial mediation session with a 9th Circuit mediator was held in June, 1999. After weeks of intensive discussions, an agreement was reached on July 29, 1999 by which Judge Pfaelzer's order will essentially be affirmed. The State and we have dismissed our appeals. One of the plaintiff groups, which we do not represent, refused to sign on to the mediated agreement and petitioned the 9th Circuit for rehearing of the order dismissing the appeal. The ACLU filed briefs explaining why the petition should be denied, though our case is not at issue. The Ninth Circuit denied the petition. Attorneys fees were received in October, 2001. (Mark Rosenbaum, Dan Tokaji,

Peter Eliasberg, with other public interest organizations)

168. Lopez v. INS (U.S. District Court, Central District)

Nationwide class action challenging (1) INS policy of not permitting access to counsel upon request by persons arrested without a warrant and (2) INS' failure to provide advisals of rights to persons arrested by the agency for deportation proceedings. A settlement was reached under which 1.5 million aliens arrested each year will be granted access to counsel prior to interrogation and a new Notice of Rights form. The settlement was approved, over last minute objections by the Government, in July 1992. The Center for Human Rights and Constitutional Law was the primary counsel in the case. (Mark Rosenbaum)

169. Mendez v. Thornburgh (U.S. District Court, Central District)

This suit contests the procedures of a recently-established INS task force sent to Los Angeles and certain other principal cities for purposes of speeding up the asylum adjudication and decision-making into no more than a one hour affair. Discovery into the practices utilized showed the newly-arriving asylum examiners to be lacking sufficient training to even be capable of stating or explaining basic standards for granting asylum. A videotaped training cassette, played to all examiners, cautioned against devoting too much time to the interview process for applicants and predicted that most applicants would have frivolous claims. Interviews were conducted in noisy, crowded counters, sometimes without adequate translators. Counsel were often not permitted to participate. After hearing argument on a motion for preliminary injunction, Judge Terry Hatter structured a consent order requiring the INS to afford new interviews and cancelling deportation hearings for applicants denied asylum as consequence of the Task Force interviews and recommendations. At an October 2, 1989 hearing, Judge Hatter extended his previous order until July 1990. The government has moved for a modification of the order regarding plaintiffs' monitoring of the interview process; however, they do not appear to be contesting the order to re-interview and re-adjudicate the 30,000 interviews we challenged. A settlement was reached in the case in 1993. (Mark Rosenbaum, Lucas Guttentag of the National ACLU, with National Center for Immigrants Rights, CARECEN, Legal Aid Foundation of Los Angeles)

170. Turcios v. Reno (United States District Court, Central District of California.

Along with seven civil rights groups we sued the U.S. Immigration and Naturalization Service, charging that the INS has systematically mishandled the cases of more than 100,000 people seeking political asylum in Southern California. The result of these abuses is that thousands of asylum-seekers are unable to obtain INS authorizations to seek employment -- a right guaranteed to such refugees under federal regulations and as a result of previous lawsuits, including the Mendez case prosecuted by our office. The systematic INS abuses, the lawsuit charged, puts asylum-seekers in an ugly -- potentially deadly -- Hobson's Choice. It forces them, the complaint contended, "to choose between destitution, working illegally or returning to their former homelands, which they fled because of fear of persecution."

The class action complaint identifies nine individual asylum-seekers victimized by the government actions and asserts that INS abuses affect more than 100,000 people in Southern California, alone. Asylum-seekers, the lawsuit contends, are often bounced randomly from one INS office to another over periods of several months in which they are told that their situations cannot be resolved at whatever office at which they happen to be present, and that they must go elsewhere. In the complaint, we noted that a prominent INS official has admitted that computer records on 60,000 asylum seekers are "lost out in space" -- so poorly maintained as to be almost nonexistent.

Typical of the individuals victimized by the INS policies is a Guatemalan refugee, identified only as Jose. In November, 1993, Jose filed an application for renewal of his employment authorization. A month later, the INS notified Jose that his asylum application could not be located. He complied with INS instructions and resubmitted copies of his application to the Western Service Center. He has received no further INS response. "If I lose my job, my family and I will suffer great hardship. I have my wife and three children to support." Jose said. In May 1994, Jose went in person to the INS asylum office in Anaheim. From Anaheim, he was directed to Los Angeles. At Los Angeles, he was directed to Bellflower. There he was told that he had to submit another application for employment authorization to the Western Service Center in Laguna Niguel. More than seven months have passed since Jose submitted his application for renewal of employment authorization.

Jose fled Guatemala with his family in 1986. He had been an economics student at the University of San Carlos de Guatemala since 1982 and was very active in the student protests against the government for socio-economic reform. He also taught seminars on socio-economic reform at a private business school.

According to the complaint, the INS regularly deprives asylum applicants of the timely and continuous employment authorization to which they are entitled by law. Often, employment authorization is denied as a result of INS recordkeeping failures. Sometimes, authorization is denied with no reason given at all.

The plaintiffs are asking that the court issue an injunction ordering the INS to issue immediate employment authorization to all political asylum applicants whose requests for employment have been pending longer than INS's own regulations stipulate -- initial requests, 90 days; renewal requests, 60 days. The plaintiffs are also asking that INS immediately cease refusing applicants' employment authorization on the grounds that their cases do not appear in the INS computer records, where the applicants' prior employment authorization document (or "EAD" in INS parlance) show that employment authorization was granted based upon an asylum application and INS has no evidence that their asylum claims are no longer pending. Attorneys fees were received in August, 1996. In the meantime, work authorization applications which are denied are being reviewed on a case by case basis. (Mark Rosenbaum, Silvia Argueta, with National Immigration Law Center, the ACLU National Immigrants Rights Project, El Rescate, Central American Refugee Center, Public Counsel and the Legal Aid Foundation of Los Angeles)

171. Xiloj-Itzep v. City of Agoura Hills (L.A. County Superior Court, Northwest Division)

A civil rights and taxpayer lawsuit filed on September 19, 1991, brought by thirteen Latinos who have been arrested, criminally prosecuted, or racially discriminated against in the City of Agoura Hills for being present in the city to solicit work. The suit challenges the constitutionality, facially and as applied, of city ordinances that criminalize the solicitation or attempted solicitation of work from persons in vehicles, regardless of whether the person soliciting is on the public sidewalk, a private parking lot, or the vehicle is legally stopped. Several Southern California cities currently have or are proposing the enactment of similar laws. We are asking the court to declare the laws invalid on state constitutional and statutory grounds, as violative of the rights to free speech, assembly, equal protection, due process (vagueness), and state civil rights laws (the latter based on Jack-In-The-Box's denial of service to persons thought to be day laborers). After considerable procedural wrangling, recusals and challenges to judges on December 31, 1991, we argued for the preliminary injunction before Judge Kolostian. Kolostian denied our motion with little explanation. We appealed the denial of the preliminary injunction on the issue of the ordinance's constitutionality. Agoura Hills filed a demurrer on August 7, 1992, along with plaintiffs' motion for leave to amend the complaint to, among other things, include claims under 42 U.S.C. § 1983. The court sustained the demurrer regarding our challenge to the facial validity of the ordinance. A settlement agreement with Jack-In-The-Box was reached. It provided a sizable monetary sum for each of the plaintiffs denied service at Jack-in-the-Box and $5,000 for plaintiff's attorney fees. Also, it requires training and posting of signs at Jack-in-the-Box regarding non-discrimination policies. Our opening brief in the appeal was filed on September 1, 1993. The Respondent's brief was filed in early November. Our reply was filed on November 22, 1993. On October 22, 1993, City filed opposition brief and request for judicial notice of demurrer order and legislative history of a state vehicle code which we argued preempts the city ordinance. On November 18, 1993, we filed an opposition and a motion to correct the defective opposition brief on the grounds that it improperly cited to facts not in the record and that it incorporated additional materials for which the court had not an opportunity to rule on whether it could be properly judicially noticed. On November 19, the city opposed our motion to correct and replied to our opposition to their judicial notice request. On November 22, 1993, the court of appeal ruled in our favor, ordering the city to rewrite its brief and giving us twenty days to reply, once the City's rewritten brief is filed. On December 2, 1993, the City filed its rewritten brief. Oral argument was held on April 14, 1994. Shortly thereafter, the Court of Appeal, 2nd Appellate District, Division 7, issued its opinion agreeing with the City, and affirming the trial court's denial of our preliminary injunction motion. The opinion held the ordinance to be constitutional. We filed a petition for rehearing, which was denied. A request for depublication was filed with the California Supreme Court in early June. (Robin Toma, Carol Sobel, Public Counsel, LAFLA's Immigrants' Rights Office, MALDEF, CARECEN, and National Immigration Law Center.)

LESBIAN, GAY, BISEXUAL 7 TRANSGENDERED RIGHTS

172. Acevedo v. City of Los Angeles (Worker's Compensation Appeals Board, Van Nuys)

Amicus brief against City of Los Angeles for its attempt to force a lesbian police offer to choose between receiving her worker's compensation benefits and "outing" her past sexual partners. The amicus brief was filed before the Worker's Compensation Appeals Board in Van Nuys on behalf of Acevedo's unnamed sexual partners. As part of Acevedo's stress-related worker's compensation case, the city attorney's office questioned her in deposition and requested that she name all sexual partners, past and present. When she refused to supply the information, the city filed a motion to stop payment of her worker's compensation benefits. Federal and state laws specifically preclude this type of questioning. The amicus brief filed by the ACLU alleges violation of First Amendment and privacy rights. As a result of our amicus brief, the Los Angeles City Attorney's office agreed that the questioning was "overbroad" and agreed to retract the request to terminate Acevedo's benefits. In addition, the City Attorney agreed to train all city attorneys in the worker's compensation division on the impropriety of this line of questioning. (Taylor Flynn)

173. Beyer v. Beyer (Orange County Superior Court)

This case involves a lesbian mother in a custody dispute with her former husband. On October 7, 1997, based on a finding by the psychological evaluator that it was in the children's best interest to relocate to Orange County, the Orange County Superior Court ordered that the children's mother would have primary physical custody if she moved to Orange County by December 1, 1997. Because the mother was unable to move by December 1, primary custody reverted to the father on December 16, 1997. After additional psychological evaluation, on August 18, 1998 the judge signed an order giving primary custody to the mother; the father will have custody primarily during vacations. (Taylor Flynn)

174. Citizens for Responsible Behavior v. Superior Court (California Court of Appeal, Fourth Appellate District)

A conservative group in City of Riverside qualified for the November 1991 ballot an initiative which would have repealed the City's AIDS anti-discrimination ordinance, disempowered the City's human relations commission from working to eliminate prejudice based on sexual orientation, prohibited the City Council from ever enacting an ordinance prohibiting discrimination based on sexual orientation, and prohibited the City from ever passing any law or directly or indirectly funding any individual, activity or organization which promotes, encourages, legitimizes or justifies homosexuality or homosexual conduct. After the City Council obtained legal opinions indicating that the proposed initiative would be blatantly unconstitutional, it declined to place the initiative on the ballot. The City brought an action for declaratory relief that its conduct was proper and the proponent of the measure filed a separate petition for writ of mandate with the Riverside Superior Court. The actions were consolidated and we intervened on behalf of the Riverside Coalition Against

Discrimination, Dr. Francis Carney, and June E. Foreman, opponents of the measure.

On August 19, 1991, the Riverside Superior Court ruled that the measure need not be placed on the ballot. The proponents of the measure filed a writ of mandate with the Court of Appeal on August 21, 1991. The Court of Appeal denied the writ, thereby precluding the 47 measure from appearing on the November 1991 ballot, but ordered briefing on the merits regarding whether the measure should be allowed to appear on the June 1992 ballot. After extensive briefing, the matter was argued on December 4, 1991. The Court of Appeal issued a tentative decision, ruling that the proposed initiative unconstitutionally denied people with AIDS and lesbians and gay men equal protection of the laws by making it harder for them than others to obtain protective legislation and by fostering and furthering private discrimination. The Court of Appeal also tentatively concluded that the measure was unconstitutionally vague, violative of rights of due process and freedom of expression, and was a disguised, illegal attempt to amend the city charter which illegally "ties the hands of the city council" with respect to future legislation. Finally, the Court tentatively concluded that the measure's provisions are not severable and that it would constitute a fraud on the electorate to have the initiative appear on the ballot. On December 17, 1991, the Court issued its decision, published at 1 Cal.App.4th 1013, 2 Cal.Rptr.2d 648, holding as indicated in its tentative ruling. A Petition for Rehearing, filed December 31, 1991, was denied January 9, 1992. A petition for review, filed with the California Supreme Court on January 27, 1992, was denied on March 12, 1992. The decision was crucial in the reversal of a similar ordinance passed in Concord, California, held unconstitutional by the Contra Costa Superior Court on November 16, 1992, and was important in the challenge to Amendment Two in Colorado. (Jon Davidson, with Mary Newcombe, Lambda Legal Defense and Education Fund, and Stephen Bomse, Clyde Wadsworth, and Dan Slaughter of Heller, Ehrman, White & McAuliffe)

175. City of Topeka v. Movsovitz (Kansas Court of Appeals)

This is a suit challenging the Kansas statute that criminalizes sodomy only between same-sex couples. The defendant in the case was charged with solicitation of the crime of sodomy; the Topeka police went into a public park and made solicitations to several men, asking whether they would like to engage in various sexual acts. When the officer approached Mr. Movsovitz and asked whether he would like to have oral sex, he replied that he would. Money was never mentioned. A location and time for the sexual act were never specified.

The ACLU's argument against the sodomy law in Kansas is that it violates both equal protection and privacy rights, because the court has selected out only same-sex couples for criminalization. In *Romer v.Evans* (the Colorado Amendment 2 decision), the Supreme Court said that laws could not single out a group for special treatment. The ACLU argues that the S.Ct. decision in *Bowers v. Hardwick*, which reaffirmed Georgia's sodomy law by saying that gays and lesbians do not have any rights to sexual privacy protections, is no longer good law in view of *Romer*.

This case also involves free speech, because Movsovitz is charged with speaking about an act he did not commit. Although the law makes it illegal for a person to make plans to commit a crime, the ACLU's argument is that since the underlying statute is unconstitutional, the behavior itself is not a crime, and so speech about this act cannot be a crime either. The ACLU is challenging the law on equal protection, privacy, and free speech grounds. Matthew Coles argued the case before the Kansas Court of Appeal. In April, 1998 the Court ruled against the ACLU. The Kansas Supreme Court denied certiorari and, fortunately, depublished the Court of Appeal's opinion (although the case remains good law). (Taylor Flynn, Matt Coles with the National Lesbian and Gay Rights Project)

176. Curran v. Mt. Diablo Council of the Boy Scouts of America (California Supreme Court)

This is a suit challenging the policy of the Boy Scouts not to permit participation by lesbians and gay men. Plaintiff contends that this policy violates the Unruh Civil Rights Act, which prohibits arbitrary discrimination by "business establishments." The Superior Court sustained defendant's demurrer to the complaint, without leave to amend, on October 30, 1981. The Court of Appeal reversed on October 3, 1983, upholding our view that the Unruh Act bars discrimination on the basis of sexual orientation and that our allegations respecting the Boy Scouts makes them a "business establishment" within the meaning of the Unruh Act. The California Supreme Court denied defendant's petition for hearing and the Boy Scout's appeal to the U.S. Supreme Court was dismissed. After years of discovery and pre-trial motions, the first phase of trial began September 20, 1990, and dealt with whether the Boy Scouts are a "business establishment." On November 6, 1990, the Court ruled in our favor, holding that the Mt. Diablo Council is a "business establishment" under the Unruh Act. The second phase of trial began on December 10, 1990, and dealt with whether application of the Unruh Act to the Mt. Diablo Council in this case impermissibly would violate its members' rights to intimate or expressive association under the U.S. Constitution. Closing arguments, after post-trial briefing, took place on February 22, 1991. While rejecting claims of intimate association, the Court issued a tentative decision on May 30, 1991, (later made final with minor modifications) accepting the Boy Scouts' argument that a significant part of their mission involves teaching that homosexuality is immoral and that requiring them not to discriminate on the basis of sexual orientation substantially would impact Scouting's ability "to get across its preferred message in its preferred way" in violation of their right of expressive association. Judgment was entered July 25, 1991. Notice of appeal was filed September 27, 1991. The Boy Scouts filed a cross appeal on October 16, 1991. The California Association of Human Rights Organizations has filed an amicus brief in support of our appeal. The Court of Appeal ruled, two-to-one, on March 29, 1994, that the Boy Scouts are not a business establishment and that their policies are justified by the rights of intimate and expressive association. We filed a petition for rehearing, which was denied April 18, 1994. We thereafter filed a petition for review with the California Supreme Court, which was granted June 2, 1994. The Court deferred briefing, however, pending decision of Warfield v. Peninsula Golf and Country Club, in which we are also counsel. After Warfield was decided, the Court set an August - September briefing schedule for both this case and Randall v. Orange County Council. Jon Davidson argued the case on behalf of the

ACLU before the California Supreme Court on January 5, 1998. On March 23, 1998, the California Supreme Court held that the Unruh Civil Rights Act does not apply to the Boy Scouts because the Court does not recognize the organization as a business. The ruling applies only to California. (Taylor Flynn, Paul Hoffman, Jon Davidson from LAMBDA)

177. Delaney v. Superior Fast Freight (California Court of Appeal, Second Appellate District)

On August 26, 1991, Superior Court Judge Diane Wayne ruled in this sexual orientation employment harassment and discrimination case that the Los Angeles City ordinance prohibiting sexual orientation discrimination in employment is void and unenforceable. She based her ruling on her conclusion that the city's ordinance is preempted by California's Fair Employment and Housing Act, even though that state law does not currently prohibit discrimination on the basis of sexual orientation. Judgment was entered on October 10, 1991 and Notice of Appeal was filed December 6, 1991. We prepared an amicus brief on behalf of all California affiliates of the ACLU , the California Association of Human Rights Organizations, the California Women's Law Center, the Western Center for the Handicapped, and the San Francisco Lawyers' Committee for Urban Affairs, which was filed on June 9, 1992. Our brief noted that finding preemption would threaten not only the sexual orientation anti-discrimination laws of Los Angeles, Sacramento, San Diego, San Francisco, Santa Monica, and 8 other California cities, but also local prohibitions on employment and/or housing discrimination on the basis of place of birth, student status, tenancy of a minor child, parenthood, pregnancy, age, disability, and political affiliation or beliefs. Our brief further demonstrated that the L.A. ordinance was enacted pursuant to the city's police power, is consistent with all state laws, and is not preempted, either expressly or by implication. We also coordinated the filing of amicus briefs by several other organizations. The Court of Appeal affirmed on the preemption issue on March 24, 1993, while reversing on certain other grounds. Petitions for rehearing filed by plaintiff and by the City of Los Angeles and County of San Francisco were denied April 12, 1993. The City of Los Angeles, the City of San Francisco and the San Francisco District Attorney's office petitioned the California Supreme Court for review and we submitted a letter brief in support of those petitions on May 3, 1993. Superior Fast Freight also petitioned for review. The Court denied the petitions on June 3, 1993. The Court subsequently issued an alternative writ of mandate in a series of three other cases which held San Francisco's parallel ordinance preempted, relying on the Court of Appeals decision in Delaney. The Court subsequently, without explanation, dismissed the writ it had granted, thus leaving Delaney as the current state of the law. (Jon W. Davidson, with Wayne Stephen Braveman, Timothy J. Toohey, Daniel K. Slaughter, and Jeffrey A. Richmond of Heller, Ehrman, White & McAuliffe and Matthew A. Coles, ACLU/NC)

178. Doe v. Anaheim Union High School District (U.S. District Court)

See entry under First Amendment

179. Dupont v.Axtell, et. al. (Orange County Superior Court)

Michelle Dupont was refused medical treatment by her HMO because she is a lesbian. We brought an action for injunctive relief in Superior Court against the individual doctor, the medical group which employs the doctor, and the HMO to which Ms. Dupont belongs.

Having just received her health benefits from her new employer, Michelle Dupont was seen for an initial appointment with the doctor who was to be her primary care physician, Dr. Ronald Axtell. Dr. Axtell is an employee of the Bristol Park Medical Group, a member of the HealthNet HMO Medical System ("HealthNet"). During the course of the appointment, Dr. Axtell asked Ms. Dupont what type of birth control she used, and she replied that she did not use birth control because she is a lesbian. Immediately after the exam, Dr. Axtell told Ms. Dupont that, in the future, she needed to see a different doctor because he did not approve of "what she was." Ms. Dupont asked if this was because she was a lesbian, and Dr. Axtell replied, "yes." He then made a notation in her medical records that he had told the patient that he could not continue to treat her because she is a lesbian.

Two significant issues are raised by this case. First, the case provides an excellent vehicle for extending California's anti-discrimination law which prohibits discrimination on the basis of sexual orientation. There are two applicable anti-discrimination statutes: (1)California Civil Code § 51, known as the "Unruh Civil Rights Act," prohibits a business establishment from discriminating on the basis of, *inter alia*, sexual orientation; and (2) California Health & Safety Code § 1365.5 prohibits "limitations, exceptions, exclusions ... or other modifications" of a health insurance contract based on, among other things, the insured's sexual orientation.

While the proposition that the Unruh Act prohibits sexual orientation discrimination is well-established, see, e.g., Curran v. Mount Diablo Council, 17 Cal. 4th 670, 702, 952 P.2d 218 (1998), Ms. Dupont's case raises a novel issue: whether the Unruh Act has been violated when a person is refused service by one employee within the business, when there are other employees who will serve her. We argue that the Unruh Act requires that customers have the opportunity to avail themselves of all goods and services offered by a business on the same terms as any other customer. We would like to establish case law which clearly prohibits a business from, for instance, limiting a customer to shopping in a particular part of the store or to riding in the back of the bus, simply based on her sexual orientation, race, religion, or any other bases protected by the Act.

Concerning California Health & Safety Code § 1365.5, we would be creating a new body of case law. Presumably because this statute does not create a private right of action, there is no case law interpreting this provision. However, we can bring two causes of action under separate statutes which would premise liability upon the violation of § 1365.5: a cause of action for "malpractice per se" and a cause of action under the Unfair Competition Law, California Business and Professions Code § 17200 ("UCL"). A defendant is liable for "malpractice per se" when she has violated a statute (here, H&S § 1365.5) which proximately caused an injury, the nature of which is one that the statute sought to prevent, where the person injured was of the class of persons whom the statute was designed to protect. A defendant is liable under the UCL where there has been a violation of a statute which regulates the conduct of business, regardless of whether the statute provides a private right of action. Both of these causes of action would broaden the possible applications of anti-

discrimination law.

Second, because Ms. Dupont's contract with HealthNet contains a mandatory arbitration clause, this cases raises the significant issue of whether a plaintiff can be precluded from having her discrimination claims heard in court. The ACLU has also raised a similar issue in the twin Lagatree cases, which challenge the practice by employers of firing employees who refuse to accept mandatory arbitration to resolve any work-related disputes. Employers and health insurers are increasingly requiring its employees and insureds, who have no real bargaining power, to agree to mandatory -- and binding -- arbitration rather than bring claims in court. This insulates these organizations from appeal and prevents the creation of precedent unfavorable to the corporations.

In the HMO context, the law on mandatory arbitration clauses is unsettled. One California Court of Appeal has ruled that an HMO's arbitration clause precluded the plaintiff from bringing her Unruh Act claim in court. Wolitarsky v. Blue Cross, 53 Cal. App. 4th 338 (1997), cert. denied, 1997 Cal. LEXIS 3166 (Cal. May 28, 1997). Another Court of Appeal has held that the plaintiff could bring her action for injunctive relief under the Consumer Legal Remedies Act, Cal. Civ. Code § 1750 ("CLRA"), despite the arbitration clause, on the ground that arbitration cannot provide injunctive relief. Broughton v. Cigna, 65 Cal. App. 4th 314, 76 Cal. Rptr. 2d 431(1998). We attempted to distinguish or overturn Wolitarsky, which concerned an action for declaratory relief, and we also brought a cause of action under the CLRA, which prohibits false advertising by businesses. For the latter, we would argue that HealthNet falsely advertised that its members will be treated by the physician of their choice. The parties reached a settlement in July, 1999, which included training HMO medical personal as well as payment to plaintiff. (Michael Small, Mark Rosenbaum, Mary Sylla)

180. Grobeson v. City of Los Angeles (L.A. County Superior Court)

This action, brought by a former LAPD officer, two current LAPD officers, and an applicant to the LAPD, challenges the LAPD's practices of discrimination and harassment on the basis of sexual orientation. On November 21, 1989, on behalf of the ACLU and the Golden State Peace Officers Association (a California labor and fraternal organization of lesbian and gay peace officers), we filed an amicus brief in support of a motion for a protective order filed by plaintiffs. That motion sought an order barring the defendants (1) from inquiring into the sexual orientation, sexual history or sexual relationships of any third-party witnesses in the action and (2) from discriminating against, harassing or otherwise retaliating in any way against such witnesses. Our brief argued that, because of the history and current reality of stigma, discrimination, harassment, and violence suffered by lesbians and gay men (which is detailed in our brief), witnesses with knowledge of the facts of the case must be assured that, if they come forward to testify, their privacy will not be invaded. Our brief further argued that, particularly because of the intense homophobia the LAPD has manifested over the years (also detailed in our brief), witnesses also must be protected against retaliation if the truth is to be allowed to surface. In response to plaintiffs' motion and our amicus brief, the LAPD stipulated to and, on January 29, 1990 the court approved, an order providing: (1) that the LAPD not engage in any act of harassment, retaliation or intimidation against any person because of any testimony the person might present or information the person might

have concerning the case; (2) that the LAPD maintain strictly confidential any information they may receive regarding the sexual orientation of any non-party witness in the case; and (3) that discovery regarding the sexual orientation of any non-party witness be narrowly limited. After that time, we became "of counsel" in this action in order to provide advice and expert assistance to plaintiffs' counsel in connection with the case, and particularly with settlement negotiations. Information gathered in this case was invaluable to the testimony we were able to present to the Christopher Commission, whose report validated many of the claims in this lawsuit and was helpful in finally achieving a favorable settlement in the case. A settlement was reached February 10, 1993. Under its terms, the plaintiffs are to be paid $770,000, Officer Grobeson is to be reinstated with full pension and seniority rights and extensive modifications in LAPD policy and practices are to be instituted, including active recruitment at lesbian and gay community events and in lesbian and gay periodicals, an end to inquiries into applicants' sexual orientation, expansion of cultural awareness training, screening of applicants regarding homophobia, and creation of new procedures to redress complaints of sexual orientation, employment discrimination and harassment. Sergeant Grobeson recommenced work at the LAPD on July 19, 1993. (Jon Davidson of counsel to Dan Stormer of Hadsell & Stormer)

181. Hernandez-Montiel v. INS (Ninth Circuit Court of Appeals)

The ACLU, in cooperation with other civil rights organizations, submitted an amicus brief on August 31, 1998 on behalf of a 17-year old Mexican national who is seeking asylum in the United States. Geovanni Hernandez-Montiel is seeking asylum based on the persecution he has suffered as a result of his status as an effeminate gay man. Mr. Hernandez-Montiel has suffered mental and physical abuse at the hands of his family, other private citizens, and Mexican officials. He has been arrested, interrogated, imprisoned, and, on two occasions, raped by the Mexican police. This unconscionable abuse began when Mr. Hernandez-Montiel was only eight years old. The Immigration Court denied his application for asylum and withholding of deportation, in part on the ground that Mr. Hernandez-Montiel's effeminacy was simply a "behavior" which he could change to avoid persecution. We argued that, among other things, that Mr. Hernandez-Montiel's identity as an effeminate gay man is fundamental to him, that he should not be required to change his identity (assuming that is even possible), and that effeminate gay men in Mexico face brutal persecution on account of their identity.

On August 24, 2000 the Ninth Circuit Court of Appeals granted asylum to Hernandez-Montiel. The unanimous Court ruled that under the asylum statute gay men with female sexual identities in Mexico constitute a protected, "particular social group." The decision is important because it is in the first time a federal court has affirmed that persecution founded on sexual orientation is a basis for receiving asylum under U.S. Law. The decision also recognizes the links between persecution on the basis of sexual orientation, and on the basis of gender identity or expression. (Taylor Flynn, Lambda Legal Defense and Education Fund, National Center for Lesbian Rights)

182. Jacks v. City of Santa Barbara (Superior Court of Santa Barbara)

An *amicus* brief was jointly filed on August 6,1998 by the ACLU of Southern California and Lambda Legal Defense and Education

Fund on behalf of the City of Santa Barbara, defending the City's right to offer its employees domestic partner benefits and to offer a domestic partnership registry to its citizens. Both the registry and the benefits are available to same and opposite sex couples. The suit was filed against the City by the American Center for Law and Justice (ACLJ), which claims that the City's registry and issuance of benefits to its employees violates the State's policy "in favor" of marriage. The case is widely seen as a beginning step in the ACLJ's fight against same-sex marriage and domestic-partnership recognition. In California alone, 10 cities and 2 counties have domestic partnership registries, and some of these also offer partnership benefits to its employees.

The *amicus* brief was filed in support of the City's demurrer to the complaint. *Amici* argued that the City acted well within its powers in establishing the registry and in granting equal compensation to its employees regardless of marital status. *Amici* further argued that California policy is to protect the State's families, which includes married couples as well as domestic partners. Agreeing with amici, the court dismissed the case and there was no appeal. (Taylor Flynn, Lamda Legal Defense and Education Fund)

183. Long Beach Lesbian and Gay Pride, Inc. v. City of Long Beach (L.A. County Superior Court)

This is a suit to require the Long Beach City Council to issue a parade-demonstration permit to the organization which stages the annual Long Beach Lesbian and Gay Pride Parade without the City charging fees for police protection and equipment or imposing other discriminatory and arbitrary requirements that would prevent the parade from being held. The suit charges content-based discrimination in that officially-recognized groups (such as Veteran's organizations) are not charged fees to demonstrate. Additionally, we contended that any charges for police protection violate California constitutional prohibitions concerning freedom of speech and discrimination based upon wealth. In May 1986, we obtained a preliminary injunction, which allowed the 1986 parade to proceed as scheduled. An agreement was reached that the organizers of the parade did not have to post insurance for subsequent year's parades and had to pay only reduced fees. Cross-motions for summary judgment were heard April 6, 1988. Both motions were denied, but the judge made various factual findings. We were ordered to draft a proposed new ordinance which would be acceptable to plaintiffs and the ACLU. We complied, but the action did not settle. Trial commenced before the Honorable Charles S. Litwin on April 16, 1990. Trial concluded on July 2, 1990. On January 18, 1991, the court ruled (in our favor) that the ordinance was unconstitutional in its entirety because it granted the city manager unbridled discretion to grant or deny a permit, regardless of whether the conditions set forth in the ordinance were satisfied. Certain fees also were ruled improper and ordered returned. Other claims of unconstitutionality, however, were rejected. Judgment was entered June 17, 1991. An amicus brief was filed in support of our appeal by LAMBDA LDEF, the Black Gay and Lesbian Leadership Forum, and the National Lesbian and Gay Law Association. Oral argument was held December 17, 1992. The Court of Appeal rejected the City's appeal and partially ruled in our favor on our appeal on March 19, 1993. The appellate court held the ordinance unconstitutional in its entirety and also agreed that its insurance and permit timing provisions violated the First Amendment. On April 5, 1993, we filed a petition for rehearing with respect to the Court of Appeal's conclusion that the departmental service charges provisions of the ordinance are constitutional and its denial of costs on appeal. The petition was denied April 8, 1993. We filed a petition for review with the California Supreme Court regarding these issues on April 28, 1993. The City of Long Beach responded, seeking review of the issues on which we prevailed, on May 27, 1993. The petition was denied June 24, 1993. We decided not to petition the U.S. Supreme Court for certiorari. Judgment after remand was entered June 14, 1994. On November 10, 1994, the Superior Court granted our

motion for attorneys' fees, finally resolving the case. (William E. Weinberger, Jon W. Davidson, Carol A. Sobel, Paul Hoffman, Susan McGreivy) \

184. People v. Walker (Ventura County Superior Court)

Working on behalf of a transsexual inmate incarcerated on May 28, 1996, the ACLU appeared in criminal court on July 26 and argued that, among other types of discriminatory treatment, Cassandra Walker was being held past her release date. The judge agreed, and Ms. Walker was released that evening. Ms. Walker is a male-to-female transsexual who was incarcerated in the Ventura County Jail, an all male institution. Ms. Walker's outward appearance is very feminine. She was serving six months in jail for trespass and other violations which occurred when she went to her parents' home to tell them that she is transsexual. Although housed in administrative segregation for her protection, she was not being given the privileges that she would normally get, including a 20% reduction of her incarceration time, which is required by statute for good behavior and participation in a work program. (Taylor Flynn)

185. Pruitt v. Perry (U.S. District Court, Central District)

This suit seeks to have declared unconstitutional armed services regulations which require discharge from the service of persons because they have homosexual "tendencies," even though actual military service is exemplary and no illegal or prohibited conduct has been engaged in. In 1983, the Reverend Dusty Pruitt gave an interview to the Los Angeles Times, in which she identified herself as a lesbian. Based on this article, the Army suspended her pending promotion from Captain to Major. In September 1985, Pruitt was ordered honorably discharged for "being a self-admitted homosexual." The primary argument at that time was that the service's regulation on its face and as applied violates the freedom of speech and expression guaranteed under the First Amendment. The regulation is also challenged as violative of lesbians' and gay men's rights of equal protection under the Fifth Amendment. The district court denied plaintiff's motion for summary judgment and granted defendants' motion to dismiss on April 7, 1987. We appealed. Oral argument of the appeal of this order took place on August 5, 1988. The Ninth Circuit finally issued its decision on August 19, 1991, ruling in our favor that dismissal of the action was improper and remanding for trial on the equal protection issue. The Court held that the government at trial must establish on the record that its exclusionary policy has a rational basis, that we are entitled to contest that basis, and that the government may not rely on the prejudice of others as a justification for its policy. The government filed a petition for rehearing and rehearing en banc on October 2, 1991. On December 2, 1991, the Ninth Circuit asked us to file a response to the petition, which was filed January 22, 1992. The petition for rehearing and rehearing en banc were denied May 8, 1992. A petition for certiorari was filed with the Supreme Court on September 1, 1992. We filed our opposition to the petition on November 6, 1992. The petition was denied, without dissent, on December 7, 1992. The case has been reassigned to Judge Rea. In light of the President's announcement of his intent to issue an Executive Order and the ongoing Congressional hearings, we stipulated to stay the proceedings until April 5, 1993. The government's motion to stay the case (except for our amendment of the complaint) until July 15, 1993 was granted on April 5, over our objections. On October 21, 1993, we filed an amended complaint, challenging not only the policy under which Pruitt was

discharged, but the President's July 19, 1993 directive and any legislation passed by Congress that would prevent Pruitt's reenlistment. On February 15-17, 1994, we took the depositions of the Assistant Secretary of Defense of personnel and the head of the Military Hiring Group. These depositions were instrumental in the ruling declaring the policy unconstitutional in the Cammermeyer case. In the fall of 1995 the case was settled; plaintiff was retroactively promoted to major and given credit toward retirement for all the years she had been wrongfully discharged. (Mary Newcombe [Hedges & Caldwell], Jon Davidson, William Rubenstein & Ruth Harlow [National ACLU Lesbian & Gay Rights Project], Amelia Craig [LAMBDA LDF], Susan McGreivy, William G. Smith)

186. Swann v. Department of the Navy, Naval Air Warfare Center, Weapons Division, Pt. Mugu (Administrative Appeal, Office of Special Counsel, Washington, D.C.)

We filed a complaint against the Department of the Navy on behalf of a gay civilian employee at Pt. Mugu Naval Base, who was transferred illegally as a result of his outspoken stance on the issue of lifting the ban against gays in the military. We alleged that the transfer, at the Navy's Pacific Missile Test Center, was a violation of the standard review process and an attempt to suppress Mr. Swann's First Amendment rights. His motivation in bringing this issue forward was to bring unity to the issue of lifting the ban against gays in the military, and to urge the government to discontinue punishing gay military and civilian employees. Mr. Swann received threats of physical violence in July 1992, from a co-worker who had repeatedly harassed him and referred to him as "queer" and "faggot" in his absence. The harassment culminated in an attempted battery which led to Swann's transfer to another department. Swann was approached in early December by a gay Naval aviator who suggested he openly advocate President Clinton's proposed lift on banning homosexuals in the military. Swann agreed to publicly voice his opposition to the ban with the television and print media. Swann's superior officer then accused him of violating Navy regulations by allowing the media to use an on-base photograph and declared he was "offended" by Swann's outspoken stance on the ban issue. Swann was then transferred back to his previous assignment where he had been repeatedly harassed and threatened with physical violence. As a result of settlement negotiations, Mr. Swann returned to work, where he received a different assignment. Subsequently, naval policy was clarified to prohibit sexual orientation employment discrimination against civilian employees. (Alan Friel [Shafer Fellow], Jon Davidson, Carol Sobel, Paul Hoffman)

187. Vecchione v. Vecchione (Orange County Superior Court)

This is a transgender custody case. Joshua Vecchione underwent a sex change operation nearly two decades ago. He fully disclosed this to his wife, Krisie Vecchione, whom he dated for two years before getting married. The couple, married five years, has a three year old child, conceived through artificial insemination (Joshua's brother donated the sperm). The girl is completely devoted to her father, as is he to her.

Joshua's estranged wife has attempted in numerous ways to divest hm of legal parenthood. She first argued that their marriage was void due to physical incapacity, which the court rejected. She next argued that the marriage was void as a same-sex marriage. In a first-of-

its-kind decision, on November 25, 1997, the judge rejected the "same-sex marriage" argument and ruled that Joshua Vecchione is male. The Court stated that California recognizes the post-operative gender of all transsexual persons. As her third attempt, Joshua's estranged wife claimed that Joshua had defrauded her by concealing certain aspects of anatomy at birth. After a two week trial, the judge denied her fraud claim.

The second phase of the trial determined the allocation of custody between the two parents. On October 22, 1998, the judge made several final rulings: Joshua is legally male, his marriage was valid, and he was awarded 50-50 custody of his child. (Taylor Flynn)

INTERNATIONAL CIVIL LIBERTIES

188. Abebe-Jiri v.Negewo (U.S. Ct of Appeals, 11th Circuit)

Trial on behalf of three Ethiopian women, including one from Los Angeles, against the man who tortured them during the "Red Terror" in Addis Ababa, Ethiopia in 1977 and 1978. Negewo, the torturer, was discovered working at an Atlanta hotel by one of the women. The suit is based on the Alien Tort Statute, 28 USC §1350, and the 1992 Torture Victim Protection Act. the case was tried on May 17 and 18, 1993. On August 20, 1993, Judge Tidwell issued his opinion and judgment in our favor awarding $1.5 million in compensatory and punitive damages to the plaintiffs. The defendant filed an appeal. Oral argument in the 11th Circuit took place in January, 1995. On January 10, 1996, the 11th Circuit affirmed the judgment in all respects. Negewo filed a writ of certiorari in the U.S. Supreme Court, which was denied in October 1996. The Center for Constitutional Rights was the lead organization in the case. (Paul Hoffman, with the ACLU of Georgia, Peter Weiss and Beth Stephens of the Center for Constitutional Rights and Miles Alexander, Michael Tyler and Laurel Lucy of the Kilpatrick & Cody law firm)

189. American Friend Service Committee v. McNary (Inter-American Commission on Human Rights)

We are assisting, with the ACLU of San Diego, in a petition filed in the IACHR challenging the pattern of abuse committed by U.S. Board Patrol agents in the Southeast. The issue of exhaustion of domestic remedies is being briefed. The case is now resolved. Peter Schey was the lead counsel in this case. (Paul Hoffman with Jordan Budd of ACLU of San Diego)

190. Barrera-Echavarria v. Rison (U.S. Court of Appeals, Ninth Circuit)

Amicus brief filed in support of Mariel cubans who is seeking his release through a petition for habeas corpus. The Petitioner has been held without charge or trial for nine years after the end of his criminal sentence because Cuba will not take him back and the INS will not parole him. He is now in Leavenworth Prison in Kansas City. Judge Kenyon granted relief in September 1993 and the government took an emergency appeal. We argue that this continuing indefinite detention violates international law and that U.S. immigration laws should not be interpreted to allow such indefinite detention. Oral argument was heard on February 8, 1994 in San Francisco. The case was argued en banc and the Government won. Barrera's lawyers filed a Petition for Certiorari in July which was denied in fall 1995. (Paul

Hoffman with USC International Human Rights Law Clinic)

191. Jaffe v. Snow (U.S. Supreme Court)

We filed a Petition for Certiorari in a case where a Canadian citizen sought to enforce a Canadian damage judgment against the bounty hunters who kidnapped her husband from Toronto and brought him to Florida in violation of international law. This is a notorious kidnapping case that has been a significant issue in US-Canada relations for several years. The Florida courts refused to enforce the judgment. In October, the Supreme Court asked the Solicitor General to file a brief expressing the opinion of the United States on whether certiorari should be granted. That brief was filed in May 1994 and the Supreme Court denied Certiorari in June 1994. (Paul Hoffman, Erwin Chemerinsky, James Green, Steve Schneebaum)

192. Linder v. Calero (U.S. Court of Appeals, Eleventh Circuit)

Amicus brief filed in support of parents of Benjamin Linder, an American who was killed by the Contras as he was assisting in the building of a dam. A district court judge in Florida dismissed the case on the basis of the political question doctrine and because he believed that a federal court could not grant relief for Linder's international humanitarian and human rights claims. Our brief contends that the political question doctrine does not apply in these circumstances and that Linder's international law claims and other tort claims should have been heard. Oral argument took place during the week of March 2, 1992. In June 1992 the 11th Circuit overturned the District Court and allowed the case to go to trial on plaintiffs' Florida law claims. (William Walker, Paul Hoffman)

193. Mochizuki et al. v. U.S.A. et al (U.S. Court of Federal Claims)

This class action lawsuit, filed on August 28, 1996, is on behalf of 2,264 persons of Japanese ancestry who, as part of a U.S. government scheme during World War II seeking persons to be used in civilian prisoner exchange with Japan, were uprooted from their homes throughout Latin America, and forcibly brought to and imprisoned in INS "enemy alien" internment camps in the U.S. Similar to the some 120,000 Japanese Americans incarcerated in the U.S. internment camps, there was never any credible evidence of criminal or espionage activity, no individualized charged were presented nor hearings ever held to justify the deprivations of liberty and property.

Though the U.S. government provided redress to Japanese Americans pursuant to the Civil Liberties Act of 1988, the government denied redress to these Japanese Latin Americans because they were not considered "U.S. citizens or U.S. permanent resident" at the time of their internment, despite the fact that it was the U.S. government that arranged their status of "illegal aliens" by initiating, orchestrating, and financing the entire scheme to bring them to the U.S. by force, as well as ordering consular officials not to issue visas and confiscating passports and other national identity documents en route to the U.S.

The complaint sets forth, *inter alia*, the following claims: first, under the statutory definitions of the term "permanent resident alien" or under the doctrine of PRUCOL (Permanent Residency under Color of Law), the plaintiffs qualify for redress under the terms of the Civil Liberties Act of 1988; second, that the application of the U.S.

citizenship/permanent resident eligibility requirement to the plaintiffs violates their right to equal protection guaranteed by the Fifth Amendment; third, that the denial of redress violates customary international law against discrimination on the basis of alienage in these circumstances; and fourth, that the denial of redress to those Japanese Latin Americans who were used in the prisoner exchange with Japan is illegal because their actions in going to Japan were involuntary under the circumstances.

Plaintiffs filed an amended complaint in the U.S. District Court in Los Angeles on February 3, 1997, and their motion for class certification on March 3, 1997. The government successfully moved to transfer the case to the U.S. Court of Federal Claims in Washington, D.C. pursuant to an amendment to the Civil Liberties Act. It filed a motion to dismiss/motion for judgment on the administrative record, and a motion for a protective order to avoid responding to any discovery requests. Plaintiffs have opposed all of defendant's motions, and successfully obtained the judge's order to bifurcate the motion to dismiss, and a motion for judgment on the record, opposed class certification, the latter being postponed until the former is decided.

At the hearing on all the motions, held on February 13, 1998 in Washington D.C. before Chief Judge Loren A. Smith, defendant's counsel surprised many when she requested a one-week delay in the ruling in order for the defendant to consider settlement, to which the judge agreed. When a settlement offer by the defendant failed to materialize following several conferences between counsel, the judge set April 13, 1998 as the date on which he would issue rulings on all the motions. The judge also allowed supplemental briefing on a judicial opinion which he had raised during oral arguments, but which was not cited or discussed by either party in its briefs.

In an unusual order dated March 19, 1998, the judge wrote:

> The court stands ready to assist the parties to achieve an alternative resolution of this case. ... The compensation system adopted by the United States [as embodied in the Civil Liberties Act of 1988] was an action of deep moral significance. It reaffirmed that this is a moral nation, and recognizes that when we act in an immoral way we must apologize and make restitution to the extent possible. This statute has attempted this. While complete restitution is never possible, the court believes that in this case, an important gap may be filled through a settlement by the parties. This would do great credit to the moral integrity of the nation. While the parties have the power to do the right and moral thing, courts have the solemn duty to take the course of action the law requires. Sometimes, particularly in the case of affirmative acts, this falls far short of the right or moral resolution. That is why this case should be settled.

After much discussion, plaintiffs requested the judge to preside over a settlement conference prior to which he agreed. Settlement was reached on June 12, 1998. The judge gave preliminary approval to the plan. A hearing was held on November 17, 1998 and the settlement was approved by the court on January 25, 1999. By the terms of the settlement the eligible Japanese Latin Americans -- pursuant to the Civil Liberties Act of 1988, those living on the date of its enactment, August 10, 1988, and the heirs of those who died thereafter -- will receive a letter of apology from President Clinton and $5,000 in reparation.

Because the settlement was tied to the Civil Liberties Act, the settlement provided that in the event sufficient money had not been appropriated by Congress in the Fund it had set up to pay the reparations to the Japanese Americans who had been interned, to pay all the Japanese Latin Americans, the plaintiffs were not precluded from seeking to obtain the necessary funds from Congress. When the settlement was announced, the President issued a press release stating, among other things:

> I am pleased that the Department of Justice has reached a settlement that will compensate Latin Americans of Japanese ancestry for their wrongful internment during World War II. ... This settlement addresses the injustice endured by Japanese Latin Americans who were interned. ... Payments for this settlement will come from the fund established by the Civil Liberties Act. If the fund proves insufficient, I will work with Congress to enact legislation appropriating the necessary resources to ensure that all eligible claimants can obtain compensation provided by this settlement.

As it turned out, the funds were not sufficient. On May 21, 1999 the President signed Public Law 106-31 which appropriated the money estimated to be necessary to pay all the eligible Japanese Latin American internees. Congressman Becerra authored a bill that would provide an additional $15,000 to each surviving former internee, and would provide $45 million for an education fund on the U.S. incarceration of persons of Japanese ancestry (including those from Latin America) that would ensure these histories are not forgotten. As of Spring, 2001, the bill had 30 co-sponsors. (Robin S. Toma, with Fred Okrand and Mark Rosenbaum of the ACLU, Paul Hoffman, and Manju Kulkarni)

194. National Coalition for Redress/Reparation (NCRR) and Joe Suzuki v. U.S. (U.S. District Court, Northern District of California; U.S. Court of Appeals for the Ninth Circuit)

The case, filed on October 13, 1998, is an outgrowth of *Mochizuki v. U.S.* At the time of the Mochizuki settlement it appeared there would be sufficient funds in the Civil Liberties Public Education Fund to pay all the Japanese Latin Americans the full $5,000. When it turned out there would not be sufficient funds, the suit was filed. The reason there were not sufficient funds is because the government had failed to comply with the requirement of the Civil Liberties Act that the $1,650,000,000 which had been appropriated was to be invested in government obligations at not less than 5%. Had this obligation been fulfilled, there would have been millions of dollars more in the Fund – ample to meet the full terms of the settlement.

A separate part of the Civil Liberties Act was for monies to be expended for public education so that the tragedy would not happen again. In this regard Congress intended $50,000,000 to be used for that purpose. Because of the failure to obtain the interest, only $5,000,000 was able to be expended.

The thrust of the class action suit is twofold: to recover the monies so that the remaining $45,000,000 may be expended for education and so that the full amount of redress could be afforded the Japanese Latin Americans. NCRR is the type of organization envisaged to

receive grants for that class. Plaintiff Joe Suzuki is an eligible Japanese Latin American who has not received redress because of the lack of funds. He is the representative of that class.

Because the Civil Liberties Act had a sunset clause, August 10, 1998, plaintiffs applied for a preliminary injunction to keep open until the merits of the case could be decided, the agency which had been set up to make the payments, to otherwise provide a method for setting up facilities in the future. The trial court denied the application. That decision was unsuccessfully appealed. The court also granted the government's motion to dismiss on the ground of lack of standing to sue, but granted plaintiff's leave to amend the complaint. Appeal was taken from the denial of the preliminary injunction. The 9th Circuit Court of Appeals affirmed the denial. The complaint was amended. The government filed another motion to dismiss which was heard on November 12, 1999, at which time the court orally announced it was granting the government's motion to dismiss. As to NCRR, the grounds were (1) that the organization had no standing because whether it would ever be entitled to receive movies for public education was too speculative and (2) because of the sunset clause of the statute, the court had no power to revive the Fund. As to Suzuki, the ground was that since Congress had appropriated monies for payment, he had no cause for complaint. That dismissal, however, was to be without prejudice. If, for some reason, he did not receive payment, he could return to court. He has now received payment. The NCRR portion of the case is now on appeal. Oral argument was heard on for December 11, 2000. In February, 2001 the Court ruled that appellant Suzuki's appeal was moot, and affirmed the District Court's judgment as to appellant NCRR. Suzuki was part of the successful class action that settled its claims in *Mochizuki v. U.S.*, through which he already received his claim of $5,000. The Court ruled that NCRR's only claim was its loss due to the government's failure to invest funds allocated to the Civil Liberties Public Education Fund. The fund was terminated and its administering board no longer exists; therefore the Court held that NCRR lacked standing to sue. (Christopher Prince of McCutchen, Doyle, Brown & Enerson)

195. Siderman v. Republic of Argentina (U.S. District Court, Central District)

We represent an Argentine family who suffered torture and lost all of their property due to anti-semitism during the 1976 "Dirty War" in Argentina. They came to this country to escape the military regime and brought suit under the Foreign Sovereign Immunities Act in 1981. In 1984 Judge Takasugi entered a $2.7 million default judgement for Plaintiffs when Argentina failed to appear. He dismissed the property claims. In early March, 1985, the Court reversed its decision, vacated the judgment and dismissed the complaint based on sovereign immunity grounds. We appealed all of these orders. The Ninth Circuit stayed the appeal while the Sidermans sought redress in the Supreme Court of Argentina and tried to settle the case with the new, democratically elected government. The Supreme Court of Argentina dismissed the Sidermans' case on statute of limitations grounds (though there is substantial evidence of correction) and the Ninth Circuit reactivated the appeal in late 1990. On May 22, 1992, the Ninth Circuit reversed and upheld jurisdiction under the FSIA for all of our claims under the "commercial activities" exception to the FSIA and found that Argentina had waived its sovereign immunity by invoking judicial process against Carlos Siderman in the United States. The decision is reported at 965 F.2d 699 (9th Cir 1992). Argentina's Petition for Cert. was denied in early April. We were granted permission to preserve Jose Siderman's testimony on videotape while the appeal is pending. This deposition took place on March 22, 1993. Further depositions were taken in January 1994.

The case has returned to District Court for further discovery and trial. Plaintiff defeated Defendant's Motion to Dismiss on August 30, 1994.

Defendants defaulted on the second amended complaint by failing to answer. Judge Takasugi entered the default and defendants appealed to the Ninth Circuit arguing that Takasugi did not have jurisdiction and that they did not have to answer the complaint. The Ninth Circuit ruled that Takasugi did have jurisdiction and let the default stand. Defendants have requested to have the default set aside. Plaintiffs did not oppose this motion. Argentina's requests for a stay of trial proceedings were denied by the 9th Circuit and Justice Kennedy. The case was settled on September 5th 1996. (Paul Hoffman, Silvia Argueta, Michael Bazyler, Scott Wellman)

196. United States v. Alvarez-Machain (U.S. Supreme Court)

In early August, 1990, Judge Rafeedie ordered Dr. Humberto Alvarez-Machain, a defendant in the conspiracy trial relating to the death of DEA agent Enrique Camarena several years ago in Mexico, returned to Mexico because the DEA violated the extradition treaty between the U.S. and Mexico by kidnapping Dr. Alvarez Machain at his office in Mexico. The Government has appealed this ruling. Dr. Alvarez Machain remains in federal custody in Los Angeles. We have appealed the denial of defendant's motion to dismiss for outrageous government conduct, including claims that Dr. Alvarez-Machain was tortured in the process of his kidnapping. The briefing has been completed. Oral argument took place April 4, 1991. On October 18, 1991, the Ninth Circuit affirmed based upon United States v. Verdugo-Urquidez, 939 F.2d 1341 (9th Cir. 1991). The Government filed a Petition for Certiorari on October 28, 1991. The Mexican Government has asked the court to take Verdugo and our case and affirm. On January 10, 1992, the Supreme Court accepted the case on an expedited briefing schedule. On December 16, 1991, Judge Rafeedie set bail at $10 million, plus a variety of non-monetary conditions. A motion for reduction of bail was denied on February 3, 1992. The case was argued on April 1, 1992. On June 15, 1992, the Court in a 6-3 decision, with a majority opinion by Rehnquist, ruled against us and determined that the Extradition Treaty did not bar kidnappings in lieu of formal extradition proceedings. The majority accepted all of the government's arguments. Justice Stevens wrote a dissenting opinion, joined by Blackmun and O'Connor, in which he called the majority's opinion a "monstrous" decision. Our attempts to litigate our alternative grounds for affirmance have been rebuffed by the Ninth Circuit. On July 27, 1992, the court issued a two page order denying us permission to file a supplemental brief and denying three of our alternative grounds for affirmance. The panel issued the mandate immediately and refused to recall the mandate to allow a Petition for Rehearing En Banc to be circulated. We filed a renewed motion to dismiss based on customary law and Article 2(3) of the 1988 United Nations Convention Against Illicit Trafficking in Narcotics, Drugs and Psychotropic Substances. Judge Rafeedie denied this motion on December 1, 1992, but issued an order under 28 U.S.C. 1292(b) allowing an immediate appeal. On December 11, 1992, we filed a Petition in the Ninth Circuit seeking permission for an immediate appeal. On December 14, 1992, after completion of the government's case, the judge dismissed the criminal case against Dr. Alvarez and ordered his release from custody. As a result of this acquittal all of the appeals are now moot.

In August 1992, the Inter-American Juridical Committee of the OAS has found the

kidnapping to be plainly illegal. The UN General Assembly passed a resolution putting the issue of whether to ask the World Court for an Advisory Opinion on the case on its Fall 1993 agenda. An immediate vote was deferred to give the Clinton Administration time to adopt a different policy. In addition, legislation was introduced in the 102nd Congress to overturn the Supreme Court's decision. Ralph Steinhardt testified before the House Sub-Committee on Civil and Constitutional Rights in late June in support of such legislation. Senator Moynihan has introduced legislation (S72) on this subject in January 1993. Attorney General Reno announced in early April 1993, that the Justice Department was conducting an internal review of its kidnapping policies. (Paul Hoffman, Tracy Rice, Robin Toma, Ralph Steinhardt, Joan Fitzpatrick, Erwin Chemerinsky)

197. United States v. Restrepo (U.S.District Court, Central District)

We are assisting on the international law issues in a case in which two Colombian national;s sought on money laundering charges were kidnapped by DEA agents from the harbor in Caracas, Venezuela. This aspect of the case raises issue unresolved by the U.S. Supreme Court in United States v. Alvarez-Machain. The defendants accepted a plea bargain and will be released in 1996. (Paul Hoffman, Mark Merva)

POLICE PRACTICES

198. Berry v. Gates (U.S. Court of Appeals, Ninth Circuit)

Appeal from defense verdict in trial challenging a killing by the SIS unit of the LAPD. We argue that a new trial should be granted because of the exclusion of the history of SIS killings in similar circumstances over the years. Oral argument took place on for February 5, 1992. On February 29, 1992, the court affirmed the judgment in an unpublished decision. (Erwin Chemerinsky, Paul Hoffman)

199. Butts v. McNally (formerly California Attorneys for Criminal Justice v. Butts) (U.S. Supreme Court)

Filed in December, 1995 this is an action under 42 U.S.C. Section 1983 to redress the deprivation by defendants of plaintiffs' and criminal suspects' rights, privileges, and immunities arising under the Fifth, Sixth and Fourteenth Amendments. The lawsuit challenges the common police practice of continuing to conduct custodial interrogation of suspects even after they have clearly invoked their right to silence or their right to consult with an attorney.

Although statements obtained in violation of Miranda are inadmissible in the prosecution's case-in-chief, the prosecution may use such illegally-obtained statements to impeach the defendant if s/he testifies at trial. A number of police departments have realized that they have nothing to lose by continuing to question a suspect who invokes his constitutional rights. If no incriminating statements are obtained, the interrogators have nothing to lose. If they succeed in obtaining incriminating statements, the prosecution can use them to dissuade the defendant from testifying in his own defense or to impeach him if he does.

In successfully defending against the defendants' motion to dismiss, the ACLU obtained a strong decision from federal district Judge Rafeedie which reinforced the constitutional significance of Miranda rights (922 F. Supp. 327).

In a hearing on cross-motions for summary judgment on August 11, 1997 Judge Rafeedie denied both parties' motions, including defendants' claim that the officers are immune from civil suit based on the doctrine of qualified immunity. Defendants appealed the denial of qualified immunity to the 9th Circuit, where the case was fully briefed by April, 1998. Oral argument was held on December 7, 1998. On November 1, 1999, the 9th Circuit affirmed the District Court's ruling, holding that the officers are not immune from civil suit.

On January 3, 2000, the Ninth Circuit denied defendants' attempt to re-hear the case, and also denied defendants' motion to hear the case *en banc*. As a result, the Court's earlier decision reinforcing the constitutional significance of *Miranda* was upheld, as was the holding that officers are not immune from civil suit if they conduct custodial interrogation of suspects even after they have clearly invoked their right to silence or their right to consult with an attorney. The defendants filed a petition for a writ of certiorari, joined by the State of California and a police organization. Our opposition to the petition was filed on May 24, 2000. In June, 2000 the U.S. Supreme Court let stand the 9th Circuit Court of Appeals decision. The case returns to the District Court to resolve the issue of the officers' individual liability. Final settlement was reached in December, and damages to plaintiffs and attorneys fees paid. (Mark Rosenbaum; with Charles Weisselberg from USC Post-Conviction Law Center; William Genego; James Bianco; and Paul Hoffman)

200. Coalition Against Police Abuse v. Board of Police Commissioners (L.A. County Superior Court)

In March, 1985, Judge Olson issued an order setting up procedures by which the police spying settlement can be enforced if there is evidence of LAPD violations of the agreement. The key issue was whether the plaintiffs have taxpayer standing to enforce all violations of the Consent Decree and the scope of discovery concerning such violations. We appealed this order. On July 25, 1986, the Court of Appeal affirmed the trial court's basic Order but reversed two important provisions we challenged. Most important, any taxpayer may enforce the settlement without showing any injury to themselves. We continue to monitor compliance with the Consent Decree. The Third Annual Audit of ATD operations pursuant to the Consent Decree was presented to the Police Commission in May, 1987. The Fourth Annual Audit was presented to the Police Commission on September 13, 1988, and to the City Council on November 7, 1989, and December 9, 1988. The fifth annual audit was presented in October 1990. The Police Commission approved the audits for 1989 and 1990 in October 1991.

In addition, we pursued our right to retain and make public the "Jay Paul" documents obtained during discovery in the police spying case against the LAPD. In July, 1985, the Court of Appeal affirmed the trial court's order requiring us to return virtually all of the disputed documents. We then requested all of the documents back under the City's Freedom of Information Ordinance ("FOIA"). The City began the process of returning tens of thousands of pages of documents under the FOIA in July, 1986. This process was completed in 1991. (Mark Rosenbaum)

201. Creech v. County of Riverside (U.S. District Court, Central District)

Suit filed on behalf of a woman who was the victim of physical abuse by a Deputy Sheriff responding to an alleged suicide call. The incident occurred when a former business partner, against whom the woman had recently obtained a temporary restraining order, called in the alleged suicide attempt when the woman hung up on him at 2:30 in the morning. An hour later, the Sheriff's deputies responded and demanded that the woman speak with them. The woman realized immediately the source of the call and tried to explain it to the police. They insisted on questioning her and informed the victim that they could hold her in a mental institution if she did not cooperate. When she asked to call her lawyer and reached for the phone, one deputy threw the phone against the wall, breaking it, and then threw the woman after it, causing her to suffer a fractured hip. The same woman had called the Sheriff's on several occasions over the previous several days to ask for assistance against the former business partner, including when he showed up at her house with a gun. The Sheriff's Department informed her that they could not respond to these calls. Defendants have filed a motion to dismiss pendent state claims. The court denied the motion without argument in April. We filed a First Amended Complaint on April 14, 1992. Discovery is proceeding. The court held a status conference on November 9, 1992. On March 10, 1993, unsuccessful discussions were held before Magistrate Rose. The federal court dismissed the state claims in April. We filed a separate action in state court. Both cases are proceeding. A settlement conference is set in the federal case for August 31, 1994. A trial date of January 9, 1995 was set in the case. A settlement was reached that morning. (Carol Sobel, Paul Hoffman, Geoffrey Lyons of Morgan, Lewis & Bockius)

202. Denny v. City of Los Angeles (U.S. District Court, Central District)

Amicus brief in support of Reginald Denny's standing to claim that the Los Angeles Police Department violated his right to equal protection by purposefully withdrawing police protection from South Central Los Angeles at the beginning of the civil unrest in April 1992. LDF was the main author of the amicus brief. On January 31, 1994, Judge Byrne allowed the plaintiffs' equal protection claims to proceed. He dismissed the due process claims. (Paul Hoffman, Robin Toma, Erwin Chemerinsky, Penelope Glass, with other public interest organizations)

203. Harris v. City of Los Angeles (L.A. County Superior Court)

Complaint for damages on behalf of African-American employee of a private corporation contracted by federal government to perform drug tests on parolees. Mr. Harris was preparing to open the office for business when LAPD officers approached him, threw him to the pavement and wrenched his back in a brutally executed bid to handcuff him. These intentional acts of the LAPD officers resulted in a denial of plaintiff's civil rights. The officers appeared determined to treat plaintiff as though he posed an immediate physical threat despite his complete compliance with police directives. After several minutes of restraint, the officers released Mr. Harris, telling him he was not who they were looking for, apologized and left but not before injuring Mr. Harris. The suit was settled, and the complaint voluntarily dismissed in June, 1994. (Robin Toma, Sharon Robinson, Paul Hoffman, with Seymour Cohen)

204. Langford v. Gates (L.A. County Superior Court)

Suit challenging as unconstitutional (excessive force and fourth amendment violations) the LAPD's use of a motorized battering ram and flash-bang grenades to raid homes suspected to be locations of unlawful narcotics activities. Following attempted removal to federal court we succeeded in having injunctive action remanded to state court. See 610 F.Supp. 120 (C.D. Cal. 1985). On January 2, 1987, the California Supreme Court ruled (5-2, with Lucas and Panelli dissenting) in an opinion by Justice Mosk, that the City's practice of using the battering ram without judicial authorization was unconstitutional. The Court accepted our argument that the battering ram is so dangerous that such judicial authorization may not be given without considering the safety of this means of entry, the likelihood of property damage, and whether possible alternative methods exist. The opinion states that the use of the battering ram "presumptively" violates the Fourth Amendment. On April 28, 1987, a preliminary injunction was entered pursuant to the Supreme Court's opinion. We are monitoring the LAPD's use of the warrant procedure and are proceeding to complete the litigation with a permanent injunction. A stipulated permanent injunction was entered in November 1991. The attorneys' fee award was approved and paid in early March 1992. (Carol Sobel, Joan Howarth)

205. Lawson v. Gates (L.A. County Superior Court)

Taxpayer/class action suit challenging the LAPD's abuse of canine units. The suit seeks an injunction against future use of canine units to bite suspects where the use of deadly force would not be justified. The class action aspects of the suit (which we are not directly involved in) seek damages for hundreds of dog bite victims. On January 7, 1992, we appeared before the Police Commission to urge a moratorium on the use of police dogs until the Commission conducts an independent investigation into our allegations of abuse. The Police Commission issued a report on its canine policy on August 20, 1992, in which significant restrictions on the use of dogs have been introduced. The Commission has adopted a "find and bark" policy, as we have urged. Discovery is continuing. We took several key depositions in November, 1993, including Daryl Gates and Willie Williams. The City's demurrer to our amended complaint was heard on December 2, 1993. Judge Cooperman continued the hearing until February 5, 1993, to permit additional briefing on the issue of whether a class action is a proper procedural vehicle to redress constitutional injuries in light of Heller vs. City of Los Angeles. In early January 1994 the demurrer was denied. The case has now been settled, including the payment of attorneys' fees. (Paul Hoffman, Robin Toma, Tracy Rice, with LDF, Litt & Marquez, and Mann & Cook)

206. Mackler v. City of Los Angeles (L.A. County Superior Court)

We filed a tort claim on March 25, 1992 on behalf of Peter Mackler, who was violently assaulted by the LAPD on November 15, 1991 at a demonstration in front of the Warner Center Marriott Hotel in Woodland Hills, protesting Governor Wilson's veto of AB101. When Mr. Mackler and others asked the police why they had allowed a driver (who had called demonstrators "faggots," left the parking lot where they were assembled, reentered,

and hit a demonstrator with his car) simply to leave, several officers began pushing and jabbing Mr. Mackler and others with police batons, despite pleas to stop. After being pushed for approximately 30 yards, Mr. Mackler turned and said, "What's his badge number?" The officer who was pushing Mr. Mackler responded by lifting his police baton above his head and forcibly striking Mr. Mackler with the baton on the right side of Mr. Mackler's face, knocking him to the ground and breaking his eyeglasses, which were thrown approximately 25 feet. Mr. Mackler was then grabbed by two other officers who lifted him from the ground and threw him several feet on several occasions. The LAPD then left Mr. Mackler injured, lying on the ground. The tort claim was denied on June 5, 1992. We filed suit October 9, 1992 in Los Angeles Superior Court for violation of Mr. Mackler's civil rights. Defendants answered and launched discovery, to which we responded. On November 30, 1992, the case was transferred to the Northwest District (Van Nuys). We propounded initial written discovery and on November 3, 1993, propounded additional document requests and special interrogatories. We filed two motions to compel and a motion to discover peace officer personnel records. On February 14, 1994, the Court issued a minute order, without argument, ordering us to be provided with the names, addresses, and phone numbers of witnesses in named officers' personnel records. After seeking clarification, we filed a notice for ruling upon our motions to compel. On June 6, 1994, the Court ruled that our motions to compel were denied. We took depositions of three of the officers involved and defended the plaintiffs' deposition. In January, 1996 we took the deposition of former officer Peck (whom we believe is the officer who assaulted Mr. Mackler) in Seattle.

Settlement was reached in January, 1997. In addition to $87,000 in monetary damages and fees, the City agreed to issue a clear and unequivocal order or training bulletin clarifying that all on-duty LAPD officers mus identify themselves, by name and badge number, to anyone who inquires and are prohibited from intentionally obscuring their name tags or other identifying insignia. (Jon W. Davidson, Paul Hoffman, Carol Sobel, Alan Friel, and Jenny Skoble)

207. Marmillion v. City of Los Angeles (L.A. County Superior Court)

On April 23, 1992, we filed a tort claim on behalf of 22 individuals, and agreed to represent 6 additional individuals as well who filed their own tort claims previously, all of whom were subjected to acts of police brutality, assault, and harassment on the evening of October 23, 1991. Claimants were either participants or passers-by at a demonstration in front of the Century Plaza Hotel protesting Governor Wilson's veto of AB101 (which would have added "sexual orientation" as a prohibited ground of employment discrimination in California). Although LAPD leadership previously had authorized a demonstration on the median strip dividing Avenue of the Stars, the LAPD refused to allow demonstrators to remain on the strip, even though the crowd remained non-violent and did not block traffic. Approximately 200 officers on horseback and on foot in full riot gear charged the demonstrators, repeatedly and violently striking, beating, shoving, punching, and trampling upon numerous of those present, and chasing them down the street and through the Century City shopping center mall, where further LAPD assaults took place. Throughout, many officers directed harassing comments and slurs toward the demonstrators on the basis of their presumed sexual orientation and political affiliations and beliefs. Injuries include contusions, sprains, scarring, and a wide range of psychological and emotional harm, as well as violations of the demonstrators' constitutional, statutory, and common law rights. The tort claim was denied

on June 5, 1992. Our complaint was filed in state court on July 15, 1992. Defendants have answered and propounded massive written discovery, to which we have responded. Defendants served subpoenas duces tecum on all identified medical providers of the plaintiffs, seeking the full medical files of all plaintiffs, regardless of the dates of service or whether treatment was related to the injuries which are the basis for suit. When defendants refused to limit the subpoenas, we moved to quash them on privacy, doctor/patient privilege, and HIV confidentiality law grounds. Our motion was granted on December 17, 1992. We have propounded substantial written discovery in the case. Status conferences were held May 17, and July 19, 1993, before Superior Court Judge Reginald Dunn. A further status conference was held September 13, 1993. We filed four motions to compel discovery and a motion for discovery of peace officer personnel records, all of which were referred to a referee, over our objection. We also have propounded additional written discovery. Seventy-seven depositions have been taken by plaintiffs or defendants. Our motions to compel were granted in part on January 21, 1994. At further hearing on February 10, 1994 certain documents alleged to be privileged were examined in camera and certain information therein was ordered to be provided to us. A further motion to compel was also granted. We filed objections to the withholding of certain documents and discovery which Judge Dunn overruled on May 4, 1994. Our motion for reconsideration was also denied on June 23, 1994. Since last November we have been engaged in settlement talks, which continue. The case was settled for $325,000 in compensation for damages, attorneys' fees, and costs. The case was dismissed on August 13, 1997. (Hugh Manes, Taylor Flynn)

208. Moreno v. County of Ventura (Court of Appeal, Second Appellate District)

We filed an amicus brief on April 23, 1993, in a case involving the shooting of a young Latino male who was shot fleeing the scene of a fight in a store in Ventura. The basis for the shooting was that the officer involved had heard that he had beaten up the shopkeeper. The shooting has left the young man paralyzed. The defendants in the civil rights action based on an alleged excessive use of force were granted summary judgment on the grounds that he shooting was reasonable as a matter of law based on the information the officer had. We are arguing that the issue of whether the shooting was appropriate in the circumstances is a mater to be decided by the jury. The case raises important questions about the use of force to subdue fleeing felony suspects and the meaning of the Supreme Court's 1985 decision in Tennessee v. Garner. Awaiting a date for oral argument. (Allen Grodsky, Robert Broadbelt and Paul Hoffman)

209. People v. Willis (California Supreme Court)

The ACLU/SC filed an *amicus* brief in a Fourth Amendment case as to which the California Supreme Court has granted review, on behalf of a prisoner seeking to have his conviction overturned. We filed this brief to explain why the California Supreme Court's decision in *People v. Ramirez*, 34 Cal. 3d 541 (1983) is correct and should not be overturned.

In the Spring of 2001, our office received a letter from a prisoner in Coalinga, California, requesting our assistance in this matter. The prisoner, Gary Willis, was subjected to a search of his Kern County motel room on the basis of information that he was currently on parole. In fact, Mr. Willis was no longer on parole at the time. The erroneous information was provided by a parole agent who accompanied the officers and aided in the search of Mr.

Willis' room. Over Mr. Willis' objections, the officers entered the room and refused to let either Mr. Willis or his companion leave until they verified his parole status. During this period, the officers elicited incriminating statements from Mr. Willis' companion, and then uncovered narcotics in the motel room. The California Court of Appeal, upheld the conviction, holding that regardless of whether the good faith exception to the exclusionary rule applied in this case, the officers could "freeze" the room while verifying Mr. Willis' parole status and obtain information from Willis during that time. *People v. Willis*, 71 Cal. App. 4th 530 (1999).

The California Supreme Court granted review on two issues. The first issue is whether the "good faith" exception to the exclusionary rule applies in cases where erroneous information is supplied to police by a parole agent regarding the parole status of an individual. The second issue, which has been conceded by the People, is whether the police could "freeze" the room while determining Mr. Willis' parole status.

The California Supreme Court issued a ruling in June, 2002, agreeing with our argument that the exclusionary rule applies to evidence discovered by parole and police officers during warrantless searches of ex-parollees. The court declined the Attorney General's invitation to overrule its prior opinion in *People v. Ramirez*, holding that the exclusionary rule applies where law enforcement officers conduct searches based on erroneous information. (Dan Tokaji)

210. People v. Yu (West L.A. Municipal Court)

On February 28, 1999 the B-Boy Summit, a hip-hop youth conference, was held on Venice Beach. The preceding two days of the conference took place on the UCLA campus without incident. More than 2000 people from across the U.S. and around the world attended the 5th annual Bi-Boy Summit. Seminars on a wide range of topics from "Women in Hip-Hop" to "Y2K: Urban Survival" dre record attendance and no reports of violence or vandalism. The event previously has been held without problems in various locations throughout the world. .

Asia Yu, the organizer of the 1999 B-Boy Summit and her organization, Eternal Two Creations, held the appropriate permits for the February 28 dance performance and exhibition held at Venice Beach. During the dance portion of the peaceful exhibition, the Los Angeles Police Department (LAPD) sent over 100 officers in full riot gear with guns to clear all the people attending the concert, as well as people on the boardwalk and the beach. The LAPD refused to look at the concert permit offered by Ms. Yu, detained her for over five hours, and charged her with inciting a riot. The ACLU contends that it was the actions of the LAPD, and not those of the B-Boy Summit organizers, which caused the confusion along Venice Beach and the Boardwalk.

The events of February 28, including the disproportionate tactics taken by the LAPD, were captured on videotape by a number of participants and clearly support the B-Boy Summit

organizers contention that the crowd was law abiding and orderly.

The ACLU is representing Ms. Yu, who faces one year in jail and a $1,000 fine on the criminal charges. If convicted, the city has indicated it will attempt to recover $3 million in costs to deploy the riot police and helicopters from Ms. Yu. On September 23, 1999, the City Attorney's office announced that it would be dropping the case against Ms. Yu, citing insufficient evidence to support the LAPD's claim that she had incited the crowd to riot. (John Duran, Dan Tokaji, Michael Small)

211. Pham v. City of Garden Grove (U.S. District Court, Central District of California)

We are representing two young Vietnamese American 15 year old female honor students in a class action lawsuit, filed on about May 26, 1994, against the Garden Grove police department for their policy and practice of detaining, interrogating and/or photographing Asian American youth for the purpose of compiling police files.

Quyen Pham and Minh Tran were with a friend in a mini-mall in the early evening of July 19, 1993, when they were detained, interrogated for about an hour, and then photographed by three Garden Grove police officers. During the arrest, the girls were asked extensively about their gang affiliations and associations, and asked nothing about any particular crime or individual. One officer said they assumed them to be gang members because the girls were wearing dark baggy pants and dark blouses, which is part of the hip hop fashion popular among youth generally. During the questioning, the police asked for specific information which they wrote onto small 3x5 index cards: date and place of birth, physical description, address, age, school, prior arrests, name of parents, phone numbers, and gang affiliations. Their wallets were searched, and one officer removed and read the personal writings on the backs of dozens of photographs of friends in Minh's wallet. After photographing them, they were released without any charge more than an hour after they were initially detained.
Since the filing of the complaint, we have uncovered several other incidents in which Asian American youth were detained, interrogated and/or photographed without any apparent legal justification. We believe the Garden Grove police policy is representative of a widespread police practice among Southern California police departments that ignores fundamental constitutional rights in the name of war on gangs. Minority youth are targeted for detentions, questioning, harassment, interrogation, photographing, and insertion of personal information into widely disseminated database systems and mugbooks. First, detention and photographing without probable cause or even reasonable suspicion that they have committed a crime is a violation of the Fourth Amendment right to be free from unreasonable arrest. Second, the police harassment, interrogation and photographing of persons because of a suspicion they are gang members or associates violates the constitutional right to free association. Third, taking and retaining such photographs violates privacy rights under the California Constitution.

In February, 1996, Judge Keller approved a comprehensive settlement agreement that provided for a host of changes in Garden Grove police department policies regarding street

encounters. The settlement agreement calls for payment of compensation, attorneys fees, and the expungement of the client's records, and the expungement of additional records regarding members of the putative class. The agreement includes numerous training bulletins that will serve as a basis for educating Garden Grove Police officers on the new policies as well as the law governing various encounters between police and citizens. ACLU involvement in the case continues, as the settlement agreement also provides detailed procedures for the ACLU to monitor Garden Grove's compliance with the new policies and procedures. (Robin Toma, Mark Silverstein, Mark Rosenbaum, Mary Chu of Howrey & Simon, Sally Cotrel of Alliance for Children's Rights, Ed Chen of ACLU/Northern California, and David Rudovsky)

212. Pratt v. Los Angeles, et. al. (U.S. District Court)

The ACLU was co-counsel in Geronimo Pratt's successful habeas corpus challenge that led to the reversal of his 25 year-old murder conviction and his release from prison after 27 years of incarceration. The District Attorney declined to appeal that decision to the California Supreme Court after we won an affirmance in the Court of Appeal, and further announced that they will not retry Pratt.

The ACLU joined the team of attorneys who filed suit to vindicate Pratt's civil rights in May, 1999. This case is a civil case in which Pratt seeks compensation for the massive civil rights violations that led to his unjust conviction and his resulting 27 years behind bars. The suit is against the City of Los Angeles, and a number of individual members of the Los Angeles Police Department ("LAPD") and the Federal Bureau of Investigations ("FBI") and the "star" witness at Pratt's criminal trial, Julius Butler.

The suit alleges that Pratt was a target, and ultimately a victim, of COINTELPRO, a now infamous, "counter intelligence" program conducted within the United States by the Federal Bureau of Investigations ("FBI") acting in concert with local law enforcement agencies. COINTELPRO was designed to, and did in practice, go far beyond the bounds of law enforcement to engage in the disruption of lawful political activities of American citizens deemed "dissident" or "subversive" by COINTELPRO's personnel. One of the groups targeted by COINTELPRO was the Black Panther Party. Pratt became a COINTELPRO target in early 1969 when he assumed a leadership role in the Los Angeles chapter of the Black Panther Party. The defendants in this case participated in a conspiracy to "neutralize" Pratt to suppress his free speech and political activities. The means eventually chosen by defendants to do so amounted to nothing less than the fabrication of evidence against Pratt in order to obtain his conviction on a charge of first degree murder, a charge of which defendants knew Pratt to be innocent. As a result of this unlawful scheme, Pratt was incarcerated for nearly 27 years from his arrest in November 1970 until his release in May 1997, after his conviction was overturned on habeas corpus. This action arises directly under the United States constitution pursuant to Bivens v. Six Unknown named Agents of the Federal Bureau of Narcotics 403 U.S. 388 (1971), and under 42 U.S.C. § 1983.

This lawsuit was originally filed on behalf of Pratt in 1998. When the ACLU joined in 1999

the case was still at a very early stage, largely because it was impossible to proceed until the criminal case was resolved. After that occurred, the civil case moved forward.

The defendants filed motions to dismiss Pratt's complaint. Oral argument on the motions was held on September 13, 1999. The judge issued an order denying the motions on September 14, thus allowing the case to proceed. The federal defendants appealed to the Ninth Circuit from the District Court's denial of the motion to dismiss. Briefing was deferred pending settlement discussions between all the parties. In May, 2000 the partices reached a tentative settlement. In August, 2000 the settlement became final. Under the settlement, the FBI and Los Angeles agreed to pay Pratt $4.5 million total in damages; $2.5 million of which is to go to Pratt. (Mark Rosenbaum, Peter Eliasberg, Johnnie Cochran, Stuart Hanlon)

213. Rhee, d/b/a Family Mini Market v. Gates (U.S. District Court, Central District)

On April 29, 1992, at or around 7:00-8:00 p.m., Plaintiff John Rhee's corner market, Family Mini Market, in South Los Angeles was being looted. A customer, who saw the looting, was approached by two LAPD officers in front of the store and was stopped and frisked. After frisking the customer, the police officers released the customer and went back to their patrol car and watched the looting for 15-30 minutes. The officers made no attempt to stop or arrest the looters. About 10-15 minutes later, another patrol car drove by slowly. Two officers were inside the car and one officer loudly stated to the people on the street to have a field day. The police conduct increased the looting to the plaintiff's store. We allege violations by police of plaintiff's First, Fourth, Fifth and Fourteenth Amendment rights under the U.S. Constitution, a conspiracy to violate plaintiff's civil rights, and that defendants deprived Plaintiff of his right to be free from violence, intimidation and threat of violence against his person as a result of his race and color and that the alleged conduct of defendants aided, incited and conspired to deprive him of such rights. The complaint was filed on April 29, 1993, but the case was voluntarily dismissed in October 1993 by plaintiff due to fear of LAPD retaliation and difficulty in locating the principal witness. (Robin Toma, Paul Hoffman, with Julie Paik of the Asian Pacific American Legal Center)

214. Rose v. City of Fullerton (Orange County Superior Court)

Filed on September 10, 1992, Petition for Writ of Mandate/Prohibition to enjoin the City of Fullerton from enforcing Municipal Code Section 7.105.020, which makes it illegal for the homeless to live in any public area in the city. This lawsuit is one of five lawsuits filed simultaneously, each challenging a similar ordinance recently enacted in the cities of Orange, Santa Ana, Long Beach, and Santa Barbara. They were filed by a broad coalition of legal aid and public interest law organizations. All are aimed at permitting local law enforcement agencies to treat the homeless as criminals for engaging in such life activities as sleeping, eating, etc. in public areas of those cities, when no other alternatives exist for the homeless plaintiffs/ petitioners. These ordinances are being challenged as violations under the state

and federal constitution of the petitioners' (1) right to due process, in that they treat the homeless as criminals based not on particular criminal conduct but on their status or condition; (2) right to equal protection, because they discriminate against homeless persons in depriving them of their right to travel and be free from governmental compulsion to move from the community in which they reside, and because the laws constitute hostile legislation designed to permit arbitrary discrimination against a protected class of persons; and (3) right to be free of cruel and unusual punishment, in that it subjects the homeless to criminal prosecution because of their status. A reply has been filed by the respondents to our Petition for Writ of Mandate/ Prohibition. The case was settled with an agreement to be notified should the ordinance be enforced. (Robin S. Toma, Cathy Jensen of Orange County Chapter of ACLU/SC, Legal Aid Society of Orange County, Western Center on Law and Poverty, National Senior Citizens Law Center, Lloyd A. Charton, and Christopher B. Mears)

215. Shefik v. City of Los Angeles (L.A. Superior Court)

Complaint filed on April 30, 1993, on behalf of approximately 60 plaintiffs arising from the unlawful arrest, detention, harassment, and battery of individuals who were lawfully engaging in a nonviolent demonstration on the morning of May 2, 1992. The demonstration was a lawful exercise of their First Amendment rights, as guaranteed under the Constitutions of the United States and the State of California. By this action, Plaintiffs seek compensatory and punitive damages for the violations of their constitutional, statutory, and common law rights, as well as declaratory and injunctive relief. The demonstrations which took place on May 2, 1992 were the result of a call that was issued before the Simi Valley verdicts were announced. There was to be a lawful demonstration at Parker Center the Saturday after the verdicts. The demonstration was supported by a number of organizations, but it was popularly associated with the First AME Church as the principle sponsor. This call was repeated on television and over the radio in the immediate aftermath of the verdicts, consequently large numbers of people saw this as their most immediate opportunity to protest the verdict and police response to the rebellion that followed. At the last minute First AME cancelled the demonstration, although many people did not hear the about the cancellation and a large number of people arrived at the site expecting to take part in the demonstration. The complaint was filed on April 30, 1993. In early July, the City Council approved a settlement of $200,000 for Shefik and the Vassos case. Considerable policy changes have also been reached. This case was dismissed in December, 1995. (Carol Sobel, Robin Toma, Paul Hoffman)

216. Silva v. Block (L.A. County Superior Court)

Taxpayer/class action suit challenging the LASD's abuse of canine units. The suit seeks an injunction against future use of canine units to bite suspects where the use of deadly force would not be justified. The judge ruled against class certification (which we are not directly involved in), which sought damages for hundreds of dog bite victims. Discovery is continuing. In December 1991, Judge Levin gave us time for discovery in order to amend our complaint before he rules on defendant's demurrer. We are still in the discovery process.

We have filed an amended complaint reflecting the results of a statistical analysis indicating a disproportionate number of bites against Latino suspects. Settlement negotiations have failed; no trial date has been set. (Robin Toma, Tracy Rice, with LDF, Litt & Marquez & Fajardo and Mann & Cook)

217. Sobel v. City of Los Angeles (L.A. County Superior Court)

This action, brought on behalf of ACLU attorney Carol Sobel, challenges the constitutionality of Sobel's arrest last year as she acted as a legal observer at a May Day Rally in 1991 sponsored by the Revolutionary Communist Party. Sobel was arrested for asking an LAPD officer if she could remain on the public street that had previously been closed to traffic. Once she was taken to Rampart Station, Assistant Chief Robert Vernon ordered her booked on an outstanding traffic warrant. A complaint for damages was filed on April 17, 1992. On October 16, 1992 Judge Horowitz heard the defendants' demurrer. The judge issued an order the same day overruling the demurrer. The case was settled in August 1993. (Lise Anderson, Paul Hoffman)

218. Sotero v. County of Riverside et al (U.S. District Court for the Central District Eastern Division)

This is a 42 U.S. C§ 1983 action on behalf of Alicia Sotero Vazquez, an undocumented immigrant who was brutally beaten by Riverside County Sheriff's Deputies on April 1, 1996 in South El Monte, on the Pomona freeway (60 westbound). The beating was caught on videotape by the news media and captured worldwide attention. The action seeks redress for the violation of Sotero's 4th and 14th amendment rights under the U.S. Constitution. On April 17, 1996, Deputy Tracy Watson filed a complaint in federal district court against the Riverside County Sheriff's Department. On April 29, 1996, plaintiff filed a Motion to intervene in the Watson complaint. On May 6, 1996, defendants in the Watson complaint moved to dismiss Watson's complaint, this was subsequently denied on June 17, 1996. On May 6, 1996, the federal government moved to intervene in the Watson complaint. Plaintiff's motion to intervene was denied on May 21, 1996, but Judge Robert Timlin invited plaintiff to file another motion to intervene based on plaintiff's civil claims. Plaintiff filed her second motion to intervene on May 28, 1996. This motion was also denied. Plaintiff filed her administrative complaint against Riverside County on July 2, 1996. The case is currently before Judge Timlin. The parties entered into settlement negotiations on January 7, 1997. Settlement was announced on Jun 20, 1997. Ms. Soterto and Mr. Funes will both receive $370,000 under the terms of the settlement. (Mark Rosenbaum, with Dan Stormer, Sam Paz, Antonio Rodriguez, Jorge Gonazlez, and Leonard Weinglass.

219. Thomas v. City of Los Angeles (U.S. District Court, Central District)

Plaintiffs in this case, represented by NAACP Legal Defense Fund, claim that there is a white supremacist gang of sheriff's deputies at the Lynwood station involved in a pattern of racially motivated police brutality. They seek discovery into the association between the gang, known as the Vikings, and the deputies. The deputies have opposed the discovery, claiming it would violate their First Amendment right of association and Fourteenth Amendment right of privacy. On March 22, 1993, we lodged an amicus brief arguing that police officers are public officials whose fitness for office is a matter of public concern, and the affiliation of

an officer with a white supremacist gang could affect the officer's ability to equally enforce the laws. We argue in the amicus brief that the discovery should be allowed. Discovery was allowed. (Raleigh Levine, Paul Hoffman, Carol Sobel)

220. Vassos v. City of Los Angeles (L.A. Superior Court)

Action filed on April 30, 1993, on behalf of 9 plaintiffs arising from the unlawful arrest, detention, imprisonment, harassment and battery of individuals who were lawfully present in downtown Los Angeles to engage in an orderly and peaceful rally and demonstration for the rights of the poor and disabled on the morning of May 9, 1992. The rally was to take place on and near the outside steps on the south side of City Hall. The rally was organized by the Campaign for a Fair Share, a coalition of community and citizens' groups united in its opposition to Governor Pete Wilson's proposal to severely reduce the state budget for health, education and human services. The intended demonstration was a lawful exercise of their First Amendment rights, as guaranteed under the constitutions of the United States and the State of California. By this action, Plaintiffs seek compensatory and punitive damages for the violation of their federal and state constitutional, statutory, and common law rights, as well asdeclaratory and injunctive relief. Discovery is ongoing. In early July, the City Council approved a settlement of $200,000 for the Vassos and Shefik cases. Considerable policy changes have also been reached. The case was dismissed in December, 1995. (Robin Toma, Carol Watson, Carol Sobel, Paul Hoffman)

POVERTY

221. City of Los Angeles v. County of Los Angeles (L.A. County Superior Court)

The City of Los Angeles sued the County for failure to redress the homeless problem in Los Angeles, contesting in particular the arbitrariness of the 60-day penalty, lack of procedures to reach and assist the mentally disabled homeless and inadequate availability of shelter. The ACLU and Legal Aid Foundation have intervened on behalf of homeless residents. A County motion to dismiss all proceedings was denied. The suit was an omnibus attack on the inadequacy of shelter facilities within Los Angeles and the failure to address the needs of the mentally disabled homeless, as well as other related issues. A settlement was reached increasing grant levels and working other major reforms in the welfare system such as substantial modification of the 60-day penalty rule permitting literacy training in place of work requirements and moving disabled recipients onto federal Social Security assistance programs. The settlement was approved by the court. (Mark Rosenbaum with Gary Blasi, Nancy Mintie, Jim Preis and Polly Thomas of LAFLA)

222. Deloney v. Espy (U.S. District Court, Central District)

Victims of the recent civil disturbances in Los Angeles filed suit contesting the failure of the Secretary of the Department of Agriculture to declare a food emergency in the aftermath of

the disorders affected residents of the stricken areas. Three days later, the Secretary issued a disaster declaration, but failed to properly implement Congressional statutes and the Department's own regulations providing victims with emergency food stamp relief and replacement stamps for food destroyed. An application for a temporary restraining order was filed and argued. On Friday, June 5, 1992, on the eve of another hearing on the TRO, a settlement was reached in which the benefits we were seeking will be given. Counsel are monitoring an outreach program to victims of the disorders. The food stamp program reached over 24,000 people in Los Angeles County. The fee matter was referred to a magistrate and the parties settled the fee issue for $180,000. (Mark Rosenbaum, with Legal Aid Foundation of Los Angeles and Western Center for Law and Poverty)

223. Forche v. City of Santa Ana (Orange Court Superior Court)

This is a challenge to another attempt by the City of Santa Ana to prosecute the homeless for sleeping in public areas of the city. After successfully halting in June and July of 1993 the City's prosecution of the homeless under a local "anti-camping" ordinance until resolution of the appeal (see separate docket entry, Tobe v. City of Santa Ana), the City began to cite homeless individuals under the state Penal Code section 647(i). That state law prohibits "lodging" in "any public or private place" but does not define the term. Santa Ana began using 647(i) to cite and prosecute persons who were simply sleeping in outdoor public areas with nothing more than a blanket covering themselves.

The lawsuit alleges that Santa Ana's prosecution of the homeless under 647(i) violates their due process rights by going beyond the scope of the law. We also seek to declare 647(i) unconstitutional because it violates due process rights as unconstitutionally vague on its face. By lacking a definition of "lodging," homeless persons do not have fair warning of what conduct is proscribed, nor does it provide clear and objective guidelines to police, resulting in arbitrary and discriminatory enforcement. We also argue the City is violating equal protection guarantees in enforcing 647(i) to homeless only, and denying them the right to remain in their city of choice (right of intrastate travel). Finally, we contend the City's actions violates constitutional prohibitions on cruel and unusual punishment in that it punishes the homeless based on their status, since sleeping outside is a life necessity inextricably bound to their status as homeless.

On October 29, 1993, the Court granted our request for a preliminary injunction against the City's enforcement of Penal Code 647(i). No longer can the City prosecute homeless individuals because they are sleeping, using sleeping bags or blankets, in possession of personal property, or remaining in public areas. On December 21, 1993, we filed an amended complaint and amended petition for writ of mandate to challenge the constitutionality of a second anti-camping ordinance, NS-2210, enacted on December 20, 1993, which makes it unlawful to use public areas of the Santa Ana Civic Center for various "living accommodations purposes" including sleeping and laying down bedding to sleep. It also makes it unlawful to store property on public land in the civic center. We argued that in combination with existing city laws, including nighttime park curfews, the city is once

again attempting to make it a crime to be homeless in the City of Santa Ana. We sought a court order to enjoin the city from enforcing NS-2210 to prosecute the homeless for living activities which are protected under the October 29th preliminary injunction.

On April 24, 1995 the California S. Ct. ruled in Tobe that there was only a facial challenge that had to be decided and the court did not have to address as "as applied" challenge. It held that the Santa Ana ordinance was valid on face, does not impermissibly restrict the right to travel, does not permit punishment for status, and is not unconstitutionally vague or overbroad. In light of this Forche was dismissed. (Robin Toma and ACLU Orange County cooperating attorney Cathy Jensen, with Legal Aid Society of Orange County, Western Center on Law and Poverty, Public Law Center, and other public interest attorneys.)

224. Gardner v. County of Los Angeles (Los Angeles Superior Court)

Lawsuit involving group of indigent Los Angeles County residents who receive general relief, claiming County cut their payments before it was allowed to. The six plaintiffs contend a new state law allows the County to reduce their payments from $293/month to $212/month on March 1, 1994, at the earliest. But the County Board of Supervisors voted July 29 to implement the reductions as of September 1. The Superior Court denied plaintiffs' motion for a preliminary injunction, calling our arguments meritorious and sensible, but felt compelled by existing precedent to reject the motion. On appeal, the Superior Court was reversed. The State Supreme Court denied the County's request for a hearing. Fees were granted. (Mark Rosenbaum, with Western Center on Law & Poverty and numerous other public interest law firms)

225. Green, et al. v. Anderson, et al. (U.S. District Court, Eastern District, 9th Circuit, U.S. Supreme Court)

Suit filed in federal district court challenging the State of California's implementation of a residency requirement which denies standard California AFDC benefits to persons who have not resided in California for twelve consecutive months immediately prior to applying for aid. Plaintiffs are impoverished families with children who depend upon public assistance to feed, shelter, and clothe themselves and their children. Under the residency provision, a plaintiff can receive only the amount of AFDC she could have received in her prior state of residence. For instance, a plaintiff who resided in Louisiana with her children can only receive a maximum AFDC grant of $190 (the maximum grant in Louisiana) as opposed to the $625 standard California benefit. the suit alleges violation of the privileges and immunities clause, equal protection, and the right to travel. The case was filed on December 21, 1992 and the court issued a temporary restraining order on December 22, 1992. On January 28, Judge Levi granted our motion for a preliminary injunction. The State appealed the grant of the preliminary injunction by Judge Levi. the matter was argued before the 9th Circuit on April 13, 1994 by mark Rosenbaum, and a unanimous panel affirmed the ruling on June 13, 1994. The Supreme Court granted certiorari. This case has been related to Beno,et al., v. Anderson, a related case challenging the residency requirements based on

statutory grounds. On January 17, 1995, the U.S. Supreme Court heard oral argument. In a percurium decision on February 22, 1995, the Supreme Court vacated the judgments below, holding that the case was unripe in light of the Beno decision invalidating the waiver. We filed a motion to amend the judgments arguing that vacatur was inappropriate since the State had chosen not to appeal the Beno decision. Our motion was denied. The State tried to reinstitute the law beginning April 1, 1997, and we filed another challenge (see Roe v. Anderson). (Mark Rosenbaum with Legal Aid Society of San Mateo County and the Coalition of California Welfare Rights Organizations, Inc.)

226. Long Beach Coalition for the Homeless v. City of Long Beach (L.A. County Superior Court)

Filed on September 10, 1992, Petition for Writ of Mandate/Prohibition to enjoin the City of Long Beach from enforcing Municipal Code Sections 9.42.110, which makes it illegal for any person to sleep, camp or lodge on public property, whether inside or outside a vehicle, between 10 p.m. and 5 p.m. This lawsuit is one of five lawsuits filed simultaneously, each challenging a similar ordinance recently enacted in the cities of Orange, Santa Ana, Fullerton, and Santa Barbara. They were filed by a broad coalition of legal aid and public interest law organizations. All are aimed at permitting local law enforcement agencies to treat the homeless as criminals for engaging in such life activities as sleeping, eating, etc. in public areas of those cities, when no other alternatives exist for the homeless plaintiffs/petitioners. We are challenging these local ordinances as violations under the state and federal constitution of the petitioners' (1) right to due process, in that they treat the homeless as criminals based not on particular criminal conduct but on their status or condition; (2) right to equal protection, because they discriminate against homeless persons in depriving them of their right to travel and be free from governmental compulsion to move from the community in which they reside, and because the laws constitute hostile legislation designed to permit arbitrary discrimination against a protected class of persons; (3) right to be free of cruel and unusual punishment, in that it subjects the homeless to criminal prosecution because of their status; and (4) right to due process, in that it fails to clearly define "camp" or "lodge." Discovery is proceeding. Depositions were taken of the Homeless Services Coordinator of Long Beach and the Chief of Police. The city council revised the challenged ordinances following the judge's decision to strike down parts of the ordinance in the Tobe v. Santa Ana case. The definition of "camping" was narrowed so as to permit homeless persons to have a blanket or cover without violating the law. Discovery is proceeding regarding current enforcement and the prohibition on sleeping between 10 p.m. and 5 a.m. A settlement offer requesting policy changes was made and rejected by the City Council.

On April 24, 1995 the California S. Ct. ruled in Tobe that there was only a facial challenge that had to be decided and the court did not have to address as "as applied" challenge. It held that the Santa Ana ordinance was valid on face, does not impermissibly restrict the right to travel, does not permit punishment for status, and is not unconstitutionally vague or overbroad. In light of this Long Beach was dismissed. (Robin Toma and ACLU Orange County cooperating attorney Cathy Jensen, with Legal Aid Society of Orange County,

Western Center on Law and Poverty, Public Law Center, and other public interest attorneys.) (Robin S. Toma, Legal Aid Foundation of Long Beach, Western Center on Law and Poverty, National Lawyers Guild-Los Angeles Chapter, and Richard Novak)

227. Navarette v. Long Beach Unified School District: (Superior Court)

Suit filed on behalf of a number of indigent families for a Writ of Mandate, along with declaratory and injunctive relief, to compel the District to amend its policy to allow economically disadvantaged families to participate in the school uniform program. The state's school uniform law provides that Districts inform parents who do not wish to purchase uniforms of an "opt-out" provision. Under the state's Free School Act, the law also requires that Districts ensure that all children who wish to wear a uniform but are unable to afford one be provided with the economic resources to obtain a uniform.

The lawsuit contends that the Long Beach Unified School District has implemented a school uniform policy. It has not provided adequate notice of the "opt-out" provision, and has not provided free or low-cost uniforms to economically disadvantaged children who have sought uniforms. Moreover, children who do not wear uniforms are often harassed and penalized academically or otherwise.

The District's uniform policy as implemented discriminates against Plaintiffs on the basis of their poverty status and interferes with their fundamental right to equal educational opportunities in violation of the California Education Code and the equal protection and "free school" provisions of the California Constitution.

On February 21, 1996 settlement was reached through use of a mediator. Under the terms of the settlement, claims filed on behalf of 26 families were dropped. The District will provide clear information regarding the availability of uniform assistance for disadvantaged students, improve exemption procedures, and change its guidelines, include an additional statement about school uniform assistance and exemptions in notices to parents. In addition, the District's director of attendance will serve as an ombudsperson to assist parents who have concerns or questions about school uniforms. Each elementary and middle school has designated a specific staff person responsible for issues surrounding school uniforms. (Mark Rosenbaum; Alan Friel, Kaye Scholer; Dennis Rockway and Terri McDowel, Long Beach Legal Services; Deborah Escobedo and Peter Roos, META)

228. Saenz v. Roe (U.S. Supreme Court)

This class action was filed on April 1, 1997 on behalf of plaintiff and other similarly situated persons. Plaintiff is an impoverished woman who lives with her husband and together they are expecting a child. They depend upon public assistance to feed, shelter and clothe themselves. Plaintiff is a would be applicants for subsistence benefits through the Temporary Assistance to Needy Families (TANF)program formerly known as Aid to

Families with Dependent Children (AFDC) program.

Plaintiff is a California resident and lives in Long Beach, California, in Los Angeles County. She was born in Orange, California, but moved away shortly thereafter and has spent most of her life in Oklahoma. She and her husband decided to move to California after losing their shared apartment and after he lost his job at a steel mill. They arrived in Needles, California in early March, 1997. Plaintiff became ill and had to be hospitalized. She was told by her doctor that she had a high risk pregnancy and would require constant monitoring and she should not be left alone. After explaining her situation to the caseworker at the Needles, she and her husband were given bus tickets to Long Beach.

Plaintiff applied for TANF benefits on April 8, 1997. She was, at the time, housed by a homeless shelter. She, her husband and then unborn child were otherwise eligible for TANF, but because of the durational residency requirement, plaintiff could receive only the amount of TANF she could have received in her prior state of residence. Under the provision, plaintiff Nelson would receive $307/month, the maximum TANF grant in Oklahoma for a family of three, compared to the standard California benefit of $624 for a family of three. Poverty level income for a family of three, according to the federal poverty line guidelines, is $964.17.

Plaintiff and her husband looked for apartments in the Long Beach area, but did not find even a one-bedroom unit for less than $450 per month.

Under section 11450.03(a) of the California Welfare and Institutions Code, added by Section 37.5 of Chapter 722 of the Statutes of 1992 ("Section 11450.03(a)") reprinted at 10 West's Cal. Legis. Serv. 1992, p. 2897, 2931, plaintiff would have been denied standard California TANF benefits because she had not resided in California for twelve consecutive months immediately prior to applying for aid. Before Section 11450.03(a) went into effect on April 1, 1997, all otherwise identical California residents were eligible for the same TANF benefits. Under Section 11450.03(a), however, newcomers to California and recent applicants for aid who have lived in California for less than twelve consecutive months could not receive aid that exceeds the amount they could have received in their prior state of residence.

On behalf of themselves and similarly situated California and out of state residents, plaintiff sought injunctive relief compelling defendants to cease implementing the durational residency requirement in Section 11450.03(a), and to cease denying full California TANF benefits to bona fide residents, based solely upon the duration of their residence in this state.

The residency requirement was challenged on the grounds that it violates plaintiff's rights to equal protection, to travel, and to the privileges and immunities guaranteed under the United States Constitution. On April 1 the Court granted the TRO until May 16, 1997. On July 9, 1997, the court issued a preliminary injunction. This is the first decision in the country that struck down an unconstitutional restrictions on poor women and children

authorized by the Welfare Reform Bill. The State appealed the preliminary injunction. The case was argued before the 9th Circuit Court of Appeals on December 11, 1997.

On January 28, 1998, the 9th Circuit upheld the District Court's decision and the state's petition for rehearing was denied. The state appealed to the U.S. Supreme Court. The ACLU filed its brief with the U.S. Supreme Court in opposition to *certiorari* on August 19, 1998 and the State has filed its reply brief. Oral argument was held on January 13, 1999.

On May 17, 1999 the Supreme Court ruled, in a 7-2 decision, in favor of the ACLU's position. Most significantly, the decision relied upon the Privileges or Immunities Clause of the Fourteenth Amendment, dormant for over a century. The Court held that state citizenship rights cannot be conditioned on recency of migration or state of prior residence. A fees settlement was reached between plaintiffs and counsel for the State, but was rejected by State officials. A petition was filed with the district court in early June, 2000, and argument has been scheduled for November, 2000. We received our fees in January, 2001. (Mark Rosenbaum, Rocio Cordoba, Dan Tokaji, Peter Eliasberg, David Schwartz, NOW Legal Defense and Education Fund, ACLU of San Diego and Imperial Counties)

229. Villery v. Board of Supervisors of the County of Los Angeles (U.S. District Court, Central District)

Plaintiffs commenced this action in August, 1995 in federal district court. Plaintiffs filed a preliminary injunction against the Board of supervisors seeking to stop the closure of six of the county's comprehensive health centers and closure of 28 of its 29 public health clinics. The suit also seeks to stop cuts to outpatient specialty care at all six County hospitals. The lawsuit seeks to ensure that the County continues to perform its legal duties to three particular groups of patients:
(1) patients with disabilities whose special needs must be accommodated as required by the American with Disabilities Act (ADA);(2) Patients admitted to County hospitals and inpatients who have a federal right to necessary follow-up care after discharge; and (3)Indigent patients entitled to a minimum level of services under state law.

The preliminary injunction seeks to ensure that proper arrangements are made for the care of the above patients prior to reducing services or closing clinics. The preliminary injunction is scheduled for hearing on September 28, 1995 before Judge Davies. The injunction was denied, andd the case has been dismissed. (Mark Rosenbaum, Silvia Argueta with San Fernando Valley Neighborhood Legal Services, Inc. Protection and Advocacy; Western Center on Law and Poverty; California Women's Law Center; National Health law Program; LAFLA and other public interest groups)

230. Young v. Orange County (U.S. District Court)

Suit was filed on March 21, 1977 on behalf of a food stamp claimant who received a profane, harassing, and threatening voice mail message from the Orange County welfare office. The

County's action was in retaliation for her exercise of her right to contest the County's termination of her food stamps benefits, and was designed to intimidate her from seeking such aid in the future.

Mara Anna Young, a 58-year old Orange County resident, applied for food stamps in July 1996, after being laid off from her job. Her application was granted, and she started receiving benefits. However, her benefits were shortly thereafter reduced to $34 per month. Ms. Young requested a hearing before an Administrative Law Judge, and her benefits were restored to their previous level of $119 per month. The County subsequently cut off her benefits completely. Again, Ms. Young sought a hearing and, again, the ALJ ruled in her favor, restoring her benefits.

In February, the County requested a rehearing of the ALJ's decision. Ms. Young wrote a letter to the hearing unit in response to the County's request for rehearing. Ms. Young's letter carefully explained why she was entitled to keep her food stamps, with reference to the relevant federal law.

On March 11, 1997, a few days after Ms. Young sent her letter, a representative of the County left a message containing profane and harassing language on her voice mail, which Ms. Young saved on tape.

When Ms. Young subsequently called to complain about this abusive and harassing voice mail message, the County denied all responsibility and failed to take any corrective or disciplinary action.

The County's voice mail message was clearly intended to intimidate, harass, and retaliate against Ms. Young for exercising her lawful right to protest the County's action terminating her food stamps; to force Ms. Young to abandon her claim for food stamps; and to silence any and all future attempts by Ms. Young to challenge or criticize action by the County Social Services Agency in relation to her food stamps claim. As a direct result of the

County's threatening and abusive message, Ms. Young is afraid to seek further aid from the County and intends to forego food stamps to which she is entitled.

The suit raises claims under the Due Process Clause and First Amendment. Defendant's motion for summary judgment was denied, although the district court ruled that no "pattern and practice" claim could be made against the County. In December, 1998, the defendants filed a second motion for summary judgment on behalf of the individual defendants. The district court heard argument on this motion on March 15, 1999. We received a favorable decision from the federal district court on March 18, allowing our First Amendment retaliation and substantive due process claims to go to trial. The court concluded that there was a triable issue as to whether an Orange County employee was responsible for or initiated the harassing voicemail message that our client, a food stamp recipient, received in retaliation for her exercise of her rights to speak out about the County's mishandling of her

case. The trial commenced on September 7, 1999 and concluded on September 10. The jury concluded that the defendant Orange County employee was not liable. (Mark Rosenbaum, Dan Tokaji)

PRISONER'S RIGHTS

231. Allen v. Barnes (Ninth Circuit Court of Appeals)

The ACLU, pursuant to a pro bono appointment, filed an appeal in June, 2000 to the Ninth Circuit on behalf of a state prisoner whose § 1983 action has been dismissed with prejudice on statute of limitations grounds. The argument is limited to whether the statute of limitations should have been tolled for the prisoner; we will not represent the prisoner on remand if we win the appeal.

According to the facts alleged in his complaint, Michael E. Allen was brutally beaten and then denied medical care on October 14, 1990, during his pretrial detention in Los Angeles County Jail. Mr. Allen waited until August 14, 1995 to file his current action, although his effort to redress his injuries has a tortured history: he filed an administrative grievance with the County Jail but received no response; he tried to file a late claim with the Office of the County Counsel for Los Angeles County, but was denied the opportunity to file; he filed first a state court action and then a federal action, but in both actions he lacked the true names of the officials who beat him; finally, nearly four and a half years after he was beaten, Mr. Allen obtained records identifying the jail officials by name and a few months thereafter he filed this action in the Central District of California.

The district court dismissed Mr. Allen's action because it construed the California state prisoner tolling provision, Code of Civil Procedure Section 352.1, not to apply to Mr. Allen because he now serves a life sentence without possibility of parole and § 352.1 tolls the statute of limitations only for prisoners who were serving sentences "less than for life" when they were injured On appeal, we argued, first, that § 352.1 also tolls the statute of limitations if, at the time a cause of action accrues, an inmate is a pretrial detainee. See Elliott v. City of Union City, 25 F.3d 800, 802 & n.2 (9th Cir. 1994). Mr. Allen was injured he was a pretrial detainee, and therefore the district court should have recognized that the statute of limitations was tolled. We argued, second, that if tolling did not continue after Mr. Allen's sentence to life without possibility of parole, then § 352.1 unconstitutionally discriminates between classes of state prisoners without a rational basis and the court should reform the statute such that it is not unconstitutional. Finally, we argued that if the court construes § 352.1 not to toll the statute of limitations for Mr. Allen, then the court should remand for a determination whether the statute of limitations was equitably tolled by Mr. Allen's efforts to litigate his claims and by Mr. Allen's allegations of such extreme injury that he may not have been able to press his claims competently before 1995.

Oral argument was held on October 4; on December 5, 2000, the Ninth Circuit issued a

favorable opinion. Mr. Allen can now pursue his claims against the sheriff's deputies in federal district court. (Catherine Lhamon)

232. Arreguin v. Gates (U.S. District Court, Central District)

Action challenging as unconstitutional the use of rubber rooms in the Orange County Jail. The action alleged that the rubber rooms are improperly used as discipline and inappropriately used for psychiatric treatment. The court, after a two day hearing, in 1989, issued a preliminary injunction placing limits on the use of rubber rooms, including the requirement that a psychiatrist approve all placements in a rubber room, the availability of paper gowns, mattresses and bathrooms. The court reaffirmed its oral order, despite Sheriff Gates' personal plea for modifications of the proposed order, at a hearing on November 8, 1988. On August 5, 1989, the court issued its ruling restating that persons placed in the rubber rooms must be examined by a psychiatrist and must be provided access to sanitation and hygiene facilities and clothing. (Richard Herman, Charles McClung, Dan Stormer, Mark Rosenbaum)

233. Chappell v. Dickerson (Ninth Circuit Court of Appeals)

The ACLU represents Rex Chappell, currently incarcerated in Folsom State Prison, in his appeal to the Ninth Circuit of a dismissal of a civil rights suit he filed while incarcerated at Corcoran State Prison. The district court dismissed his suit based on its determination that his claim was subject to the requirements of the Prison Litigation Reform Act ("PLRA"). The appeal was filed on April 26, 2000. The Ninth Circuit Court appointed the ACLU to serve as pro bono counsel to Mr. Chappell in his appeal.

Mr. Chappell filed under 42 U.S.C. § 1983 alleging violations of his constitutional rights by a Corcoran corrections officer, who, with full knowledge that Mr. Chappell suffered from and was being treated for paranoid schizophrenia, placed him in a locked recreation yard with other inmates, denied all inmates in the yard regular recreational items, and then announced over the loudspeaker to the yard, "you can thank that a--hole Chappell for it. If you guys want to beat his f--king a-- no gun control officer will see anything."

These events took place on April 7, 1996. The PLRA became effective on April 26, 1996. Mr. Chappell filed his civil rights complaint on May 1, 1996. A portion of the PLRA provides "[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury." The district court dismissed Mr. Chappell's complaint primarily based on a magistrate's recommendation that he had failed to state a claim because he had only alleged "mental distress" and not a physical injury as required under the PLRA.

The case raises the issue, novel in the Ninth Circuit, of whether the physical injury provisions of the PLRA applies to claims which arose prior to, but were filed after its enactment. Many courts have held that the PLRA does not apply retroactively to claims *filed* before its

enactment; research reveals no reported decision on whether the PLRA applies to claims which *arose* before but were filed after its enactment.

In addition we argued that the section of the PLRA requiring a prior showing of physical injury before a prisoner may bring a claim for mental injury is unconstitutional. The ACLU's reply brief was filed on June 23, 2000, and the case was argued before the Ninth Circuit Court of Appeals on September 13, 2000.

On September 28, 2000 the Ninth Circuit ruled in Mr. Chappell's favor and reversed the District Court's dismissal. The Court agreed with the ACLU's argument that the PLRA should not have been applied retroactively to bar Mr. Chappell's claim when the conduct giving rise to his case took place before the law was enacted. The Court also determined, as the ACLU argued, that a pre-PLRA claim for psychological injury alone is cognizable under the Eighth Amendment. The case now returns to the trial court, where Mr. Chappell will have new counsel. (Rocio Cordoba)

234. Doe v. California Department of Corrections, et al. (U.S. District Court, Central District)

Class action for declaratory and injunctive relief on behalf of women prisoners at the California Institution for Women ("CIW") who are known to be HIV positive or who are regarded as being HIV positive. We contended (1) that the policy of isolation violates the right to privacy; (2) that the conditions of confinement are inadequate; (3) that physical and mental health care are inadequate; and (4) that the denial of access to programs and services is discrimination based on a handicap in violation of §504 of the federal Rehabilitation Act of 1973. In January 1990, Judge Letts enjoined the implementation of a "pilot program" mandating HIV patients to program in the general population or suffer the loss of work credits. After negotiations a pilot program began in 1990. Under the pilot, women who met behavior and medical criteria were given access to the educational, vocational, religious, work and other programs available to the general prison population; however, program participants continued to be housed in the HIV Unit. On November 1, 1990, the case was reassigned to Judge Taylor. Thereafter, a physician with experience in treating HIV disease was hired to provide treatment at CIW. On April 15, 1992, the Department of Corrections ended its program of absolute housing segregation of all women prisoners known or believed to be HIV positive. The Department has also ended prohibitions on HIV positive inmates working in the infirmary. We carefully monitored implementation of the Department's new housing program criteria and the provision of medical care. We also sent additional document production requests and interrogatories and took multiple further depositions during the week of July 21, 1993. Trial was rescheduled to December 1993. After review of the improvements made at CIW, we decided not to proceed to trial because virtually all of the objectives of the lawsuit had been accomplished. On February 9, 1994, the Court entered an order approving procedures for notifying the class of the intended dismissal of the case. On April 7, 1994, we filed notice of lack of objections by class members to the dismissal. A stipulation regarding entry of order and dismissal was filed with the Court in December, 1994 and the settlement and release were also signed. Attorney's fees were

negotiated and a settlement of $60,000 in fees was reached. (Rebecca Jurado, Tracy Rice, Jon Davidson, Paul Hoffman, Silvia Argueta, Coby King of Skadden, Arps, Slate, Meagher & Flom, with ACLU/NC, Prison Law Office and Rosen & Phillips)

235. Harris v. McCarthy (San Luis Obispo County Superior Court)

Suit to enjoin prison authorities from allowing toxic substances to be taken into residential areas where they are sniffed and cause illness to other inmates and for damages. Other issues in the case: right to medical treatment for what had happened, right to consult attorneys, and freedom from retaliation because of filing suit. A state action was filed after our federal action was dismissed on 11th Amendment grounds after the U.S. Supreme Court's Pennhurst decision. The Defendants' summary judgment motion was denied in September. On December 11, 1989, Judge Money granted the defendants' motion to dismiss all of plaintiffs' damage claims. Judge Money granted defendants' demurrer concerning our damage cause of action. We recently appealed this decision. However, the court ordered that our injunctive relief cause of action concerning toxic materials in the CMC Shoe Factory to proceed. Motion for preliminary injunction denied April 6, 1990, however, court subsequently ordered the relief we sought, a secret CAL OSHA inspection of CMC facility. The only thing left in the trial court is a motion for attorneys' fees which was heard on March 25, 1991. The motion was denied in April. Our opening brief on appeal was filed in December 1991. The opposition brief was filed in mid-March 1992. Our Reply Brief was filed on May 22, 1992. Argument took place on October 20, 1992. In December, 1992, the Court rejected all of our arguments in an unpublished decision. We filed a Petition for Review which was denied on March 10, 1993. (Ronald Greenberg, Paul Hoffman)

236. Kozeak v. McCarthy (San Bernardino County Superior Court)

This action sought to correct the prison's procedures regarding segregation. In general, the procedures do not provide the prisoner with the opportunity to defend herself nor is very much evidence needed to find her guilty of a disciplinary charge. We also contended that there is insufficient access to recreation, exercise, proper meals, the law library, privacy, clothing, linen, hygiene items, toilets, contact attorney visits. The security unit is being operated at 260% of capacity and does not offer access to required services or programs. Defendants' motion for summary judgment or summary adjudication of issues was denied in April 1990. Trial began on September 17, 1990. Plaintiffs rested on September 26, 1990. In response to defendants' Motion for Judgment, the court asked for further briefing. Trial resumed on October 16, 1990, and ended on October 18, 1990. On October 30, 1990, the court issued its Statement of Intended Decision, denying plaintiff's request for relief. We have sought clarification of the decision prior to filing an appeal. This request is still pending and the trial judge has since retired. It is not clear when or if we will receive the requested clarification or if there will be an appeal. (Rebecca Jurado, Tracy Rice)

237. McDougal v. Ramon (U.S. District Court)

Successful results were obtained by the filing of a habeas petition on behalf of Susan McDougal on July 21, 1997. The petition alleges that federal authorities, influenced by the Whitewater Independent Counsel, were holding plaintiff illegally in Los Angeles County jail as punishment for refusing to testify in the Whitewater investigation. McDougal is incarcerated under a federal civil contempt order.

The suit charged that there was no lawful basis for federal authorities to hold McDougal in Los Angeles County jail. A state court judge had released her on her own recognizance from the state criminal charge on which she was purportedly transferred here from a federal detention facility in Texas. Further, because McDougal was in federal custody and not charged with any criminal offense by federal prosecutors, her detention in a country facility was punitive and violated her constitutionally protected right to due process. The ACLU also charged that the harsh and restrictive terms of McDougal's custody in L.A. county jail showed an intent by federal authorities to punish her for not cooperating with Independent Counsel in the Whitewater investigation.

McDougal was held in isolation, under lock-down up to 23 hours per day, consistently kept in handcuffs, denied visitation, medical visits, worship services, reading materials, and even a Bible, forced to wear a red jail uniform reserved for despised informants and baby-killers, among other conditions not imposed on persons held in civil contempt.

McDougal was convicted in May 1996 in federal court of offenses stemming from the Whitewater investigation and sentenced to 24 months in federal prison. An appeal is currently before the 8th Circuit Court of Appeals. On August 20, 1996, McDougal received a grand jury subpoena from the Independent Counsel; on September 6 she was found in civil contempt for refusing to testify, and was placed in federal custody on September 9, 1996. She was held in a federal prison in Texas until November, 1996, when she was transferred to the L.A. County jail on state criminal charges. On December 20, a state judge ordered her released on her own recognizance on the California charges, and returned to the Federal Medical Center in Texas. Despite the order, she remained in the county jail facility. On July 31, ten days after the ACLU filed suit, and without any legal opposition, federal authorities relented and McDougal was transferred to the federal Metropolitan Detention Center. With McDougal receiving the remedy sough by the habeas petition, the case was closed. (Mark Rosenbaum, David Schwartz, Peter Eliasberg, Mark Geragos, James Liebman)

238. Page v. Torrey (Ninth Circuit Court of Appeals)

Sammy L. Page is currently detained at Atascadero State Hospital under Welfare and Institutions Code § 6600 et seq. as a "sexually violent predator." On May 10, 1999 the ACLU filed an appeal in the Ninth Circuit of dismissals of two suits Page filed while detained, based on lower court determinations that he was required to comply with requirements of the Prison Litigation Reform Act of 1995 (PLRA), and had not.

Mr. Page filed two suits under 42 U.S.C. § 1983 alleging violations of his constitutional

rights by staff of Atascadero; both were dismissed by the District Court for failure to exhaust administrative remedies, a requirement under the PLRA.

The case raises the issue, novel in California, of whether a person detained under California's "sexually violent predator" law is a "prisoner" for the purposes of the PLRA. We would argue that, because Mr. Page is civilly detained rather than currently serving a sentence, he does not fall within the definition. Under the PLRA a "prisoner" is defined as ". . . any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program." 42 U.S.C. § 1997e(h). Under the California Welfare and Institutions Code, a "sexually violent predator" is defined as "a person who has been convicted of a sexually violent offense against two or more victims . . . Conviction of one or more . . . shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator." Cal Welf. & Inst. § 6600(a). Thus, conviction is a condition precedent to being committed as a sexually violent predator, however the legislative history is clear that the purpose of commitment under this section is not punitive.

The PLRA as a whole dramatically limits the ability of incarcerated individuals to bring lawsuits to challenge the conditions of their confinement, as well as undercuts broad injunctive relief for inmates by forcing plaintiffs to reprove continuing violations of constitutional rights every two years. On September 14, 1999 the 9th Circuit decided to take the case under submission without oral argument. In January, 2000, the Court ruled that Congress' restrictions on litigation challenging the conditions of confinement under the PLRA do not apply to a prisoner whose sentence has ended, and who is then civilly committed to a state hospital. (Mark Rosenbaum, Mary Sylla)

239. Rios v. McCarthy (Sacramento County Superior Court)

This action challenges the Department of Corrections' failure to fully and effectively implement an alternative for women prisoners. Under the program, women who are low risk and who have children under the age of six are allowed to be placed in a community setting with the child to serve her sentence. Our efforts have resulted in the expansion of the program from 3 to 5 Mother Infant Care facilities. We have also been able to assure the right of pregnant women and those who were victims of abuse to participate in the MIC Program. The case was settled in 1990 and we are seeking fees and monitoring the program. In August, the trial court granted our motion for attorneys fees but at a rate much lower than requested. Our motion for reconsideration was denied on November 8, 1993. (Rebecca Jurado with ACLU/NC and Legal Services for Prisoners with Children)

240. Stewart v. Gates (U.S. District Court, Central District)

The action concerns numerous conditions of confinement at the Orange County jail. In 1985 an opinion was published regarding the unconstitutionality of conditions. In March of 1985 defendants were held in contempt and fined $50,000 plus $10 per day for each prisoner who slept on the floor for more than one night. The court appointed a special master to monitor compliance with the court's previous orders. A population cap of 1290 was set. This cap was reduced to 1200 in May 1987 upon the opening of the Intake and Release Center. The court issued additional orders regarding enforcement of the previous judgment and prisoner's rights to call witnesses prior to disciplinary segregation. In May 1988 defendants' consultant issued a report analyzing conditions in all county jails and each facility's compliance with Stewart v. Gates orders. The report concluded that there was sufficient compliance at all facilities. On June 6, 1988, Judge Gray held a hearing on our motion to amend the complaint to add additional claims and facilities. This motion was denied on July 1, 1988, and the case was "closed," except for enforcement actions. In early August, 1988, a contempt motion was filed by plaintiffs regarding prisoners sitting on the floor during the court line procedures. Defendants filed a motion to modify the court order so that inmates could sit on the floor for short periods of time in the floor line. On September 12, 1988, Judge Gray set a hearing to determine whether defendants have violated the existing orders concerning discipline hearings, recreation and sleep before court hearings. All of those issues were resolved after a hearing on November 1, 1988, when Judge Gray issued an order permitting ACLU counsel access to the jail to investigate complaints. Plaintiffs' motion to modify the Stewart order was heard in late April, 1991. Judge Gray issued an order extending the Stewart orders to all jail facilities in Orange County but did not grant the other requested relief. The case was reassigned to Judge Taylor in 1991. The County appeal from a 1990 $100,000 fee award led to a negative decision in Steward v. Gates, 987 F.2d 1450 (9th Cir. 1993). On January 14, 1994, Judge Taylor cut most of our most current fee request, granting only $4,541 in fees. The County recently filed a motion to modify Judge Gray's 1988 access order. On May 27, 1992, Judge Taylor vacated Judge Gray's order. On April 21, 1993, Judge Taylor essentially revoked Judge Gray's June 19, 1990 "Memorandum to Counsel." The Court also provided guidelines for the submission of future fee applications. (Richard Herman, Charles McClung, Dan Stormer)

241. Whisman v. Rowland (San Bernardino County Superior Court)

This action concerns the quality of medical care provided to women prisoners and the living conditions of those classified as psychiatric patients or as in need of protective custody. We sought a ruling that the prison comply with the requirements of the Department of Health Services and obtain a license for the prison medical facilities. On December 11, 1987, after several hearings and extensive briefing, the Court found that the CIW Medical Facilities are health facilities requiring licensure. In March 1988, the court ordered the Department of Corrections to file an application for licensure. Defendants appealed the March order. Oral Argument was held on December 5, 1990. The appellate court held that the Department of Corrections had discretion as to licensure and vacated the lower court's writ of mandate. After taking some additional discovery it appears that the case has been largely mooted by the transfer of many forms of medical care out of the prison. We reached a settlement with

the Department of Corrections union which the Department of Health Services inspected CIW medical facilities in the fall and steps have been taken to improve medical care at CIW. On February 3, 1993, a second inspection of medical facilities at CIW took place. In March 1993, the report was issued finding that licensure is not required. We will continue to monitor conditions and consider other options. We reached a settlement on fees in January 1994. (Rebecca Jurado, Tracy Rice, and Silvia Argueta)

REPRODUCTIVE RIGHTS

242. Steir v. Superior Court (4th District Court of Appeal; California Supreme Court)

The ACLUs of Northern and Southern California and several other non-profit women's health organizations filed an *amicus* letter brief on December 7, 1999 to the 4th District California Court of Appeal on behalf of a doctor who alleges that he is being selectively prosecuted solely based on his status as an abortion provider. The case involves an apparently unprecedented decision of the California Medical Board to refer a licensed physician, Dr. Bruce Steir, to the Riverside County district attorney for prosecution of alleged medical error. The district attorney has filed murder charges against Dr. Steir. This unusual prosecution raises a serious constitutional concern: Whether, of all the doctors whose mistakes resulted in a patient's death, this doctor has been selectively prosecuted because he has provided the highly controversial and constitutionally protected service of abortion.

On February 24, 1999 the California Supreme Court intervened in the prosecution of Dr. Stier and ordered the Court of Appeal to hear his request for records from the California Medical Board. The records address policies and practices regarding criminal referrals of licensed physicians for alleged medical error and could serve as critical evidence in support of Dr. Stier's defense of selective prosecution based on his status as an abortion provider. This unusual and important action from the court indicates that it agreed with the arguments made in the ACLU's *amicus* brief that this case raises serious constitutional concerns and could have far-reaching implications.

On April 29, 1999 we filed a substantive amicus brief before the Court of Appeal, following the court's instruction to address the relevance of criminal abortion cases to the selective prosecution claim. The court heard oral argument from petitioner on June 2, 1999, and ruled against Dr. Steir. An amicus letter brief was filed with the California Supreme Court on September 15, 1999; the Court denied review. We helped Dr. Steir's counsel prepare a motion to dismiss based on our study of Medical Board discipline and criminal referrals.

On April 5, 2000 Dr. Steir entered into a plea bargain to a lesser charge of involuntary manslaughter based on a finding of "gross negligence" and a lack of "due caution" in the care of the patient. (Maggie Crosby of the ACLU of No.Cal., Rocio Cordoba)

STUDENT'S RIGHTS

243. Benford v. LAUSD (U.S. District Court)

The ACLU/SC filed suit on June 19, 2001 on challenging the implementation of the student search policy at Locke High School where school administrators are implementing a district policy of searching students for weapons without reasonable suspicion. The policy is referred to as "Weapons Scanning" and is conducted in at least two formats. In the first instance, school administrators and campus security officers make unannounced visits to classrooms while a class is in session, force students to stand up against the wall in front of their classmates, frisk them, look in their backpacks and purses. In the second instance, students who show up late to school are ordered to hand over their bags for an inspection at the school's front gate, and are themselves frisked and searched. The legal basis for the lawsuit is that LAUSD officials' actions constitute a violation of the students' rights under the Fourth Amendment to be free from unreasonable searches. The case settled in July 2002, with the District agreeing that suspicionless patdown searches, bag searches, and in-class metal detector searches are not to be permitted. (Dan Tokaji, Peter Eliasberg)

244. In the Matter of Celia Salazar (Los Angeles Unified School District)

We represent Celia Salazar a 9th grade student at Mt. Vernon Middle School in Los Angeles who is under disciplinary proceedings and subject to expulsion from the LAUSD. Celia was suspended from school for five days for possession of an unloaded air pistol which she picked up on her way to school. Celia had meant to return it but instead went to homeroom and then on to her P.E. class. Celia did not brandish or threaten anyone with the unloaded air gun. She was immediately suspended and recommended for expulsion. Celia has never had any disciplinary problems at school and is an honor student. She has been described by her teachers as "a joy to work with," "very diligent" and "hard working." Celia was to receive several awards for her participation in honor society, etc.

The school principal recommended expulsion based on the LAUSD's new mandatory expulsion policy for possession of a gun. This expulsion goes to the heart of the problem with the LAUSD's mandatory expulsion policy. The policy does not allow flexibility to administrators and it further violates due process by not allowing students to present mitigating circumstances. Celia's case was heard by the Expulsion Review Committee of the LAUSD on June 28, 1993, where the ERC recommended expulsion. On July 28, 1993, the case was heard by the Board of Education of the LAUSD and sent back for further comment by legal counsel. On August 16, 1993 hearing, the board voted, 5-2, to terminate expulsion proceedings against Celia based on her academic record and past disciplinary record. She will be attending Los Angeles High School's College Intensive program in the fall. (Silvia Argueta with law clerk Ana Viesca)

245. In the Matter of Monica Marquez (Burbank Unified School District)

On January 30, 1992, we filed a tort claim with the Burbank Unified School District on behalf of a student suspended for wearing a t-shirt to school with a typeface to which school officials objected. The student's shirt bore a memorial tribute to a fellow student and local football star who had been killed recently in a drive-by gang shooting. Neither the dead student nor the student suspended for wearing the t-shirt are gang members. School officials ordered the student to remove the shirt after they concluded that some gangs sometimes use the same Old English type face for their gang insignias. The claim raises a First Amendment violation, as well as several due process violations based on the fact that the district gave the parent no meaningful opportunity to discuss the decision or any right to appeal. The school district has until mid-March to act on the claim. After that time, if it is denied as expected, we will file suit. The immediate response from the Superintendent was to reverse the suspension and expunge the record. The dress code policy issues have been resolved. The student has been permitted to wear the t-shirt. (Carol Sobel with cooperating counsel Marvin Krakow).

VOTING RIGHTS

246. Garza v. County of Los Angeles (U.S. District Court, Central District)

Suit filed in federal district court seeking redistricting of districts utilized to elect County Board of Supervisors and enlargement of the number of supervisor positions. The action charged that district boundaries were intentionally gerrymandered to deny Hispanics effective participation in the political process. For over 138 years no non-white has ever been elected to the Board, yet Los Angeles County white population is only 45% by 1980 census figures. The Hispanic percent population, in 1980 numbers, is 28% and growing. The districts are so large as to dilute minority voting power and make genuine representative government theoretical at best: each district includes more than 1½ million persons, or roughly the equivalent of three Congressional districts. Present district lines fragment an otherwise relatively cohesive and geographically concentrated Hispanic populous into three district lines, frustrating concerted voting strength. The Department of Justice subsequently filed a similar suit against the County charging identical violations of the Voting Rights Act. The trial, which began on January 2, 1990, concluded on April 10, 1990. At the end of May 1990, Judge Kenyon issued a massive ruling finding for the plaintiffs on every issue. In early August after a week of hearings, the court rejected the County's proposed plan and adopted, for the most part, the plan proposed by the ACLU and MALDEF. The County immediately filed a Petition for a Stay. The Ninth Circuit ordered expedited briefing and held a hearing on August 16, 1990. After argument the three-judge panel (Nelson, Beezer and Kozinski) issued a stay of elections under any plan.

On November 2, 1990, the Ninth Circuit concurred 3-0 on the District Court's finding of intentional discrimination in the redrawing of 1981 district lines and that the County violated both §2 of the Voting Rights Act and the U.S. Constitution. The remedy adopted by the District Court was also affirmed (2-1, with Judge Kozinski dissenting on some of the dicta in the majority's finding). The Ninth Circuit issued a mandate for the County to proceed forthwith with new elections. After a hearing before Judge Kenyon, a primary election in the new First District was set for January 22, 1990, with the run-off, if necessary, scheduled for February 18. A petition for a stay and for a rehearing before the entire Ninth Circuit was denied; the petition for rehearing received no votes from any Member of the Court. On December 7, the Supreme Court denied the County's petition for a stay. In January 1991, the Supreme Court denied the County's petition for Cert. Gloria Molina was elected in the first election held under the new plan. Our motion for attorneys fees was settled in early May, 1991. (Mark Rosenbaum, Robin Toma, Douglas Mirell, with MALDEF and other cooperating attorneys)

247. League of Women Voters v. Davis (California Supreme Court; San Francisco Superior Court)

This is a state constitutional challenge to Proposition 21, the juvenile crime/street gang initiative that was approved by California voters in the March 7 , 2000 election. A writ of mandate was filed with the California Supreme Court on April 20, 2000. The writ also seeks to stay implementation and enforcement of Proposition 21, pending resolution of the single subject challenge. It argues that Proposition 21 violates the "single subject rule" of the California Constitution, which provides that initiatives shall not include more than one subject. Specifically, the argument is that Proposition 21 contains more subjects than just juvenile crime/street gangs. Among other things, it amends the "three strikes" law of California; those provisions apply to crimes committed by anyone, be they adults or juveniles.

Single subject challenges are difficult to win. The California Supreme Court previously has rejected single subject challenges in cases involving two other broad criminal justice measures. We argue, however, that Proposition 21 is different from the measures at issue in those cases. Furthermore, the California Supreme Court recently invalidated a ballot measure on single subject grounds. Prior to the March, 2000 election it struck from the ballot Proposition 24, which had two different subjects: restructuring the process of legislative reapportionment and cutting the salaries of legislatures. There is strong language in that decision about the vitality of the single subject rule.

The ACLU strongly opposed Proposition 21 as a matter of public policy. This lawsuit seeks to vindicate that interest. It also seeks to put a check on an initiative process that has become unwieldy and cumbersome. In May, 2000, the California Supreme Court issued a one line order denying the petition for writ of mandate in that Court. It did not foreclose starting the challenge anew in the lower courts. In June, 2000, the case was refiled in San Francisco Superior Court. In November, 2000, the judge sustained demurrers on all causes of action.

In December, 2000, we filed a notice of appeal. Our opening brief was filed in the Court of Appeal, First Appellate District on July 2, 2001; the government responded on October 3. Our reply brief was filed on January 26, 2002. In August, 2002 the court ruled that voters were not misled by the initiative petitions with wording different from the text that actually appeared at the polls. (ACLUs of Southern California, Northern California, and San Diego & Imperial Counties, Steve Mayer and Kym Proctor of Howard Rice)

248. Lemoore Unified Elementary School District v. Hendrix (San Luis Obispo County Superior Court)

Charlie Hendrix is a custodian with the Lemoore Unified Elementary School District. He was elected to the local school board in November, 1990. Immediately thereafter, the school district filed a lawsuit asserting that his employment and his simultaneous position on the school board were inherently "incompatible". We have filed a demurrer to the district's complaint, raising the same points as in San Luis Coastal Unified School District v. Cooney, as well as the additional issue of whether Education Code § 32539 essentially waiving conflict-of-interest rules for classified employees serving as school board members in school districts with less than 70 students, excludes classified employees from serving as elected school board members in districts with more than 70 students. A hearing was held February 21, 1991, on our demurrer. The judge denied our motion. Plaintiffs have taken no further action in the case. (Carol Sobel)

249. Linton v. City of Los Angeles (U.S. District Court, Central District of California)

Suit was filed on January 29, 2001, against the City of Los Angeles and the members of the City Council, to challenge their failure to fill the vacancy on the 13th City Council District created by the election of Jackie Goldberg to the State Assembly. Goldberg was elected to the State Assembly in November, and therefore vacated her seat on the City Council. As things now stand, her seat will not be filled until the regularly scheduled elections. The primary election is scheduled for April 10, 2001, with the general election to be held on June 5, 2001. In the meantime, City business is being conducted without any representation for the 13th Council District.

The new City Charter, now in effect, provides that City Council vacancies "shall be filled by either appointment or [special] election..." City Charter § 409. The City Council thus has the authority to fill the vacancy left by Councilmember Goldberg's departure, but has not yet done so. A motion was put to the City Council on January 23, 2001 to fill the 13th District seat.

The suit was brought on behalf of the residents of District 13, to challenge their lack of representation on the City Council. In addition to making a claim under the new City Charter, a claim was also brought under the Equal Protection Clause since District 13 residents now have no representation in city government.

We asked the City Council promptly to appoint someone to fill the vacant seat; when it did not, the ACLU filed for a preliminary injunction in February against the City for its failure to appoint a new council member prior to the primary election, pursuant to the new City Charter provisions. In March, the District Court denied our motion for a preliminary injunction. It found that actions taken after we filed our complaint, under which the City Council will appoint the district's council member for the next term once the winner is known, obviated the need for a preliminary injunction. (Dan Tokaji)

250. San Luis Coastal Unified School District v. Cooney (Botwin) (San Luis Obispo Superior Court)

We represent Caroline Botwin, a teacher in the San Luis Obispo Unified School District. Botwin won a seat on the school board of the district in the November 7, 1989 election. Immediately after the election, the district brought an action to prevent her from taking office, arguing that it was an inherent conflict of interest for a teacher in the district to serve on the school board. The district concedes that Botwin meets all the statutory qualifications for office and that no statute expressly prohibits a district teacher from holding this office. Our primary argument is that, absent a statutory provision providing for Botwin's disqualification, there is no basis for a court to deny the people who elected Botwin of their chosen representative. On December 14, 1989, the Court sustained our Demurrer to the complaint on the grounds that the Board could only challenge Botwin's entitlement to hold office in a quo warranto proceeding with the concurrent of the Attorney General's office. The case was dismissed and the motion for a preliminary injunction denied. On December 27, 1989 the Board filed a Petition for Extraordinary Relief in the Court of Appeal which was denied later that day. On December 28, 1989, the Board sought similar relief in the Supreme Court. The Court issued an Order late in the day continuing the TRO in effect until it could rule on the Petition. On January 12, 1990, we filed a full response to the Petition. On January 31, 1990, the California Supreme Court declined to rule on the Petition and lifted the Temporary Restraining Order. Caroline Botwin was sworn in as a school board member on February 2, 1990.

On July 23, 1991, the Court of Appeal held that the San Luis Obispo Superior Court had erred in refusing to allow the Board to seek declaratory relief as to those issues that the Board asserts present a conflict of interest for Botwin and remanded the case back to the San Luis Obispo Superior Court.

In February 1990, the School Board voted to cut off Botwin's salary and cancel her pension and health insurance. On February 23, 1990, we filed a petition for a writ of mandate and an application for a TRO in San Luis Obispo Superior Court seeking reinstatement of Botwin's salary and benefits. The TRO was granted on February 26, 1990 and on May 4, 1990, Judge Fredman ruled in our favor, holding that the School Board must continue to pay Ms. Botwin. The defendants have appealed from this order. The Board's appeal was dismissed on September 24, 1991 on the grounds that, since the trial court made its final ruling in Board v. Botwin, the appeal was not ripe. No date for further proceedings has been

set in this action and the Board's counsel has expressed interest to us in settlement of this case as part of the settlement of Board v. Botwin.

The Board also filed a petition with the California Attorney General on February 28, 1990, asking the Attorney General for permission to seek Botwin's removal in a quo warranto proceeding. We filed our opposition to this request on March 19, 1990. On May 24, 1990, the School Board petitioned Governor Deukmejian, asking him to order the Attorney General to begin quo warranto proceedings and charging the Attorney General with delaying action on the case. We opposed this action on the ground that the Attorney General has a right to proceed at deliberate pace in reviewing the Board's petition. On July 6, 1990, the Attorney General issued an opinion denying the School Board's request for leave to sue Ms. Botwin. The Attorney General adopted virtually all of the arguments we had made in favor of Ms. Botwin's right to serve on the school board and explicitly held that she had a constitutional right to seek and hold public office. The School Board filed a Petition for a Writ of Mandate on November 8, 1990. The petition was denied in early February 1991. The District has filed a Petition for Review in the Supreme Court which was denied in late March 1991.

On March 8, 1991, Senator Marian Bergeson introduced legislation to prohibit school teachers from serving on the school board in their districts. The ACLU Legislative Office actively opposed the legislation and succeeded in removing unconstitutional retroactivity provisions. Governor Wilson signed the legislation in mid-September of 1991. The legislation does not affect either the Botwin or the Lemoore cases as Botwin's term ends at the end of 1994. (Marketa Sims, Paul Hoffman, Carol Sobel)

251. Voting Rights Coalition v. Wilson, et al. (U.S. District Court for the Northern District)

A class action lawsuit was filed on December 15, 1994, contesting Governor Wilson's refusal to implement the National Voter Registration Act of 1993. The suit charges that the Governor's veto of legislation to implement the new act, and his Executive Order requiring state agencies to wait for federal funding before beginning NVRA procedures, violates federal law and harms poor minority communities that stand to benefit from the Act. The NVRA was passed by Congress in 1993 to close the gap between minority and white voter registration rates, and promotes registration of eligible voters by mail, at motor vehicle, social service, and other state agencies. In California, only 24% of the Latino voting age population is registered to vote as compared to more than 60% of the white voting age population.

In an Executive Order issued on August 12, 1994, Governor Wilson limited implementation of the NVRA in California "to the extent federal funding is made available for such purpose." Subsequently, on Sept. 30, 1994, he vetoed Assembly Bill 271 and Senate Bill 1441, which would have provided procedures for NVRA implementation in California. The lawsuit claims that California's failure to fully implement the NVRA will adversely affect more than one million California residents who are eligible to vote. Wilson filed a lawsuit to block the NVRA in California on December 20, 1994. In January 1995, the U.S. Department of Justice also filed a lawsuit to force California to obey the NVRA. Plaintiffs are seeking a

preliminary injunction against state officials enjoining them from implementing any state law, requirement or procedure that fails to comply with the NVRA. Judge James Ware bifurcated the case into the constitutional issues and the implementation issues, and also converted our motion to one for a permanent injunction. After a hearing on March 2, 1995, Judge Ware granted an injunction against the state upholding the constitutionality of the NVRA and directing the state to comply. The state moved for an emergency stay pending appeal in the Ninth Circuit; that motion was denied.

After proceeding on an expedited calendar, the case was argued in the Ninth Circuit on June 16, 1995. In a 30 page opinion written by Judge Sneed, the Ninth Circuit affirmed the injunction on July 24, 1995.

Despite the fact that every judge from every court to consider the question has held the NVRA to be constitutional, Governor Wilson filed a petition for certiorari with the United States Supreme Court. We filed an opposition to the Governor's petition, and the Supreme Court denied certiorari on January 22, 1996.

We are currently fine-tuning the mechanics of the state's implementation. California has been implementing the NVRA since June 12, 1995. State DMV offices and designated social service agencies are required to provide registration materials to applicants and to assist their clients in filling them out. The first wave of numbers from the State indicate that Motor Voter is not being fully implemented in some California counties. We have convinced the State to make sure that disabled people receiving in-home support services are given the opportunity to register. This service is essential, if those confined to their homes are to exercise their constitutional right to vote. In addition, we are currently investigating the procedures followed by the State and several counties, to make sure they are complying with the Act's requirements.

In July, 1996, a team of ACLU summer interns fanned out over San Diego County to monitor compliance with the Motor Voter Act, and found that many offices were not fully complying with the act and the court's order. Partly as a result of these findings, the State agreed to extend past the November election the remedial relief of offering everyone who comes into a public assistance office, for any reason, the chance to register. A fee motion was filed and decided by the court. Monitoring is ongoing. (Mark Rosenbaum, Karl Manheim, Dan Tokaji, with other public interest organizations)

WOMEN'S RIGHTS

252. Butchko, et al. v. County of Riverside, et al. (U.S. District Court, Central District)

This is a class-action civil rights lawsuit, alleging a pervasive pattern of sex discrimination and sexual harassment suffered by women who work as group counselors in the Riverside County Juvenile Hall. The lawsuit alleges violation of federal and state constitutional rights

prohibiting sex-based discrimination in employment, as well as statutory claims under the California Fair Employment and Housing Act and common law claims. The complaint alleges that the discrimination has included, but is not limited to, unequal treatment in hiring, work assignments, shift preference, wage differentials and discipline and creation of a hostile work environment. The total number of women working at the Juvenile Hall at any one time has been limited by the County's policy of restricting the number of jobs available to women and the number of women who can work together on a shift in a male detention unit. Those women who regularly work male units have routinely been subjected to crude sexual advances, sexual innuendos and generally demeaning sexual and gender-based comments by male co-workers. Most of these comments have taken place in front of the male juveniles, undermining the security and authority of female employees. The lawsuit was filed on February 18, 1993. We served a First Amended Complaint in late March. A legal conflict has now arisen in the case and we filed a motion to be relieved as counsel which was granted on November 22, 1993. (Carol Sobel, Silvia Argueta, Tracy Rice and Sharon Robinson.)

253. Campbell v. City of Los Angeles, et al. (L.A. County Superior Court)

This is an action brought on behalf of a female officer of the Los Angeles Police Department who was raped by a male officer after hours in the women's restroom at the Police Academy grounds. At the time, the female officer was extremely intoxicated and ill as a result of having had too much to drink. After the female officer reported the incident, the department investigated and the division recommended the male officer be held to answer before a Board of Rights. That recommendation was overturned by Chief Gates, who found there was insufficient basis to send the matter to a disciplinary board. There is no formal avenue of appeal from the Chief's decision. The female officer continued to try and have a Board set and was told that if she persisted in pressing the case, she would be charged with lewd conduct on company property. She was also told that the department did not discipline on "one-on-one" offenses. Eventually, she appeared before the Police Commission which ordered a Board of Inquiry. The Board of Inquiry then ordered a Board of Rights, at which the charges against the male officer were sustained. He was terminated. Our complaint alleges that the department's policies constitute sex discrimination and sexual harassment in violation of the California Constitution and the provisions of the Fair Employment and Housing Act. The City has filed a demurrer. The original judge recused himself. A new judge was assigned. The City's demurrer was heard and denied on May 13, 1993. Trial was held in January, 1995. The case settled moments before a verdict was returned by the jury. (Carol Sobel, Michelle Williams Court, George Denny)

254. Doe v. City of Los Angeles, et al. (L.A. Superior Court)

This case alleges sex discrimination and sexual harassment by supervisors within the Los Angeles Police Department against female officers. The plaintiff filed a written complaint against her supervisor after undergoing six months of harassment. She had complained verbally after approximately three months; however, inadequate steps were taken to remedy the situation. Moreover, after she complained to her next level supervisor, he joined her

original harasser in a series of retaliatory actions against her. The LAPD did a cursory investigation of her complaints and concluded that only one physical incident, with eyewitnesses, had any merit. In that instance, the supervisor had pushed the female's head to his groin as she bent down to pick up a napkin she had dropped. When the case came before a disciplinary board, however, the command level officers hearing the case concluded that, although the incident did occur, it did not constitute sexual harassment because the male officer said he received no sexual gratification. The lawsuit challenges the LAPD's failure to provide adequate training to its employees as to what constitutes sexual harassment in the workplace and to establish adequate procedures for investigating and disciplining these cases. The case settled on January 8, 1996, just as trial was scheduled to begin. (Carol Sobel, Silvia Argueta)

255. In Re Marriage of Fingert (California Court of Appeal, Second Appellate District)

This case challenged a Superior Court order requiring a mother with primary joint custody of her seven year old son to move from Northern California (where she and her son lived for three and one-half years) to Southern California or else lose custody, in order that her ex-husband could more easily spend more time with the son. This is one of approximately eight cases of which we are aware in which similar orders have been issued. Although there may be cases where a move by a custodial parent could be valid grounds for reconsidering a prior custody award, we contended these cases have improperly (1) violated California's statutory mandate requiring that custody orders in the "best interest" of the child, by uprooting children from their primary homes, schools, and communities in order to accommodate greater paternal visitation and convenience; (2) discriminated against women, by requiring that they move (and give up their jobs and independent lives) or lose custody (as opposed to having their ex-spouses move or considering alternative visitation schedules) on the ground that their ex-spouses have a greater income than such women do; and (3) infringed upon the right to travel.

On July 13, 1990, the Court of Appeal issued its opinion, vacating the order above. The Court of Appeal held that it was an abuse of discretion for the lower court to require that the mother choose between "her right to resettle, find new employment, [and] start a new life," and retaining custody of her child. The Court ruled that "Courts cannot order individuals to move to and live in a community not of their choosing," and that attempts to do so violate both the federal and constitutional rights of travel. The Court also held that the trial court improperly based its decision on the father's superior economic position, thereby discriminating against the mother on the bases of both wealth and gender. This decision is published at 221 Cal.App.3d 1757 (1990). The Court of Appeal denied a petition for rehearing on August 8, 1990. The father filed a petition for review with the California Supreme Court, which was denied on September 26, 1990. The father also returned to the Ventura County Superior Court to seek modification of custody in order to continue to force the mother and child to remain in Ventura, notwithstanding the Court of Appeal's decision. We filed opposition to this collateral attack on the Court of Appeal's decision and have sought a modification of visitation, consistent with the child's school schedule back in

Northern California. On August 29, 1990, the Ventura County Superior Court ordered that the child remain in Ventura pending the hearing on modification. On January 3, 1991, after a trial, the Ventura County Superior Court awarded the mother full physical custody, thereby permitting her to return with her son to their former home in Northern California. A final visitation schedule was negotiated between the parties and approved by the court on May 7, 1991. The father was given visitation during non-school periods.

The mother and her son moved back to Northern California in January of 1992. An order to show cause to change custody to the father was thereafter filed by the attorney appointed to represent the child. Custody temporarily was reversed, pending an evidentiary hearing on the child's desire to live in Ventura and consideration of the child's best interests. An appeal of the temporary change was filed, but a writ of supersedes and request for stay were denied by the Court of Appeal. In the interim, the child was living in Ventura again with his father, and the mother was prohibited from discussing the child's wishes as to custody or residence and from having the child psychologically evaluated. At the hearing on January 8, 1993 (at which we assisted) custody was finally returned to the mother in Northern California. (Jon Davidson, Carol Sobel, Paul Hoffman, with Christine Littleton, Grace Blumberg, and Sheila Kuehl of the Southern California Women's Law Center)

256. Frost v. Terrell, et al. (San Bernardino County Superior Court)

This is a sexual harassment suit brought by a government employee against her supervisor, the Superintendent of Schools, for repeated sexual harassment over a four year period. The case was initially filed in November, 1990 by private counsel. We entered as co-counsel in December, 1991 after it appeared that the woman might have to abandon her case for lack of funds. Because the alleged harasser was a public official and public employee, his defense was being covered by virtually unlimited public funds. His counsel had announced their intentions to make it financially impossible for the woman to continue her suit. The case is brought under the California Government Code sections barring sex discrimination and harassment in the workplace, as well as several California tort claims. Discovery in the case has largely been completed. Some additional discovery remains, including a motion to compel release of phone records showing calls made late at night by the defendant to the plaintiff. The case was settled with a substantial payment to Ms. Frost. (Carol Sobel, Paul Hoffman, with private counsel Diana Scott and Joan Lind)

257. Gonzalez v. City of San Fernando (Los Angeles Superior Court - San Fernando Branch)

The case involves a female dispatcher and jailer with the City of San Fernando who was subjected to repeated harassment in the workplace. In October 1992, she was informed by several male officers that what appeared to be semi-nude photographs or her were posted on a bulletin board in the men's locker room. After several weeks, the photos "disappeared."

The female was later provided with the photos by someone who apparently removed them from the watch commander's office. The department then began to threaten the female with discipline and possible criminal prosecution if she did not return the photos and disclose who had given them to her. When she refused to do so and questions why there had been no effort to investigate and determine who had posted the photos in the first place, she was informed that the department was waiting to see if anyone came forward and asked for the photos. In December, 1992, the female filed a complaint of discrimination with the Department of Fair Employment and housing. Almost immediately thereafter, she received an extremely poor employment evaluation, although previously she had always received excellent ratings and many letters of commendation from the community. When she appealed the rating, a Lieutenant and the Chief both cited her failure to return the photos as insubordination. The Chief also told her that they had received many complaints about her. When she asked to see them, the Chief had none to produce. The next day, however, a call came into the station from the nearby LAPD Van Nuys Station, complaining about Kim by name. Because Kim had not been working on the phone at the time the alleged discourteousness was supposed to have occurred, she was extremely distressed and believed the department was beginning a campaign of retaliation against her. We filed suit in December 1993, challenging the Department's failure to properly investigate the initial harassment for her though the prominent display of the semi-nude photographs in the workplace and the subsequent retaliation against her for complaining about the discrimination. On July 28, 1994, the defendants' motion to compel disclosure of the whistleblower was granted. We filed a writ seeking to protect his identity. Discovery is proceeding otherwise. The Court of Appeal denied the writ; however the California Supreme Court then granted review and remanded the case back to the Court of Appeal for argument. The Court of Appeal again ruled against us, issuing an opinion upholding an employer's right to force disclosure of suspected "after-acquired evidence." Following the decision of the Court of Appeal, the case settled. (Carol Sobel, John White and Sharon Robinson)

258. Graham v. Smith & Smith (Court of Appeal, Second Appellate District)

This is an appeal from a jury verdict in a pregnancy discrimination case. We represent an accounts receivable supervisor who claimed to have been fired because of her pregnancy. In addition to several grounds for appeal on the merits of this claim, we are challenging an award of $80,000 in attorney's fees against the plaintiff issued by the trial judge. This kind of award, if allowed to stand, would deter other women from seeking relief against pregnancy discrimination. Defendant Smith & Smith filed for bankruptcy in April and we are currently finalizing the settlement papers in the case. The case was settled in August 1994. (Silvia Argueta, Paul Hoffman, Carol Sobel)

259. Hill v. City of Los Angeles, et al. (L.A. Superior Court)

This is a companion case to Campbell v. City of Los Angeles. This lawsuit was filed by former Los Angeles Police Department Officer Hill against the LAPD and Officer Suzanne Campbell. Officer Campbell had successfully pressed her complaint of rape against Officer

Hill, resulting in a department decision to terminate Hill. Thereafter, Hill filed a writ of mandate, seeking to overturn the decision of the LAPD to fire him. The Superior Court denied the writ. Hill has now filed a claim for race discrimination, under the California Constitution and the Fair Employment and Housing Act, and for interference with contractual relations against Officer Campbell. On March 8, 1993, we filed a demurrer to the complaint on the grounds that both Officer Campbell's charge of rape, made in October 1990, and her testimony before the LAPD Board of Rights on January 6, 1992, was privileged under Civil Code § 47 and that the lawsuit was filed beyond the applicable statute of limitations for a personal injury claim. The City has also filed a demurrer to the complaint. A hearing on the matter was held March 24, 1993. The judge dismissed all claims against Officer Campbell, with prejudice, on the grounds that they were barred by the statute of limitations and immunity rules. (Carol Sobel, Silvia Argueta, Tracy Rice and Sharon Robinson.)

260. Lantz v. County of Kern, et al. (Kern County Superior Court)

This case alleges sexual harassment and sex discrimination against the Kern County Sheriff's Department. The plaintiff in this case was subjected to explicit sexual demands over the course of three years by a supervisor. The supervisor had a long history of establishing sexual relationships with subordinates and then subjecting them to punitive employment treatment when he was no longer interested in them. In this instance, however, the plaintiff was married to another supervisor in the Sheriff's Department and rejected the sexual advances out of hand. When the plaintiff finally reported the problem, the department hired an independent investigator to explore the complaint. The investigation concluded that the harassment had, in fact, occurred and plaintiff received a letter to that effect. The accused officer then began a letter campaign to paint the victim as a sexual aggressor in the workplace. Although claiming his decision was not affected by these letters, the Sheriff then overrode the independent investigator's report and found there had been no sexual harassment. Notwithstanding this action, the Sheriff agreed to a remedial program to protect the plaintiff when she returned to work. The plan included not assigning the accused officer to supervise her. Within two weeks of her return to work, her harasser was assigned to a position which put him in close contact with her at work. A hearing on several discovery motions was set for April 15, 1993. We prevailed and the County took a writ challenging the decision of the trial court. The County's writ was denied on July 16, 1993. We filed additional discovery motions in August. In November, those motions were denied. We filed a writ on the denial of a protective order concerning the improper disclosure a medical records. The Fifth Appellate District has now ordered the County to respond. Oral argument was heard July 19, 1994. A trial was held in September and October, 1994. The jury returned a verdict for the defense. (Silvia Argueta, Carol Sobel)

261. Rockwood v. O'Connell, et al. (Court of Appeal, Second District)

In July 1993, we filed an amicus brief on behalf of a government employee in Santa Barbara

who brought a construct discharge employment discrimination lawsuit aftassigned and demoted. The demotion followed a long-history of attempts by ıment at adverse employment actions in response to the plaintiff's outspoken c: suspect awarding of lucrative contracts by his supervisors. Because the finlemotion occurred more than two years after the initial whistleblowing act, an the two supervisors involved disclaimed any knowledge of the previous eveıal judge refused to permit the plaintiff to introduce any evidence of retaliation oone-year period preceding the final act of demotion. Our brief argues that, undrine of a "continuing violation," the plaintiff should have been permitted to presdence of harassment in the work place, whether by these supervisors or otherom they worked. Using both case law and social studies, we presented a discusslength of time and the reasons why individuals may delay in filing a complaint of unassment. This case has particular significance in sexual harassment cases where thires that the unlawful conduct be severe or pervasive. Many courts have looked th of time over which the harassment has occurred to measure whether a hostile ronment claim rises to an actionable level. Oral argument occurred Februar4. In an unpublished decision filed April 7, 1994, the Court of Appeal affirmenissal of plaintiff's lawsuit. (Carol Sobel)

262. Wallin v. City of Los Angeles (L.A. County Superior Court; U.S. Courts, Ninth Circuit)

This is a civil rights lawsuit filed on behalf of a female officer with the Es Police Department who was raped by a male officer with the LAPD. The suit alle LAPD applies a double standard in reviewing criminal complaints against depersonnel. We have alleged in this case that LAPD handled her case differently frother rape victims because the assailant is an officer with the LAPD. Specifically, sn denied the right to file a crime report, and has been prohibited from naming her as Victim's Assistance Fund forms or speaking to anyone about her case. In additieges that the LAPD has investigated the case by delving into her private life, incstioning every male friend of her's as to whether they have ever had sex wither than investigating the specifics of this crime. At the time the complaint was fipartment had closed the case for almost a month. Almost immediately after we fmplaint, the department reopened the case. The lawsuit is brought under federal avil rights laws, and constitutional claims of denial of equal protection and due ş well as several tort claims. Named as defendants in the case are the City, the Glice, the assistant chief in charge of the Internal Affairs Department, the captain estigator in IAD, as well as the assailant. The lawsuit was filed on February 13, 19fendants removed the suit to federal court and filed a motion for summary judgmer August, the judge denied City-defendants' motion. The City appealed this orcase was submitted without oral argument on January 31, 1994. On February he Ninth

removed the suit to federal court and filed a motion for summary judgment. In early August, the judge denied City-defendants' motion. The City appealed this order. The case was submitted without oral argument on January 31, 1994. On February 3, 1994, the Ninth Circuit dismissed the City's appeal for lack of jurisdiction. Discovery is pending in state court. The trial was scheduled for April 14, 1995; however, a settlement was reached. (Carol Sobel, Paul Hoffman, Tracy Rice, with Paul Kiesel)

263. Warfield v. Peninsula Golf & Country Club (California Supreme Court)

On August 10, 1993, we filed an amicus brief with the California Supreme Court in this appeal, in support of the Appellant Mary Ann Warfield. Our brief was filed on behalf of the American Civil Liberties Union of Southern California, the American Civil Liberties Union of Northern California, and California Women Lawyers. Through a family membership issued in her husband's name, Ms. Warfield had used the facilities of a country club in San Mateo, California for many years to play golf and to make contacts for and promote her residential real estate business. When she divorced, Ms. Warfield obtained the club membership as part of her property settlement. The country club refused to honor this based on its policy that only men could be "members." Ms. Warfield sued, claiming illegal sex discrimination under California's Unruh Civil Rights Act. After a trial, the Superior Court ruled in favor of the Club and the Court of Appeal affirmed. 12 Cal. App. 4th 178 (1992). The Court of Appeal held that the club was not a business establishment because it was "private in nature," having a limited membership, selective membership screening process, and a focus on recreation. Our brief argues that the Unruh Act reaches all entities with business-like attributes and that the Unruh Act's legislative history and prior precedent reject any approach that would exclude "private" entities from the Act's coverage. Here, the country club is subject to the Unruh Act because, among other things, it has a large permanent staff, is formally governed by a board, sells meals in its restaurant to both members and the general public invited by members, contracts with third parties who provide the members and public with goods and services at its golf and tennis shops, sells memberships for thousands of dollars, and allows members and non-members to rent its facilities for events. Our brief further argues that whether an entity is private or not does not relate to its coverage by the Unruh Act, but instead to whether or not it has a constitutional defense based on the right of intimate association to application of the Act in particular circumstances. In this case, however, no such defense exists because women are allowed to associate with men at the club and because no member's intimate association would be infringed by allowing Ms. Warfield to have full membership. The brief also argues that any limited impairment of the right of intimate association in this context is justified by California's compelling interest in ending invidious discrimination by businesses against women -- an interest strongly at issue in this case given the evidence (cited in the brief) that membership in such clubs provides valuable business contacts and adds to one's status in the community. After we filed our brief, Ms. Warfield asked us to represent her as co-counsel and to argue the case before the California Supreme Court. Our formal application as counsel was filed June 15, 1994. In mid-May, by a vote of 6 to 1, the California Supreme Court issued an opinion finding that the Golf Club is a "business establishment" and acted

by Joanne Caruso of Howrey & Simon. (Carol Sobel, Paul Hoffman, with Ann Brick, ACLU/NC)

WORKERS' RIGHTS

264. Bardwell v. Appleone Employment Services and Bellerdine v. Appelone Employment Services (Court of Appeal, 2nd District)

The ACLU filed *amicus* briefs in May, 1999 on both of these cases before the California Court of Appeal. Bellerdine seeks to have her state employment discrimination claim heard in court rather than arbitration. She successfully opposed a motion to compel arbitration of her discrimination claims; the employer appealed. The *amicus* argues that the 9th Circuit opinion in *Duffield v. Robertson Stephens Inc.* should be followed by California courts in FEHA cases. The Court granted review in Bellerdine and will vacate and remand that decision for reconsideration in light of the Court's decision in *Armendariz v. Foundatino Psychare.* The plaintiff in Bardwell won the case in an unpublished decision and the Suprme Court denied review. (David Schwartz)

265. Lagatree v. Keesal, Young & Logan and Lagatree v Luce, Forward, Hamilton & Scripps (Superior Court)

In a first-of-its-kind challenge to a growing national trend to force employees to waive their right to sue, the American Civil Liberties Union of Southern California filed lawsuits on February 17, 1998 against two companies for firing an employee who refused to sign an agreement forcing him to accept binding arbitration to resolve any work-related disputes. Donald Lagatree, of Long Beach, a legal secretary, was fired by two successive law firms for refusing to sign a final and binding arbitration agreement waiving his right to go to court with any future disputes he might have with the companies.

The ACLU has sued the two law firms, claiming that each has violated Mr. Lagatree's right to bring disputes to court and to trial by jury as guaranteed by the First and Seventh Amendments of the United States Constitution and Articles 1 and 16 of the California Constitution, as well other state and federal statutes concerning the rights of employees.

Plaintiff Donald Lagatree is a professional legal secretary. In March of 1994, he was hired by the law firm of Keesal, Young & Logan after working there for six months in a full-time temporary capacity. Mr. Lagatree received satisfactory or better job performance reviews. In June 1997, the firm asked him to sign a pre-printed standard arbitration agreement requiring him to waive his right to go to court over claims against his employer such as fraud, breach of contract or even "whistle blower" claims.

After receiving the form, Mr. Lagatree told the management, including a firm partner, that he did not wish to agree to arbitration of any future disputes and would, therefore, not sign the agreement. On June 30, 1997, Mr, Lagatree was fired for refusing to sign the arbitration agreement.

On September 12, 1997, Mr. Lagatree was offered a position as legal secretary with the law firm of Luce, Forward, Hamilton & Scripps and told to report for work on September 16. On his first day of work, after beginning his job duties, Mr. Lagatree was given a memo entitled "Letter of Employment," which confirmed the offer of employment and contained the following paragraph:

In the event of any dispute or claim between you and the firm (including employees, partners, agents, successors and assigns), including but not limited to claims arising from or related to your employment or termination of your employment, we jointly agree to submit all such disputes or claims to confidential binding arbitration, under the Federal Arbitration Act.

On September 18, 1997, Mr. Lagatree informed the management of Luce, Forward, Hamilton & Scripps that he did not wish to give up his right to take disputes to court and that he would refuse to sign the Letter of Employment. At a meeting with management, Mr. Lagatree was told that the arbitration agreement was not negotiable and that his employment was contingent upon his signing the agreement. Mr. Lagatree declined to sign the letter and he was immediately let go.

The Superior Court judge dismissed the case following hearings in Mary and June 1998. The appeal in *Lagatree v. Luce* was filed on July 20 and the appeal in *Lagatree v. Keesel* was filed on August 28. In Spring, 1999 the ACLU filed its appeal briefs. The case was argued on August 25, 1999. On September 13, 1999 the Court of Appeal affirmed the lower court's ruling. The ACLU filed a Petition for Review in the California Supreme Court on October 22, 1999. The petition was denied. (David Schwartz)

266. Wright v. Universal Maritime Service Corp. (U.S. Supreme Court)

In early May, 1998, the ACLU of Southern California co-authored an ACLU *amicus* brief filed in the U.S. Supreme Court on an appeal from a 4th Circuit Court of Appeals decision that held that a union member has no right to sue in court for disability discrimination. This holding is squarely at odds with the Supreme Court's 1974 decision in Alexander v. Gardner-Denver, which held that a union member's individual right of access to the courts to hear a statutory discrimination claim could not be bargained away by the union in a collective bargaining agreement. In Wright, the company is asking the Supreme Court to overrule Alexander.

Alexander is the last remaining Supreme Court precedent that upholds the right of access to the courts for civil rights claims in the face of an arbitration agreement. If it is overruled, that would represent a total victory for private companies that wish to keep statutory

discrimination claims out of the courts. Although Wright involves a union, there are also major implications for non-unionized employees as well. The ACLU brief argued not only that Alexander is still good law, but also that the Court should hold that an individual should not be forced to waive the right of access to the courts for ***statutory civil rights claims*** on a "take-it-or-leave-it" basis. (The Wright case does not raise, and we did not challenge, the right of unions to make collective bargaining agreements requiring arbitration of routine employee grievances regarding terms and conditions of employment or termination without good cause.)

The ACLU argued that "the right of access to the courts" is protected by the First Amendment right to petition government for redress of grievances. An arbitration clause waives that right. Firing someone for refusing to sign an arbitration agreement, then, is akin to firing someone for exercising free speech rights. Forcing employees to sign arbitration clauses undermine other First Amendment values as well. Unlike court proceedings, arbitrations are private and confidential. The public and the press have no right to attend arbitrations. Arbitrators can and do issue gag orders on parties, and there is limited right to appeal such orders. Arbitrators are free to seal the record of the hearing. Without a public right to know, civil rights laws lose their deterrent impact. A highly publicized discrimination court case, for example, can cause hundreds or thousands of employers to obey civil rights laws. A secret, confidential arbitration award affects only the individual employee.

Arbitration agreements weaken civil rights laws and due process. Employers like arbitration agreements because they know that arbitrators are less likely than courts to follow civil rights laws, and to award substantial damages or civil rights attorneys fees. There is practically no right to appeal an arbitrator's decision; courts nearly always uphold arbitrators' decisions, even when they are admittedly arbitrary.

In November, 1998, the U.S. Supreme Court reversed the 4th Circuit, though on a narrower ground than the ACLU urged, holding that the collective bargaining agreement did not expressly waive union members' right to a judicial forum for ADA claims. (David Schwartz, National ACLU)

ORANGE COUNTY CHAPTER CLOSED CASES

FIRST AMENDMENT

267. In The Matter Of John Dickinson (California Teacher Credentialing Commission/Sacramento)

This case involves an administrative investigation into whether a military conviction of a conscientious objector for missing a troop movement during the Gulf War is evidence of moral turpitude and unfitness to teach in the public schools in California. John Dickinson has been a conscientious objector all of his adult life. Feeling that he wanted to perform

community service, however, he enlisted in a non-combat unit of the Air National Guard. He served with distinction in that unit for nearly a decade, resigning only when he moved to California. In California, he enlisted in a similar unit that, in a Pentagon cut-back reorganization, was then absorbed into the Air Force Reserve. The unit's mission continued to be non-military until the Gulf War.

Dickinson then sought a discharge on conscientious grounds and also medical grounds because of recent surgery he had undergone. The application for discharge was ignored and Dickinson was tried and convicted of being AWOL and missing a troop movement. He was sentenced to one year in the brig, but released after only five and one-half months after intervention by conservative Republican Congressman Christopher Cox and human rights groups such as Amnesty International. The military officer who initiated the discipline then sent the notice of conviction to the California Teacher Credentialing Commission which issued a notice to Dickinson to show cause that he was not guilty of moral turpitude. On May 6, 1992, we filed a brief on Dickinson's behalf arguing that the investigation into John Dickinson's fitness to teach violates his First Amendment rights. The brief also argued that the military conviction could not used as evidence of a felony under civilian law and, in any event, the particular crime alleged did not involve moral turpitude under the California Education Code. In early June, 1992, the Credentialing Commission closed the case. (Carol Sobel with UCLA law student Craig Bloom).

PRISONER'S RIGHTS

268. Benson v. Gates (U.S. District Court, Central District)

This action is an expansion of Stewart v. Gates which challenges conditions at Orange County Jail. This suit includes conditions at the women's facilities and addresses a number of problems not specifically dealt with in Stewart. Our motion for class certification was granted on August 27, 1990. Plaintiff's Motion for Preliminary Injunction was heard in April 1991. We sought population caps on the remaining four jail facilities in the system and an order authorizing the Sheriff to release inmates to meet the cap. Judge Gray declined to grant these requests but he did issue an Order which brought all of the Orange County jail facilities under existing orders in Stewart v. Gates. Recently, a municipal court judge found Sheriff Gates in contempt for releasing inmates early. The case was transferred to Judge Taylor after Judge Gray became ill. We dismissed the case without prejudice in order to seek relief in state court on these issues. (Richard Herman, Tracy Rice, Lise Anderson, Paul Hoffman, with Prisoners Union, Legal Aid Society of Orange County)

269. Hallard v. Orange County Board of Supervisors (Orange County Superior Court)

This action seeks to have the medical services provided to prisoners in the Orange County

jail licensed as required by the Health and Safety Code. The action was filed after extensive discussions with the medical care providers who agreed that the services and facilities met the statutory threshold for licensure. Defendants refused to seek licensure based on the pending adoption of regulations for a correctional treatment licensure category. Trial was set for October 1992 but we agreed to dismiss the case without prejudice based on the County's stated intention to obtain licensure under regulations which will be promulgated in early 1993. (Rebecca Jurado, Tracy Rice, Lise Anderson)

270. Myer v. County of Orange (U.S. District Court, Central District)

Class action to challenge conditions in which pretrial detainees are housed in holding cells in Orange County courthouses. Detainees are kept in overcrowded, "standing room only," holding cells for up to four to six hours awaiting hearings, or return to the jail. A motion for a preliminary injunction was heard on February 2, 1987. Judge Gray stayed the case based on the fact that the County had corrected the problem in the meantime. The stay will permit us to return to court if the conditions deteriorate again. We are monitoring the situation. The case was dismissed without prejudice in early March 1989. An application for attorneys fees was denied in October 1989. The briefing on appeal is complete. Oral argument took place on February 14, 1991. In late February the 9th Circuit reversed and remanded for more proceedings on our fee application. A hearing was held before Judge Hupp on December 16, 1991. The fee issue was settled in December 1995 and attorneys fees have been paid. (Michael Linfield, Richard Herman, Silvia Argueta)

SANTA BARBARA CHAPTER CLOSED CASES

PRISONER'S RIGHTS

271. Jahanshahi v. Carpenter (Santa Barbara County Superior Court)

This is a challenge, by means of Petitions for Habeas Corpus, of conditions, particularly overcrowding, at the Santa Barbara County Jail. After a trial in October, 1985, the court ruled in our favor. The Court has expanded the work furlough program and the work release program. The court ordered a detoxification center to be built. Although the commander of the jail housed qualified inmates there for awhile, in summer, 1992, he asked the court for leave from its earlier order to close the detoxification center. The court denied the commander's request. Nevertheless, the commander closed the center in November 1992 and plaintiffs are preparing to ask the court to enforce its earlier order and find the commander in contempt of court. A cap was placed on the female population and there will be a hearing to set a cap for the male population. The other side has attempted to obtain release from certain prior orders relating to early release and work furlough to no avail. (Robert Sanger, Catherine McKinney)

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• If you are filing for an **Additional (not automatic) 3-Month Extension, complete only Part II** and check this box . . . . . ▶ ☒

Note: ***Only complete Part II if you have already been granted an automatic 3-month extension on a previously filed Form 8868.***

• If you are filing for an **Automatic 3-Month Extension, complete only Part I** (on page 1).

Part II Additional (not automatic) 3-Month Extension of Time — Must File Original and One Copy.

Type or print File by the extended due date for filing the return See instructions	Name of Exempt Organization ACLU FOUNDATION OF SOUTHERN CALIFORNIA		Employer identification number 95-2673361
	Number, street, and room or suite no If a P O box, see instructions 1616 BEVERLY BLVD.		For IRS use only
	City, town or post office, state, and ZIP code For a foreign address, see instructions LOS ANGELES, CA 90026		

Check type of return to be filed (File a separate application for each return):

☒ Form 990 ☐ Form 990-EZ ☐ Form 990-T (sec 401(a) or 408(a) trust) ☐ Form 1041-A ☐ Form 5227 ☐ Form 8870
☐ Form 990-BL ☐ Form 990-PF ☐ Form 990-T (trust other than above) ☐ Form 4720 ☐ Form 6069

STOP: Do not complete Part II if you were not already granted an automatic 3-month extension on a previously filed Form 8868.

• If the organization does **not** have an office or place of business in the United States, check this box . . . . . ▶ ☐

• If this is for a **Group Return,** enter the organization's four digit Group Exemption Number (GEN) _____ . If this is for the **whole** group, check this box ▶ ☐ . If it is for **part** of the group, check this box ▶ ☐ and attach a list with the names and EINs of all members the extension is for.

4 I request an additional 3-month extension of time until FEBRUARY 16 , 20 04 .

5 For calendar year _____ , or other tax year beginning JANUARY 1 , 20 03 and ending MARCH 31 , 20 03 .

6 If this tax year is for less than 12 months, check reason: ☐ Initial return ☐ Final return ☒ Change in accounting period

7 State in detail why you need the extension
ADDITIONAL TIME IS REQUESTED TO OBTAIN THE NECESSARY INFROMATION NEEDED TO FILE A COMPLETE AND ACCURATE RETURN.

8a If this application is for Form 990-BL, 990-PF, 990-T, 4720, or 6069, enter the tentative tax, less any nonrefundable credits. See instructions . . . . . $

b If this application is for Form 990-PF, 990-T, 4720, or 6069, enter any refundable credits and estimated tax payments made. Include any prior year overpayment allowed as a credit and any amount paid previously with Form 8868 . . . . . $

c **Balance Due.** Subtract line 8b from line 8a. Include your payment with this form, or, if required, deposit with FTD coupon or, if required, by using EFTPS (Electronic Federal Tax Payment System). See instructions . . . . . $ N/A

Signature and Verification

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete, and that I am authorized to prepare this form

Signature ▶ _____ Title ▶ CPA Date ▶ 11/12/03

Notice to Applicant — To Be Completed by the IRS

☐ We **have** approved this application Please attach this form to the organization's return.

☐ We **have not** approved this application. However, we have granted a 10-day grace period from the later of the date shown below or the due date of the organization's return (including any prior extensions). This grace period is considered to be a valid extension of time for elections otherwise required to be made on a timely return Please attach this form to the organization's return

☐ We **have not** approved this application After considering the reasons stated in item 7, we cannot grant your request for an extension of time to file. We are not granting a 10-day grace period.

☐ We **cannot consider** this application because it was filed after the due date of the return for which an extension was requested

☐ Other _____

_____ By _____ _____
Director Date

Alternate Mailing Address — Enter the address if you want the copy of this application for an additional 3-month extension returned to an address different than the one entered above.

Type or print	Name ENGEL KALVIN MCMILLAN & COMPANY, LLP
	Number and street (include suite, room, or apt. no.) Or a P.O. box number 11845 W. OLYMPIC BLVD., SUITE 900
	City or town, province or state, and country (including postal or ZIP code) LOS ANGELES, CA 90064-5014