Five years ago—while the Bush administration was in power—Sylvia Darenburg of Oakland filed a civil rights lawsuit against the Bay Area’s Metropolitan Transportation Commission (MTC). On behalf of the class of minority bus riders she represented, Darenburg hoped the federal courts would force MTC to change its funding priorities, which favored affluent rail commuters over transit-dependent people who rely on local bus service for access to employment, education, health care, and other essential services. (See "Bay Area Transit—Separate and Unequal" on page 30.)

Back then, civil rights and Environmental Justice (EJ) advocates could not have foreseen that it would be a federal regulatory agency and not the federal courts that would step up for equity in the allocation of transportation funding. But that is what happened on February 12 this year when the head of the Federal Transit Administration (FTA), citing civil rights violations, withdrew $70 million from a $500 million rail project on MTC’s priority transit expansion list.

The story of how bus riders—with the help of civil rights, EJ, and labor organizations—pulled off this unprecedented victory holds out hope for a much desired fundamental shift in how the Bay Area allocates some ten billion dollars in public funds for transportation each year. It also offers important lessons for regional equity advocates across the country.

Courtroom Drama
Our story begins in a crowded San Francisco courtroom, just a month before the election of President Obama. Magistrate Judge Elizabeth Laporte of the Northern District of California had already heard several days of testimony about MTC, the transit agencies under its jurisdictions, and the riders those agencies serve. The testimony showed that the ridership of AC Transit, the largest bus-only transit provider in California, is nearly 80 percent people of color, many of whom cannot afford to own a car. By contrast, BART (Bay Area Rapid Transit) provides deluxe rail service to a ridership that is much more affluent and approximately 50 percent white.

The court had also heard testimony about MTC’s $17 billion “strategic master plan for transit expansion” known as Resolution 3434. The inclusion of a project in the plan implied a commitment of considerable funds and advocacy muscle for that project. Then on the fourth day of trial, plaintiffs’ transit finance expert, Thomas A. Rubin took the stand to explain how minority bus riders figured into MTC’s “master plan”: 94 percent of the funding was allocated for rail projects and only 4.7 percent for bus projects.

On March 27, 2009 the court issued a decision with a mixed outcome. On the one hand, Judge Laporte acknowledged that MTC’s funding decisions caused AC Transit to raise fares and cut service. She also found that “Plaintiffs have shown that MTC’s practice with respect to Resolution 3434 caused disparate impact... MTC allocates more funding to rail projects than to bus projects, resulting in bus projects proposed by AC Transit being excluded from projects listed in Resolution 3434.” At the same time, the court applied an unusually lax standard in finding that MTC’s discrimination was justified:

“The Court sympathizes with the predicament of
the members of the Plaintiff Class, who have experienced declines in bus services on which they depend to meet their basic needs, such as getting to school and work safely and on time. Nonetheless, MTC has met its burden of showing a substantial legitimate justification for the challenged funding practices.”

Ultimately, the court did not grant bus riders any relief against the discriminatory impacts it had found. The ruling is now on appeal before the Ninth Circuit Court of Appeals.

An “Immoral” Use of Transit Stimulus Funds

Meanwhile, Congress passed its historic stimulus legislation. In anticipation of receiving $340 million in federal “formula” funds, in February 2009, MTC announced its plan to divert $70 million of those stimulus funds into closing a shortfall for BART’s Oakland Airport Connector (OAC) project—a 3.2 mile elevated rail “people mover” linking an existing East Oakland BART station to Oakland International Airport. The project would replace an existing bus shuttle service at an estimated cost of nearly $500 million.

MTC’s decision came at a time when Bay Area transit systems, like their counterparts across the country, were imposing draconian service cuts and fare hikes. Community advocates, led by Urban Habitat and Genesis, a regional faith-and-values organizing group, turned out more than a hundred vocal opponents to an MTC hearing that month. Rev. Scott Denman, president of Genesis, asserted that it was “immoral” for MTC to prioritize the needs of people who could afford an airline ticket over those who could barely afford a bus pass. In a lighter vein, he added that the Connector project was “shovel ready, and we should bury it today; I myself will perform the last rites.”

The protesters won over only one Commissioner but in a nod to the urgency of their appeal against

Public transportation is actually helping the environment and the price effectiveness of public transportation literally dictates how the environment will end up. Let’s face it, if public transportation costs too much, folks won’t take it, they’ll buy cars.

We have a lot of youth who live in public housing, who’ve grown up in public housing, and who have used the transportation system. They utilize these services. It’s all about public transportation while you’re in high school and even in college, commuting. You’re not rich at 21 or 20 or 19, so you’re going to need housing and transit.

With the Muni fare increase proposal, we organized youth to go to City Hall in preparation to protest the board meeting for the MTA. After that, we found out that the proposed fare increases got shut down, six to one. So, it’s important that we organize youth around these issues because our voice does matter. Many people don’t see how environmental justice relates to housing and transportation. Many low-income individuals don’t even know about the green jobs industries. That’s why I’ve built up a passion for it.

My mom didn’t have a car for a couple of years. When she didn’t have a car we’d catch buses. It was tough—seeing her take me places on the bus and getting home late, not having the luxury of a car. The cars she got were old. We didn’t have a lot of money. So, I grew up most of my life on MUNI. My mom just recently got a new car. I’ve lived through those fare increases, where it was 34¢, then it went up to 50¢, and then 75¢. Now, I’m just thankful to have had the experience of driving and taking public transportation. If I would have grown up driving a car, I would have looked down at the public transportation system, like, “That’s for poor people.” I can actually appreciate the public transportation system. I think San Francisco and the Bay Area are blessed to have these systems.

De’Anthony Jones is on the Youth Commission representing the Fillmore Western Addition neighborhood.
bus service cuts, MTC adopted a contingency plan: It would re-allocate the $70 million to the region’s transit systems for existing service in the event that the BART project could not obligate the funds to the OAC project in time to meet federal deadlines.

But questions were already being raised about whether the MTC had met its duty to ensure that BART, one of its subrecipients, had properly conducted an equity analysis of the OAC project as required by the FTA under Title VI of the Civil Rights Act of 1964. The purpose of such analysis is to ensure that low-income and minority populations receive a fair share of the benefits of the project, without being unduly burdened by its adverse impacts. A request from Public Advocates for the equity analysis under the California Public Records Act determined that BART had not conducted any equity analysis.

In July 2009, Public Advocates, Urban Habitat, and TransForm, a Bay Area transit advocacy organization, brought the Title VI issue to the attention of the BART and MTC boards of directors. Despite that, in August, MTC certified to the federal government that the BART OAC project “has received the full review and vetting required by law.”

On September 3, 2009 Public Advocates filed an administrative civil rights complaint under Title VI with the FTA’s Office of Civil Rights.2

Advocates Speak Truth to the FTA

The complaint, brought on behalf of Genesis, Urban Habitat, and TransForm, charged BART with failing to comply with its civil rights and environmental justice duties in connection with the OAC project. It noted that two neighborhoods within a half mile of the project area have 95 percent minority and 25 to 33 percent low-income populations, and spelled out clearly why the project would deprive these populations of a fair share of the benefits from this investment:

“The OAC... would charge a one-way fare of up to $6. The rail project would replace an existing bus link with a fare of $3... Situated in an East Oakland community with a very high minority and low-income population, the OAC will traverse a corridor with many low-wage jobs that employ local residents, yet it will apparently be built without any intermediate stops. Even if such stops were added in the future, [the] extremely high fare will exclude low-income riders from the delayed benefits of the new service.”

More than just a procedural shortcoming, BART’s failure to evaluate the equity impacts of the OAC project and weigh appropriate alternatives to find a less discriminatory one, is likely to have disparate impacts on Environmental Justice populations in East Oakland, low-income and minority BART riders, and the many low-wage workers with jobs at
the airport and along the Hegenberger corridor in which the OAC project would operate. Those populations either rely on the existing bus connection or would benefit from a low-fare transit option with stops at the airport and along the way.

The complaint urged the FTA to investigate these Title VI violations and require BART to conduct the equity analysis. It also asked the FTA to “place a hold on the provision of federal funds to BART for the OAC project, including the $70 million in ARRA [American Recovery and Reinvestment Act] funds programmed for the OAC project by the Metropolitan Transportation Commission... pending the satisfactory completion of the required evaluation, mitigation and review of alternatives.” Among the alternatives that BART had refused to analyze was a Bus Rapid Transit (BRT) system proposed by TransForm that would have provided fast service to intermediate stops for a very low fare at about a tenth of the cost of the OAC.

Civil Rights Action Wins $ for Community

In December, two FTA civil rights investigators met with BART staff and representatives of the groups that had filed the complaint. In the course of this on-site compliance investigation, BART acknowledged that “it failed to integrate Title VI into [its] service planning and monitoring activities for the Project,” according to a January 15, 2010 letter from FTA chief

Oakland Airport Connector Ignored Civil Rights Laws

By Juliet Ellis and Mahasin Abdul-Salaam

The Federal Transit Administration (FTA) pulled $70 million in stimulus funds from BART’s Oakland Airport Connector project last month based on our civil rights complaint, finding that BART ignored civil rights laws. Fortunately, the Bay Area didn’t lose that funding—it was distributed among the region’s ailing transit systems. But the transit administration’s action makes it clear that public money must be spent fairly or agencies will be held accountable.

A project isn’t “shovel-ready” until it is fair. Agencies receiving federal funds are legally obligated to ensure that low-income and diverse communities share fairly in the benefits of that funding. To do so requires analysis and community involvement. BART failed to live up to these responsibilities. As the project evolved, the anticipated round-trip fare rose to $12 (plus BART fare), and intermediate stops that could have given workers access to hotel and retail jobs en route to the airport were eliminated. But BART didn’t study whether those features excluded low-income and minority riders from the project’s benefits, and East Oakland communities never had a chance to have their say when the airport tram project was revised.

Our groups expressed our concerns to both BART and the Metropolitan Transportation Commission (MTC), the agency that oversees the regional distribution of federal transportation dollars. But we were ignored, so we took our complaint to Washington. And the FTA backed us up.

Since then, BART has continued to insist it did nothing wrong. But it has also vowed to make its civil rights practices the “gold standard.” Now is the time to turn these words into action.

BART can begin by working with the community on an airport connector plan that shares benefits with East Oakland residents as well as airport travelers, which includes seriously studying alternatives like Bus Rapid Transit. Instead of a $492 million slow cable car that dumps passengers in the airport parking lot at double the current fare, the Bay Area can have a faster, cheaper, and more convenient airport connection that also serves the needs of the East Oakland community.

For its part, MTC can thoroughly examine its long list of proposed transportation projects to make sure they promote civil rights. This critical review has never been done. Both BART and MTC can usher in a new era of respect for accountability, transparency, and fairness for all.

Juliet Ellis of Urban Habitat and Mahasin Abdul-Salaam of Genesis represent, along with Public Advocates, Inc. and TransForm, the organizations that brought the civil rights complaint.

Peter Rogoff, which also informed BART that it had to submit a “corrective action plan” for the preparation of the equity analysis for FTA’s pre-approval and that the $70 million in stimulus funds were being placed on hold.

After several weeks of failed efforts by BART to negotiate the terms of an acceptable corrective action plan, Rogoff wrote again on February 12: “I am required to reject your plan... Given the fact that the initial Title VI complaint against BART was well founded, I am not in a position to award the [stimulus] funds to BART while the agency remains out of compliance.” Furthermore, he stated, “it is imperative that BART, as a recipient of FTA funds, come fully into compliance with Title VI as soon as possible” and added that MTC must work “to ensure that [stimulus] funds can create and preserve jobs in the Bay Area” through reallocation according to MTC’s contingency plan.

Suddenly, MTC was all but forced to distribute the $70 million among all Bay Area transit systems, including BART. These funds could now be used to help fill the large operating deficits and mitigate, if not entirely avoid service cuts and fare hikes. At last, regional equity and transit advocates had the very outcome they had sought a year ago. Coming as it did at a time of great hardship for minority and low-income bus riders who are the first victims of growing operating deficits, the FTA’s landmark decision has had a profound effect across the country.

Bay Area advocates, however, are not resting on their laurels but working to keep the pressure on BART (which has yet to conduct a proper equity analysis for the OAC) and the MTC (which is facing further FTA scrutiny to determine if its failure to impose Title VI guidelines is part of a larger pattern). Ultimately, advocates hope to ensure that both agencies meet their civil rights obligations and provide low-income communities of color a fair share of the benefits from public funds.

The Obama Administration’s demonstrated commitment to revive civil rights enforcement so that the economic recovery lifts everyone, not just the few, has buoyed advocates into action across the nation. And as Congress moves ahead with its deliberations over the next major reauthorization of the surface transportation bill, the message that increased funding must be accompanied by Title VI protections is gaining traction.

Endnotes
1. The court’s decision after trial is available at www.publicadvocates.org
2. The Title VI complaint is available at www.publicadvocates.org

Richard Marcantonio is a managing attorney and Guillermo Mayer is a senior staff attorney with the public interest law firm Public Advocates, Inc., in San Francisco.
End Funding Discrimination in Public Transit

By Juliet Ellis

Fifty years ago, Rosa Parks did not give up her seat on a bus in Montgomery, Ala. Public transportation, and more specifically buses, became the stage from which the civil rights movement was launched. This act of courage is fresh in our minds due to the recent passing of Mrs. Parks. Viewed as a national hero, her body was placed in the rotunda of the U.S. Capitol—the first woman ever accorded such a tribute.

The irony is that today, discrimination is alive and well in mass-transit bus service. In the Bay area, for instance, a federal civil rights lawsuit is pending in the U.S. District Court in San Francisco, charging that the Bay Area’s Metropolitan Transportation Commission (MTC)—which plans and allocates funding for the area’s transit needs—supports a “separate and unequal transit system” that discriminates against poor transit riders of color.

The lawsuit, filed on behalf of African-American and Latino AC Transit riders, states that public monies are spent to expand a “state-of-the-art rail system”—BART and Caltrain—into relatively affluent suburban communities, at the expense of a shrinking bus system, AC Transit, for low-income people of color. According to AC Transit’s ridership survey, nearly 80 percent of its bus riders are people of color, and more than 60 percent of them have no other means of transportation. In cities across the nation, African Americans and Latinos comprise over 54 percent of transit users, according to the Harvard Civil Rights Project. Richard Marcantonio, an attorney with Public Advocates, citing data from the federal National Transit Database, noted: “As a result of MTC’s knowingly discriminatory funding practices, AC Transit riders receive a public subsidy of $2.78 per trip, BART passengers receive more than double that—$6.14—and Caltrain passengers receive $13.79, nearly five times more than AC Transit riders.”

And it’s not just AC Transit. Just last week, The San Francisco Chronicle published an article detailing the high cost of a commuter train in Marin and Sonoma counties (“New debate over light rail for North Bay,” Nov. 22, 2005). A report prepared by an engineering firm and requested by the Sonoma-Marin Area Rail Transit District not surprisingly concluded that the North Bay “is better off environmentally with a light-rail system.”

In 1999 in the South Bay, three weeks after SamTrans agreed to give a $72 million interest-free loan to BART for the construction of the SFO extension, SamTrans cut 15 percent of its bus service. SamTrans has repeatedly cut bus service in the last several years, according to Bay Rail Alliance, as well as increased fares in order to balance its budget.

The issue is not solely buses versus rail. Public transportation receives a fraction of the government funding spent on highways and roads.

Buses are the backbone of our transportation system. The majority of bus riders are transit dependent; that is, they rely on public transit for all of their essential trips— unlike rail commuters, who rely on BART (according to its rider survey) for 25 percent of their essential household trips. BART, light rail, and commuter rail systems depend on buses to get people to and from stations. Without an effective bus system, the rail system will not work. Buses also mean less congestion and less pollution on our roads.

Why buses over rail? If funded properly, technology exists to make buses fast, clean and quiet. Buses are cheaper to run and can be more flexible in terms of routes. Buses are like gigantic car pools. They do the best job of getting people to their destinations. Buses work within existing road structures, and local and express routes create time efficiencies.

MTC’s own analysis in 2001 indicates that a minimum of $109 million per year is needed to fund the transit needs of low-income riders. It also found that 80 percent of AC Transit’s safety-net or “Lifeline” routes were served too infrequently and/or were not served from midnight to 6 a.m. Since then, it has gotten worse. For instance, AC Transit cut 14 percent of its service in 2003. (MTC said it was important to update the Lifeline gap study, but has not done so.) Transportation justice advocates do not oppose BART or rail; however, we do support equal access and mobility for all. Funding and service cuts in bus service disproportionately affect youth, the elderly, people with disabilities, and low-income communities. The MTC must change its discriminatory practices by treating all transit riders equally and subsidizing bus transit at the same level as rail. Everyone in the Bay Area deserves equal access to a first class, safe, dependable public transit system.

Juliet Ellis is the executive director of Urban Habitat, an environmental justice organization in Oakland.
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