

HUMAN RIGHTS NOW!

*Newsletter of the
Meiklejohn Civil Liberties Institute*



June 2010

A Note from the Executive Director:

On Human Dignity

By George Lippman

It's May 23, and news just came to us at Meiklejohn about yesterday's funeral of seven-year-old Aiyana Stanley-Jones, shot to death by a police officer while peacefully sleeping in her Detroit home.

This tragedy has elements of farce. Aiyana lost her life in a police raid for a man who was never there, a raid accompanied by a cable camera crew from the Arts and Entertainment channel (A&E), videotaping for a reality show. A family attorney indicated that the police may have been excited and inspired to act with excessive force by the presence of television camers.

This pointless loss of a young life exemplifies the violation of what the United Nations Declaration of Human Rights, reflected in U.S. law by the international treaties, calls the Right to Dignity. So does the spill of immeasurable amounts of oil off the coast of Louisiana.

MCLI On the Move

To introduce myself: I stepped into the Executive Director position with Meiklejohn Civil Liberties Institute on March 15 following the retirement of the valiant and resolute Ann Fagan Ginger, who remains extremely active with MCLI. I want to offer my initial impressions of MCLI and the environment in which it works.

While MCLI undergoes its transition, the terrain of human rights law does as well. I have seen an explosion of interest in the application of international treaty law to human rights violations in the U.S.

- ▶ In late March the State Department held "listening sessions" in several cities across the country to help prepare its submission to the Universal Periodic Review of the U.S. human rights record. This Review is mandated by the United Nations Human Rights Council for every U.N. member every four years. At the Berkeley and San Francisco sessions MCLI and many other non-profit organizations gave panel presentations and floor statements condemning treaty violations against Native sovereignty, po-

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State Dept. Requests Local Human Rights Reports

By Ann Fagan Ginger

May 20, Washington: The Department of State held a session with Non-Governmental Organizations on how to make the best reports under the U.N. treaties ratified by the U.S.

MCLI was represented at the meeting in Washington by Zachary Wolfe and on the phone by George Lippman, Ann Fagan Ginger, and intern Kelly Winer.

This was the largest such meeting ever called by the DOS concerning the treaties, including many NGOs quite new to the U.N. treaty process.

It did not include representatives of state, county and city governments, whose input is essential to have the U.S. reports be complete.

MCLI raised this point several times during the meeting and learned that this DOS has taken more steps than any previous DOS to notify state governors, attorneys general, and human rights commissions about the treaties.

But there is still no acceptance by the DOS that the treaties require the DOS to obtain information at the local level from local government bodies.

George Lippman, MCLI Executive Director, described the fact that the City of Berkeley is making reports to the three U.N. committees on specific problems as well as successes in the city.

"MCLI can be proud of its role in sending representatives to previous meetings of the UN committees in New York and Geneva to raise issues about local violations of the treaties not reported in the U.S. reports. Their input helped lead the committees to request specifically that the U.S. submit information

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Inside:

Arizona's New Law: SB1070

Does the Supreme Court Use International Law?

Meet MCLI's New Interns

Babies, A Movie Review

And more!

Why America Lost the War on Poverty - and How to Win It, A Review:

Frank Stricker tells us, currently some 38 million people in the United States are living in poverty according to the government. This book is a remarkable piece of research work. It surveys and evaluates U.S. Government policies to reduce poverty from the mid-twentieth century to the early years of the present century, covering eleven administrations - from that of Harry Truman to that of George W. Bush. Of the various causes of poverty, one leading source is unemployment. The author makes it clear that so long as Capital is in command, Labor will have to face a permanent degree of unemployment. For neither corporate employers nor bankers will tolerate full employment, as the former want wages kept as low as possible and the latter are determined to avoid inflation.

So it is a sad story of sometimes serious but often half-hearted campaigns carried out against an unremitting opposition. The book begins with a list of seven ways of reducing poverty (the favorite method being stimulating economic growth, but also job training, raising the minimum wage, providing government jobs paying above poverty wages, direct payments and services to the poor, and so on). The success or failure of these various methods is weighed throughout and the book ends with 17 recommendations to eliminate poverty. European countries have shown that poverty can be virtually eliminated without destroying capitalism. So the continued refusal to eliminate it here leaves one with the impression that there is an element of just plain cruelty in our society. 345 pp. with notes and index. *Why America Lost the War on Poverty - and How to Win It* by Frank Stricker, University of North Carolina Press, Chapel Hill, 2007

Doing It Right in Marin!

The latest news and views of MCLI were presented at a delightful event hosted by Faye Hinze at her home in Corte Madera on May 23. George Lippman, Steve Bingham, Susan Scott and Ann Ginger described MCLI's new projects. Jon Fromer played his latest Obama piece, and the SF Gray Panthers did their skit on Eleanor Roosevelt and the Universal Declaration of Human Rights.

MCLI invites you to host a party at your house -- soon!

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MCLI human rights case histories at UC-Bancroft:

bancroft.berkeley.edu/collections/meiklejohn/project.html

A Letter to Congress:

Dear Senators Feinstein and Boxer:

Today the New York Times printed pictures of the one thousand American soldiers killed so far in Afghanistan. A surprising number of these young men and women were only 18 or 19 years of age.

We know from the work of neuropsychologists over the past decade that the human brain is not developed enough to make mature decisions before the early to mid-twenties. And this has led to proposals to raise the age requirement for drivers licenses, as well as the age at which someone can be sentenced to death or life imprisonment.

Clearly the decision whether to enter the military should not be made by those whose brains are not mature enough to handle such a fateful decision. What we are doing, in effect, is taking advantage of these young men. That, in itself, is unethical. But when the consequences for some of them is death, I believe it is criminal.

I hope you will consider raising this issue with your colleagues. No enlistments should be permitted below an age that our neuroscientists agree makes a mature decision possible.

Sincerely Yours,

James W. Syfers

Dept. of State

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from the local level," said George Lippman.

MCLI Intern Rod Brown is preparing chart templates which every city, county or state can use in future US reports. For example, each government body should tell the UN committees how many people have filed lawsuits or complaints about being illegally arrested, by race, nationality, immigration status, religion, etc.; how many of these cases have been won; how many are pending; and how many have been lost.

MCLI will expand its work to assist cities, counties, and states in: learning about the treaties, the reporting requirements, the date of submission. On May 24 the Berkeley Peace & Justice Commission adopted its report to submit to Berkeley City Council for approval to send to Department of State and UN Human Rights Committee.

Ann Fagan Ginger is Executive Director Emeritus, founder of MCLI, and MCLI Board Member.

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Arizona's SB 1070 Faces Legal Challenges

By Lucy Rodriguez

The recent and very controversial Arizona legislation SB1070, approved in April by the Arizona legislature and signed by the governor despite wide protests, has already cost the state of Arizona hundreds of thousands of dollars in revenues from cancelled professional meetings and economic boycotts. It is unlikely to survive constitutional challenges. A complaint has recently been filed by the ACLU and other NGOs challenging its constitutionality even before it goes into effect.

The U.S. Constitution Article VI, Section 2, the Supremacy clause, states that federal law preempts state law in areas over which Congress has expressly or impliedly reserved authority or which is constitutionally reserved to the federal government. The Supreme Court has held that the Federal government power to control immigration is inherent in the nation's sovereignty. In addition, implementing SB1070 would place a heavy burden on citizens and legal residents who would have to prove their legal status whenever challenged.

The Fourteenth Amendment of the provides that "no State shall... deny to any person within its jurisdiction the equal protection of the laws". SB 1070 requires that the police stop anyone who they may "reasonably suspect" to be undocumented. How the police are to make this determination is not specified. It seems the police would have to decide on appearance alone. Thus a person who "looks foreign", though they may be a citizen, could be suspect and thus face detention and arrest until she can prove that she is a citizens or legally in the country. It seems unavoidable that racial profiling would become common practice despite being unconstitutional.

The Fourth Amendment prohibits unreasonable searches and seizures. SB 1070 requires that police officers conduct warrantless searches and seizure of individuals without probable cause that a crime has been committed. A citizen with a heavy accent may have his vehicle searched if the police have stopped him because he forgot his license. Again, this is a heavy burden on both the populace and on law enforcement agencies.

Furthermore, SB 1070 represents a violation of international human rights law. As explained by ACLU attorney Chandra Bhatnagar, the U.S. is a signatory to the International Convention on the Elimination of All Forms of Racial Discrimination. Any racial profiling, of the sort that already occurs in many states but would certainly be exacerbated by

Supreme Court Looks to International Law

By Josephine Weinberg

On Monday May 17, in a decision authored by Justice Kennedy, the U.S. Supreme Court held that sentencing juvenile non-homicide offenders to life imprisonment without the possibility of parole, violated the Eighth Amendment's ban on cruel and unusual punishment (*Graham v. Florida*, 560 U. S. ____ (2010)). The case involved Terrance Graham who committed armed burglary at the age of 16 in Jacksonville, Florida. During the burglary his accomplice attacked a restaurant manager with a metal bar. No death resulted and no money was taken. Graham was charged as an adult but accepted a plea agreement, was sentenced to a year in jail and was put on probation. Graham was subsequently found to have violated his probation by committing a home invasion robbery and was sentenced to life in prison without the possibility of parole. Graham challenged his sentence under the Eighth Amendment.

In its decision, the Court examines national and global consensus in determining whether such sentencing is cruel and unusual. The Court notes that while 37 states allow for the life sentencing of non-homicide juvenile offenders (California being among them), the actual imposition of such a sentence is rare. What is of particular interest to MCLI is the court's mention of international law and the fact that the United States is the only nation that actually imposes life without parole sentences on juvenile non-homicide offenders. The court states that, *Article 37(a) of the United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990), ratified by every nation except the United States and Somalia, prohibits the imposition of "life imprisonment without possibility of release ... for offences committed by persons below eighteen years of age."* [citations omitted] [T]he United States now stands alone in a world that has turned its face against" life without parole for juvenile nonhomicide offenders. [citing *Roper v. Simmons*, 543 U.S. 551 at 577(2005)]. (Page 30 of Slip Opinion)

The Court recognizes the weight of these international views and finds that even though there are no international legal agreements that are currently binding on the U.S. on this issue, the fact that the overwhelming weight of international opinion is against life without parole for non-homicide offenses committed by juveniles, provides "respected and significant" support for the Court's own conclusion that such sentencing is cruel and unusual.

The Court reiterates its findings in *Roper* which many of us would view as common sense:

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On Human Dignity

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lice abuse, environmental racism and many other urgent issues. Representatives of State and other federal agencies listened respectfully and promised to consider the input in their report to the U.N.

- ▶ On April 12, the Berkeley Peace and Justice Commission took public testimony for the City of Berkeley's report to the United Nations on local compliance with the International Covenant on Civil and Political Rights (ICCPR). MCLI played a major role in persuading the Commission and the Berkeley City Council to make this historic report.
- ▶ As we discussed in the March issue of *Human Rights Now!*, California Assembly Member William Monning has introduced ACR 129 to mandate California to file reports on state compliance with the ICCPR, the International Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (ICAT), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The Resolution also requires the state to publicize the text of the treaties and to prepare reporting templates to be used by state and local agencies. Please come to a reception with Mr. Monning hosted by MCLI on June 10 from 5-7 pm at the California Nurses Association, 2000 Franklin Street in Oakland, California (see box on page 8).

Making A Difference

I want to directly address an argument that I often hear: that international precedents and norms are irrelevant to the grassroots struggles in this country. I'm not referring to the narrow, nationalistic perspective that promotes an America detached from and unaccountable to the international community. The issue from the progressive perspective is that the international community seems very far away. President Obama is continuing, even extending, Bush's snubs to world opinion in arguing that those detained by the U.S. in foreign countries may not challenge their detention in U.S. courts, and has even authorized assassination, without any due process, of a U.S. citizen.

In this political environment, it is perhaps understandable that progressives question the value of human rights treaties, though they are the supreme law of the land according to the U.S. Constitution. But the experience from Berkeley shows that it's what people do with these treaties that makes the difference. The staff and community people who

helped draft the ICCPR report experienced empowerment and validation for their struggles for a more just society. The reporting process is a way to begin the conversation *locally* about what the values of our community ought to be, and what progress we are making with respect to that vision.

Beyond that, MCLI has found an increasing interest among lawyers and even judges to cite international law and precedent in human rights cases. See the review in this issue of the *Graham v. Florida* decision, in which Justice Kennedy gives weight to "global consensus" in banning juvenile life without parole in non-homicide cases.

The Universal Declaration of Human Rights begins, "Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace." In the end, it is our advocacy and defense of our collective dignity and rights that will guarantee their recognition in practice by society. Please contact us at MCLI to get involved in our community campaign.

Human Rights Training Institute

MCLI is planning to initiate a Human Rights Training Institute. The goals of the Institute are to train community people as advocates in the use of human rights law in support of struggles for social justice.

While we are at the beginning stages of planning, we hope to draw in a wide net of participants, including college students, teachers, trade unionists, and activists from every social movement. This is not continuing legal education for lawyers, but rather skill-building for the grassroots.

The certificate issued by the Institute will attest that the participant has learned what rights are guaranteed under international and domestic U.S. law; how international treaties apply to the U.S. and can be used in domestic advocacy; how to report non-compliance to the U.N., and why this process matters. The course will explain how the U.S. lags behind the rest of the world in ratifying treaties such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and it will describe the on-going campaigns for their ratification.

The course will not be a one-way "transmission belt" of information. Participants will share their wealth of experience and contribute to the strategies for application of internationally recognized human rights law to their own local campaigns. Everyone will have the chance to practice debating the issues, and getting comfortable with public speaking. At the end of the course, participants will have a new tool for enforcement of their community's human rights

MCLI's New *Testify!* Project

MCLI is working with the U.S. Human Rights Network on the new *Testify!* Project. The Project collects stories of injustice from throughout the U.S. through one-minute video and one-page written testimony. (www.ushrnetwork.org)

This testimony will be used as part of the U.N. Human Rights Council's review of the entire human rights record on November 5, 2010, in Geneva.

We need your help! We need the voices of individuals across the country who face injustice. We need to see your story. -- Bring Human Rights Home!

Meet Board President Rev. Daniel Buford

After almost five years on the MCLI Board of Directors and many more of involvement with the organization, Rev. Daniel Buford has taken over as President of the Board.

A long-time community activist, Rev. Buford is Prophetic Justice Minister at Allen Temple in Oakland and works on the Toxic Triangle campaign for MCLI as well as the Oscar Grant shooting case.

After nine months of serving as Interim President, Susan Scott is stepping down as originally planned to re-focus on her NLG work. She will continue on the Board.



Babies, A Review

By Kelly Winer

Watch five seconds of Focus Features' newly released documentary *Babies* and your parental triggers will fire a hundred "Awww!"s into your bloodstream. The film follows four newborns from four countries, bridging

racial, socioeconomic, and gender divides with multicultural cuteness; the film's message, after all, is one of cross-cultural commonalities. As the tagline reads and shots of international tenderhearted childrearing confirms, "Everybody Loves Babies." Showcasing the humanity of marginalized populations of the world is an honorable feat for a movie to accomplish, and *Babies* does this by following Bayar, an infant from Mongolia, and Ponijao, an infant from Namibia,

in addition to two infants from the so-called "developed" world. However, by focusing on universal aspects of babydom like love, cuteness, and toddler antics, the gravely disconcerting differences between the babies' home countries can only be hinted at.

Babies does present an image of economic in-

equality. Audiences cannot help but infer the relative wealth associated with the countries of Hattie and Mari, *Babies*' subjects from the United States and Japan, respectively. Hattie and Mari live in gleaming urban homes packed with every toy and childrearing novelty imaginable. Bayar and Ponijao, meanwhile, live in one-room huts.

Although *Babies* shows a number of such juxtapositions, the film lets them go unexplained. Viewers might be struck by the contrast of Hattie and Bayar's births; Hattie enters the world studded with high-tech, expensive medical equipment while Bayar is wrapped in a blanket at a clearly inferior clinic. The implications of such unequal medical care, however, are not addressed. Access to medical facilities like the one where Hattie was born can mean the difference between life and death; Mongolia, shown anecdotally by the film to have relatively poorly equipped medical facilities, has an infant mortality rate six times that of the United States. With even fewer health resources, Ponijao's Namibia has an infant mortality rate seven and a half times that of the United States. The repercussions of poor medical systems carry far beyond infancy, however; due in part to inadequate medical care, Hattie can be expected to live ten years longer than Bayar and twenty-six years longer than Ponijao.

Birth, of course, is only the start of what will be *Babies*' subjects' wildly unequal trajectories. Nearing toddlerhood, Mari and Hattie are read to and brought to preschool. Bayar and Ponijao receive no such early education, and their countries' literacy rates reflect this. The legacy of uneven access to education can be found in the background of *Babies*; the parents whose footsteps the infants are toddling behind engage in very different occupations from country to country. Mari and Hattie's parents are cellphone toting professionals who can afford prime real-estate and time off to play with their newborns. Bayar's parents toil at farming so vigorously that they miss their child's first steps, and Ponijao's parents seem to be employed solely in the craft of surviving dire poverty.

Thus, *Babies*' feel-good message that All Babies Are Created Equal is eclipsed by global social stratification that grows as the infants do.

Introducing MCLI's Summer Interns

Kelly Winer studies Social Welfare and Global Poverty at the University of California, Berkeley. She is passionate about mitigating poverty, inequality, and the deficits of information and resources that they cause. Through



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MCLI's Interns

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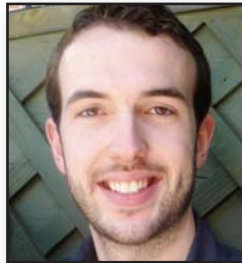
student organizations at UC Berkeley, Kelly leads seminars and workshops about class, race, gender and sexual orientation. Kelly interned with the DA of Los Angeles' department on gangs and vice in 2009. This experience enabled her to observe the interrelating forces of poverty, crime, law, and public policy first-hand and was a driving force behind the subsequent field research regarding the intersection of homelessness and city-level policies that Kelly initiated in 2010. Today, Kelly is thrilled to work with MCLI towards the pursuit of human rights for all.

Born in Guangzhou, China, **Carmen Ye** immigrated to San Francisco when she was three. Growing up in the Chinatown community she became committed to the Adopt-an-Alleyway Youth Empowerment Project (AAA). This organization of high school students focuses on issues of environmental cleanliness, open space, and affordable housing. Currently a rising junior, Carmen is majoring in Social Welfare and Asian



American Studies, with a minor in Public Policy. She has been involved in many areas of campus life, including completing a research apprenticeship in Sociology, writing for *hardboiled* Asian Pacific American newsmagazine, and joining Phi Nu Xi multicultural sorority. Next year she will serve as a co-leader for a service-learning trip to San Diego/Tijuana as part of the Alternative Breaks program through the Cal Corps Public Service Center. Upon graduation, Carmen hopes to be a teacher through Teach for America before pursuing a Master's in Public Policy.

Rod Brown recently graduated from San Francisco State University with a degree in International Relations where he focused on US foreign policy and US involvement within the international community. Now, he is going into his second year at Golden Gate University, School of Law where he will focus on international law. Human rights is an area in which Rod says he has a great amount of interest. Having volunteered at two organizations last semester, he has come to appreciate the importance of non-profits. Rod says the work that MCLI does is "truly inspiring"; he looks forward to the experience and particularly, what he will be able to incorporate into his time as the vice president of the International Law Society at school, next year.



GGU School of Law student **Katy Kendig** will also be an intern at MCLI this summer.

Supreme Court Decision

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Roper established that because juveniles have lessened culpability they are less deserving of the most severe punishments. As compared to adults, juveniles have a "lack of maturity and an underdeveloped sense of responsibility"; they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure"; and their characters are "not as well formed." These salient characteristics mean that "[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." Accordingly, "juvenile offenders cannot with reliability be classified among the worst of offenders." A juvenile is not absolved of responsibility for his actions, but his transgression "is not as morally reprehensible as that of an adult." Thompson, supra, at 835 (plurality opinion). [all citations omitted] (P. 16-17 of Slip Opinion)

The Court viewed a categorical ban on life sentences of non-homicide juvenile offenders as a necessary step given the above findings. Hopefully such a ban puts the U.S. closer to ratification of the UN Convention on the Rights of the Child.

Perhaps the most useful for all those seeking to have the U.S. further recognize international law, is the language and approach the Court takes on analyzing global views. The Court frames international condemnation of such sentencing as evidence that such sentencing practices are simply inconsistent with basic notions of decency (Page 31 of Slip Opinion). While the Court clearly states that no international agreement or view is currently dispositive on this issue, the legitimacy of international treaties and the need for international perspective to be incorporated into decision making is evident.

A copy of the *Graham v. Florida* decision can be found at www.supremecourt.gov

Josephine Weinberg is a graduate of the New College School of Law, a legal activist, and MCLI Board member.

SB1070

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implementation of SB 1070 in Arizona, puts the U.S. in a difficult position with respect to international law in general and particularly for human rights issues.

For these reasons, SB 1070 has aroused considerable protest and concern in the immigration and international law communities as well as among immigrants. Immigrant rights groups are organizing around these issues to put pressure on legislators, including urging comprehensive immigration reform by Congress.

Lucy Rodriguez is an attorney specializing in Immigration Law, a member of the National Lawyers Guild, and MCLI Board member.

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Save the Date!



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This will be a chance to meet with Bill and learn about his resolution to mandate state reports to UN Human Rights committees.

With Special Guest

Judge Claudia House Morcom (ret.)
1964-65 NLG director, Legal Assistance
Mississippi and 2009 IADL Agent Orange
tribunal, Hanoi, Viet Nam

Thursday, June 10th, 5PM
@ California Nurses Association
2000 Franklin St., Oakland

**Join MCLI at the
United Nations Charter Day
Human Rights Conference**

**June 26, 2010
time TBA**

University of San Francisco

MCLI's Ann Fagan Ginger, Daniel Buford, and Rod Brown will be leading a panel titled "Incorporating International Human Rights Law at Home: CEDAW Ordinance as a Model of Cities Across America; Other Initiatives at the Local and State Level"

**To learn more about the conference or
to RSVP please contact us!
at mcli@mcli.org or (510) 848-0599**

Want to represent MCLI in Geneva
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