

HUMAN RIGHTS NOW!

Newsletter of the Meiklejohn Civil Liberties Institute



Sept
2008

MCLI GOES TO WORK ON THE TOXIC TRIANGLE

Aug. 19: Rev. Daniel A. Buford, MCLI Vice President, provided opening remarks prior to a standing-room only public fact-finding hearing on The Toxic Triangle of polluted sites in Alameda, Contra Costa and San Francisco Counties.

This hearing was sponsored by African American elected officials and clergy of the East Bay including Oakland City Council Member Desley Brooks. In attendance: representatives from the offices of Mayor Ron Dellums, Rep. Barbara Lee, State Assemblymembers Sandre Swanson and Loni Hancock, Port of Oakland, Berkeley City Council, and the Environmental Protection Agency.

Riveting accounts of nose bleeds, respiratory problems, cancer, skin lesions, and death were provided by community members from each county of The Toxic Triangle

Bay Area Superfund Sites

The San Francisco Bay Area has many distinguishing features that attract visitors to the region for tourism. This sight seeing haven is also distinguished by the presence of hazardous waste sites in African American neighborhoods that are so poisonous that the USEPA (United States Environmental Protection Agency) has placed them on the National Priorities list of superfund sites slated for urgent clean-up. A Superfund site

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"UNDOING THE BUSH-CHENEY LEGACY: A TOOL KIT FOR CONGRESS AND ACTIVISTS"

Planning to visit your Congressman soon to talk about Bush-Cheney laws that absolutely **MUST** be repealed January 3, 2009?

Do you have the exact name of the bad Law -- and a good Bill to repeal it?

You need "UNDOING THE BUSH-CHENEY LEGACY: A Tool Kit for Congress and Activists" MCLI is publishing on Oct. 15.

This MCLI Little Orange Book No. 3 gives you all the info you need to talk to your Senator or Representative on 21 issues, from **Agriculture** and **Anti-Trust** to **Veterans** and **Wars in Afghanistan and Iraq**, describing 67 laws, signing statements, executive orders that need changing.

Every write-up gives:

***Name of Bush "law"**

***Citation:** where to find it in U. S. Code, Fed Reg., etc.

***Who is hurt by this "law"**

***What the "law" provides**

***What the "law" ignores:** Listing which articles in the U.S. Constitution are being ignored or violated; the articles in the U. N. Charter and other treaties ratified by the U.S.

***What Congress can do:** listing specific bills proposed by Senators and Representatives in recent sessions of Congress.

See a sample page on the back cover of this newsletter.

Order your copy on page 7

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COME TO BERKELEY CITY COUNCIL MEETING ON JOHN YOO RESOLUTION SEPT. 16

MCLI representatives helped convince the Berkeley Commission on Peace & Justice to pass a resolution asking the Berkeley City Council to pass a resolution:

1) asking the University of California administration to study whether its rules provide for putting a professor on leave who has been accused of committing war crimes while these charges are being investigated.

2) asking the Dean of the Law School to appoint a second professor to teach each of the

(cont'd p. 6)

RECENT BOOKS ON THE SUPREME COURT AND BLACK GOLD

"The Hollow Hope: Can Courts Bring About Social Change?"

Gerald W. Rosenberg (Univ. of Chicago, 2nd ed.,) Paperbound, 2008.

This is a work that was published first in 1991 arguing that U.S. courts can almost never be effective producers of significant social reform. The thesis was supported by extensive studies of advances in civil rights, abortion and women's rights, the environment, reapportionment, and criminal law. Nonetheless it occasioned a great deal of controversy and the author has posted reviews and replies on a website:

www.press.uchicago.edu/books/Rosenberg/.

Now, years later, the author's thesis seems generally accepted as being correct, but the discussion continues. This new edition adds a section on same-sex marriage. There is a lot of history in these 525 pp. that may be of interest to readers of Human Rights Now.

"The Dirty Dozen: How Twelve Supreme Court Cases Radically Expanded Government and Eroded Freedom"

Robert Levy and William Mellor, (Sentinal Press, Penguin), 2008.

Twelve Supreme Court decisions considered dreadful by two authors of Libertarian persuasion. Author R. Levy is on the board of the Cato Institute and a former clerk for Justice Ginsberg, while W. Mellor served as a deputy counsel in the Reagan administration and is president of the Institute for Justice. None of the cases go back further than the 1930's (the oldest is one of the Gold Clause cases under the Roosevelt Administration) and the most recent one is from 2005, *Kelo v. City of New London*, in which homeowners properties were taken by eminent domain for the use of a private developer. Each decision occupies a chapter of the book and includes attendant circumstances, the Court's reasoning, an analysis, and a related case. Despite not agreeing with many of the authors choices, I found this a very educational work. It would be good to have a Progressive answer to its "dreadful" list.

"Taking the Constitution Away from the Court"

Mark Tushnet, (Princeton Univ. Press, 1999).

M. Tushnet is a professor of constitutional law at Georgetown and author of a study of the career of Thurgood Marshall. Both of the above books could provide material for the argument of this book, which is essentially that Congress, representing the will of the people, should be the branch of government that decides

what the Constitution means, not the Supreme Court or the President. The Court declared itself supreme authority very early in *Marbury v. Madison*, 1803, and George Bush is not the only president that has regarded the Executive branch as the supreme authority. The Constitution, however, in Article VI, section 2, supports the Legislature.

Jim Syfers, Ed.

"The Curse of the Black Gold"

Power House Cultural Entertainment, Inc.
2008, 224 pp.

'One picture is indeed worth a thousand words, and many pictures are worth volumes.' In their book Ed Dashi, photojournalist, and Michael Watts, editor, have created an indictment against the 'Big Oil Industry.'

The book leaves a profound haunting feeling in your gut. The camera never shies away from its subjects, showing the devastating effect of 50 years of drilling oil in the Niger Delta.

The book captures the soul of the people in their everyday grit to survive. From the blackened sky, scorched earth, polluted waterways to the abject poverty in which they live, the photos illustrate the fertile ground birthing the insurgency.

The people in their oil forsaken communities have no choice but to fight back. The insurgency, Movement for the Emancipation of the Niger Delta or MEND, the proliferation of youth groups across the Delta, and a complete lack of leadership to unite the various organizations, created chaos. The Editor clearly cites three different oil states: Venezuela, Iran, and Nigeria.

The people in the book are an assortment of authors, poets, intellectuals, activists -- G. Ugo Nwokeji, Ukoha Ukiwo, Nnimmo Bassey, and others. They create a glimmer of hope amidst the despair.

Chimamanda Ngoze writes: "But there is triumph at the end where the African laughs, in a real way, and 'not ice-block laughter,' because

"My fathers and I
Are owned by the living
Warmth of the earth
Through our naked feet."

The world's dependence on oil has produced devastation where the oil is drilled and

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3-TREATY PROJECT MOVING FORWARD

The Berkeley Commission on Peace & Justice is moving toward completion of the template to be used by all relevant City agencies in making reports to the three U.N. committees under the 3 U.N. treaties ratified by the U.S. MCLI has participated in each of the meetings with Commission members and Interns.

This is not a quick process, since interns must get the lists of relevant city agencies, and get lists of relevant issues raised in the three treaties and fit the two together. The U.N. system is sufficiently efficient, and tight, that several issues that must be reported for the U.N. Human Rights Committee under the International Covenant on Civil & Political Rights must also be reported to the U.N. Committee Against Torture and the U.N. Committee on Elimination of Racial Discrimination.

Some issues are unique and specific, namely issues to report to the Committee on the Rights of the Child concerning the Optional Protocol the U.S. ratified on the Involvement of Children in Armed Conflict. (The U.S. ratified this Protocol, not the Convention on the Rights of the Child, unlike virtually every other nation in the U.N.)

Note: Watch for announcement of completion of the template on MCLI's web page: www.mcli.org

CLE on HOW TO WIN USING U.N. TREATIES and OFFICES of INSPECTOR GENERAL

Thursday, Oc. 16, MCLI will present a Continuing Legal Education Workshop at the National Lawyers Guild Convention in Detroit.

Lawyers are winning cases by citing U.S. law PLUS articles in treaties the U.S. has ratified. And lawyers are bringing their clients' causes to the attention of the relevant government agencies by filing complaints with the Offices of Inspector General of those agencies.

These New Paths for Action will be presented by: Steve Bingham, Staff Attorney at Bay Area Legal Services; Prof. John Brittain, Chief Counsel of Lawyers Comm. For Civil Rights under Law; David Gespass, Co-Chair, NLG International Law Committee; and Ann Fagan Ginger, MCLI.

Judge Claudia Morcom of Wayne County Circuit Court (ret.) will then describe how to help clients, and causes, by filing reports and attending U.N. Committee hearings in Geneva and New York based on U.N. treaties the U.S. has ratified.

Elizabeth Troutman, MCLI/NLG student intern, will describe the U.N. ratified treaties violated by Bush-Cheney laws and signing statements that need undoing by the next Congress.

Note: The California Bar granted credit for a similar CLE and is expected to again. Michigan Bar is expected to grant credit.

MCLI at Convention in Denver



MCLI Board Member Lindsley Smith of the Arkansas Legislature at the Democratic Party National Convention in Denver.

MCLI GOES TO WORK ON THE TOXIC TRIANGLE

(cont'd p. 1)

has a super amount of hazardous waste that requires a super amount of money and effort to remediate. Bayview-Hunter's Point, Oakland, and Richmond all have Super Fund Sites causing the region to be collectively referred to as "The Toxic Triangle."

From the Remarks of Rev. Buford:

You don't have to be an African-American to be adversely affected by The Toxic Triangle. You need only be a living organism, either a person, pet, or plant anywhere in the Bay Area. Unlike EPA policies in the region, pollution doesn't discriminate along race and class lines. The rising cancer rates in Marin County are a potent reminder of the need to eliminate Superfund sites that release contaminants into the air, soil, and water that everyone shares.

Many editorial comments could be made about the planned coincidence of superfund sites in three African-American communities and the resulting health disparities documented in toxicology surveys and epidemiological studies. All three counties, cities, and communities have shared high rates of asthma, emphysema, low birth weight, birth defects, cancer, leukemia, shorter life expectancy, and negative environmental impacts on senior citizens.

The civil, human, and environmental protection rights of these three communities are being violated each day these sites exist: African Americans in the San Francisco Bay Area are only getting 3/5ths of the rights they are entitled to under the U.S Constitution in violation of the Equal Protection Clause of the 14th Amendment; 1964 Civil Rights Act Title VI; National Environmental Protection Act (NEPA); Executive Order 12898; California Environmental Quality Act (CEQA) laws; county and municipal public health ordinances.

Oakland has at least two Superfund sites that are direct health hazards to children and senior citizens. **Verdesse Carter Park**, (96th &

Sunnyside) in Oakland is contaminated with lead that has shown up in the blood streams of children at Cox Elementary School nearby. **AMCO Chemical** Superfund site on Mandela Parkway near the W. Oakland BART station has extreme amounts of vinyl chloride, benzene, toluene, and xylene found in the soil and ground water in the area. A tot-lot playground for small infant is across the street and a Latino family lives next door.

It will soon be the third anniversary of Hurricane Katrina and the toxic brown fields are "gas ovens without walls". Actions must be taken before another day of global warming or the next disaster strikes the Oakland area. Here are three specific proposals in a letter to Mayor Dellums:

1. Call Hearings immediately on the locations of Oakland's EPA Superfund sites and toxic brown fields located near children and elders.

2. Commission a panel of health professionals, scientists, environmentalists, activists, and grass roots community members to study and design appropriate epidemiological studies and health interventions for residents within a seven-block radius of each Superfund site.

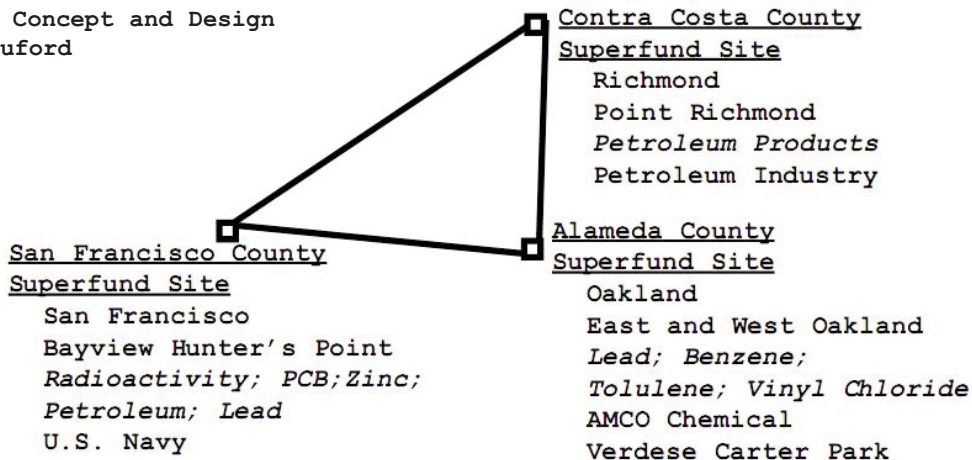
3. Protect the human, civil, and environmental protection rights of African Americans in Oakland under: the Equal Protection Clause of the U. S. Constitution related to NEPA regulations and laws; the 1964 Civil Rights Act Title VI; Executive Order 12898; California Environmental Quality Act; county and municipal public health ordinances.

The hearing in Oakland will be followed up by State-sponsored hearings in October 2008.

MCLI's work on the Toxic Triangle began with a 2000 report to the U. N. Committee administering the Convention on Elimination of all forms of Racial Discrimination (CERD). This spring residents of Bayview-Hunter's Point, aware of our Hurricane Katrina work, asked Rev. Buford for technical assistance.

Visit mcli.org for more Toxic Triangle Info.!

Toxic Triangle Concept and Design
by Daniel A. Buford



**MCLI ARCHIVES GROWING
THANKS TO PHILIP F. RUBIO**

On July 21, 2008, I interviewed Ann Fagan Ginger for my research project on the Ohio Un-American Activities Commission (OUAC) and its attacks on civil rights, labor, and community activists in that state in the early 1950s. I have a personal as well as scholarly and political reason for writing this story: Ann was the only attorney my late paternal grandmother Anna Hass Morgan (1894-1996) could find to defend her on the 37 charges of contempt leveled at her during an OUAC hearing on April 1, 1952 when Anna appeared without a lawyer—charges for which she was later convicted by a Hamilton County Court.

Ann graduated the University of Michigan Law School in 1947, worked with labor unions in Detroit and Cleveland, and Anna's case in 1952 was her first major case. She fought all the way to the U.S. Supreme Court in 1959. The combined decision in these cases, *Raley v. Ohio* and *Morgan v. Ohio*, 360 U.S. 423 (1959), unanimously reversed the convictions. Justice Brennan chastised Ohio for "entrapment by the State" for not informing her of a state immunity clause that precluded her invoking the Fifth Amendment privilege.

Cassette copies of the interview are now in MCLI Archives and will be in the Duke University Special Collections.

--Philip F. Rubio, Ph.D., Durham, N.C.

**THAI, INDONESIAN, MALAYSIAN, and
INDIAN VISITORS TO MCLI**

The U.S. Department of State, through its International Visitor Leadership Programs, funds lawyers, scholars, and others concerned about human rights to come to the U.S. to meet with U.S. lawyers, scholars and others to discuss matters of common concern.

In July and August, three delegations came to MCLI. 1) Thai lawyers/scholars coming through the Grassroots and Citizen Participation in a Democratic Society project; 2) Malaysian lawyers coming through the International Visitor Leadership Program: U.S. Judicial System Project; 3) Managing Director of Indonesian Human Rights Monitor.

None of the visitors had heard about any human rights problems in the U.S. during their meetings across the U.S.: eco/racist problems after Katrina, health care/racism/unemployment issues in every U.S. area, or the extent of U. S. opposition to U.S. military forces in Afghanistan and Iraq.

They all expressed interest in MCLI's Treaty Reporting Project, which they can use in their nations, which have ratified most of the same treaties. They all said they would keep in touch.

MCLI Lawyer Friend From India

Prof. Kusum Singh, of the Communications Department at St. Mary's College of California visited MCLI recently with her daughter, Gayatri Singh, active lawyer in Mumbai, India working with Untouchables determined to be treated with the human dignity declared in the U.N. Charter.

MCLI HAYWOOD BURNS NLG SUMMER INTERN -- LIZ TROUTMAN

Interning at MCLI this summer has been an exciting challenge. On my first day, Ann briefed me on the project we would be working on, a book delineating all of the laws, executive orders, policies, etc., of the Bush Administration and how they were against our pre-existing laws.

It was not until I had begun working for a few days that the enormity of this project sank in. It seemed like every day there was something new we needed to include. I think both Ann and I were frustrated from the beginning with our original goal of 100 pages. Clearly, this book could span a thousand pages if we were left to our own devices. However, given the limitations that practicality and logistics had handed us, we worked tirelessly to put together the best work we could and it certainly would not have been possible without the contributions of the two other interns as well as Corrie and Jennifer's daily invaluable assistance.

Upon graduation next year, I hope to become an immigration attorney, likely with a focus on refugee and human rights law. This project gave me a chance to explore some of the current problems with the system, but what I really enjoyed was reading and learning about so many other issues that affect immigration law. I, personally, have no experience with labor or education issues, but this project forced me to learn about them and really delve into areas with which I am unfamiliar. Of course, it was not easy, but the end result is that I now have a better understanding about these once-mysterious areas and I see how all of these issues are interrelated. I hope to be a better immigration attorney with an understanding of the working conditions that immigrants face and the educational challenges they must overcome.

One of my favorite parts of the summer was the people I encountered . It wasn't easy to concentrate as they talked about issues they are passionate about. These day-to-day interactions are what made my time at MCLI truly special and why I look forward to being one of those visitors when I next visit Berkeley.



COME TO BERKELEY CITY COUNCIL MEETING ON JOHN YOO RESOLUTION SEPT. 16

(from p. 1)

classes now taught by Prof. John Yoo so that the students can exercise their academic freedom to choose not to take a course from someone charged with war crimes.

3) ask the U.S. Attorney for Northern California to file charges of war crimes against John Yoo, and if he has not taken that step by January, 2009, to ask the new U.S. Attorney General to file such charges.

Let the City Council members of Berkeley know your thoughts on this resolution, then come to the Council meeting when it will be discussed: Tuesday, September 16 at 7 p.m. at the old City Hall on Martin Luther King Jr. Way.

Recent Books on the Supreme Court and Black Gold

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extracted from our earth. The net result: lives, communities and ecosystems destroyed. According to the U.N. Charter, these are Crimes Against Humanity. Another term used, not enough: Environmental Racism.

A 'must' read/see book with black the basic color in full-page pictures with no neat, white edges. But there is a warning: You will not feel the same as you fill your vehicle with petrol, ever again. I promise. I hope it pushes us into action.

Victoria Sawicki

"UNDOING THE BUSH-CHENEY LEGACY: A TOOL KIT FOR CONGRESS AND ACTIVISTS"

(from p. 1)

Howard Zinn Is Sending a Blurp

So are Marjorie Cohn, Nat'l Pres. of National Lawyers Guild; Ajamu Baraka, of U.S. Human Rights Network; Steve Rohde, past Pres. of ACLU of S. California. Betty Brown, of El Cerrito Democratic Club, says: "Social justice and peace activists throughout the United States will find this Tool Kit to be an invaluable and timely guide for education and lobbying on issues vital to the future of the United States."

***Tell you friends!**

***Order your copies now!**

***Send one to your Representative & Senator!**

***Give one to your favorite Student, Professor and Library!**

Please send MCLI any Bills and Acts we should add to the next edition. Thanks!

MCLI on Norwegian TV on Election Day

At 10:30 a.m. August 27, the University of California police, plainclothes FBI agents and one Alameda County sheriff raided the Long Haul, a long-standing community library and info shop and seized 16 computers and many papers. At a rally on Sproul Plaza Sept. 4, Ann Ginger compared 1964 Free Speech Movement at Sproul Plaza and today, and the '30s. This led Geir Gronilaten and Arne Furseth of TV 2, Oslo to interview her to include in their report on the U.S.



The Early Summer MCLI Crew: (left to right) Bd. Member Victoria Sawicki, Intern Liz Troutman, Project Director Jennifer Smith, Exec. Dir. Ann Fagan Ginger, V.P. Rev. Daniel A. Buford, Office Mgr. Corrie Willis, Intern Twila Flores.

Helping MCLI Enforce Human Rights and Peace Law

Friends: We've been so busy training interns and compiling the Tool kit for Congress and Activists book (see p. 1) that we've not raised the money to pay Staff and Internet bills. Send money today! And ask about getting an internship in your name for only \$2,000!

Meiklejohn thanks its recent 2008 donors:

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MCLI PUBLICATION ORDER FORM

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	quantity	total price
Undoing the Bush-Cheney Legacy: A Tool Kit for Congress and Activists	\$20	_____
The Living Constitution	\$10	_____
Landmark Cases	\$10	_____
Human Rights Organizations and Periodicals Directory	\$100/\$175 libraries	_____
Using International Treaties & OIG Complaints: CLE Text	\$40	_____
Undoing the Bush-Cheney Legacy: Tool Kit For Congress PR Flyer	free	_____
Re: John Yoo Memo On U.N. Law on Torture	free	_____

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Bush/Cheney "Law": Statement on Signing the Intelligence Reform and Terrorism Prevention Act of 2004

Citation: 40 Weekly Comp. Pres. Doc. 2993 (Dec. 17, 2004)

Who is hurt by this "law": The intelligence community is hurt by this signing statement that rejects the act of Congress directing the Director of National Intelligence to develop recruitment programs and policies to ensure that the personnel of the intelligence community are sufficiently diverse for purposes of the collection and analysis of intelligence through the recruitment and training of women, minorities, and individuals of diverse ethnic and racial backgrounds. The Congress at three equal branches of government ruled in, e.g., *Gutter v. Bollinger*, 339 U.S. 206 (2002) that diverse is a compelling governmental interest.

What the "law" provides: The executive branch shall construe provisions of the Act that relate to race, ethnicity or gender in a manner consistent with the requirement that the Federal Government afford equal protection of the laws under the Due Process Clause of the Fifth Amendment to the Constitution.

What the "law" ignores:
♦ Intelligence Reform and Terrorism Prevention Act, Pub. Law No. 108-458, 118 Stat. 3638, 3649.
♦ U.S. Constitution, Art. II, Sec. 3, Clause 1, requiring that the President "shall take Care that the Laws be faithfully executed."
♦ U.S. Constitution, Art. I, Sec. 7, Clause 2, requiring that the President "shall take Care that the Laws be faithfully executed."

approve and sign a bill or return it to Congress for reconsideration of any or all of his veto. The President has no authority to sign a bill into law but reject part of its requirements. See also *Clinton v. City of New York*, 524 U.S. 417 (1998) (invalidating the line-item veto).

What Congress can do: In 2009, Congress can (1) act on Sen. Specter's (R-PA) legislation (first proposed in 2006 as the Presidential Signing Statements Act, S. 3731, 109th Cong.) that would instruct the federal courts to disregard signing statements and provide standing to Members of Congress who wish to challenge such statements in court; (2) pass legislation clarifying that signing statements, including this one, do not alter the requirements of the law; (3) refuse to confirm any nominees for office until it is clear that they understand that their duty is to the law as passed by Congress and signed by the President, without regard to signing statements.

Contributor: Prof. Zachary Wolfe, George Washington University

"UNDOING THE BUSH-CHENEY LEGACY: A TOOL KIT FOR CONGRESS AND ACTIVISTS"
Over 180 pages like this plus an appendix of legal texts (Constitution, UN Charter, ...)
Order your copy today - see page 7