

HUMAN RIGHTS NOW!

*Newsletter of the
Meiklejohn Civil Liberties Institute*



Winter 2009

Historic Win for Human Rights Spurred by MCLI!

Envisioning the Future of MCLI

By Susan Scott, Interim President of MCLI

Ann asked me to write a bit about how and why I came to be Interim President of MCLI and why I care about the organization. First of all, you need to know about Steve Bingham, who has served as

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Who Is Susan Scott, New Interim President of MCLI?

Susan is a long time supporter of MCLI and ex-intern. She graduated from New College Law School in 1978 (where she studied Constitutional law with Ann Ginger) and went on to work as a lawyer with farm workers in the Sacramento Valley and the Agricultural Labor Relations Board in Sacramento. She left the ALRB when the Deukmejian administration made it impossible for the agency to continue to serve the interests of farmworkers and moved to Nicaragua in 1988 to work on their agricultural labor law. She returned to Sacramento and went to work on property tax issues for the California Board of Equalization and criminal appellate work for the Central California Appellate Project, plus pro bono immigration and housing work. She has now retired from her state job and is working with the National Lawyers Guild -- serving as co-chair of its International Committee. She recently led numerous legal delegations to Venezuela, El Salvador and Honduras.



Susan's current passion is something Ann taught her -- the Universal Declaration of Human Rights and the treaties that implement it (especially the Covenant on Economic, Social and Cultural Rights), and how international human rights law relates to current social justice struggles in the US.

Berkeley City Council Votes to Make Reports under U.N. Treaties

Sept. 29, 2009 -- The Berkeley City Council voted unanimously to become the first city in the U.S. to resolve to file periodic reports on what it is doing, and failing to do, to enforce three U.N. human rights treaties the U.S. ratified in 1992 and 1994.

The Berkeley reports will be prepared by volunteer interns trained by the Berkeley Commission on Peace & Justice and (MCLI), which worked together for several years on the project. Recently they have been preparing templates to use for recording the City and Board of Education material, at no cost to the City.

The treaties are: the International Covenant on Civil and Political Rights (ICCPR) which includes half of the rights in the Universal Declaration of Human Rights, the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), and the International Convention Against Torture and other Cruel, Inhuman or Degrading

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MCLI Submits Friend of the Court Brief in Support of Anti-Recruitment Efforts in Arcata, CA

MCLI prepared a brief as a "friend of the court" supporting the right of the cities of Arcata and Eureka, California to uphold the ordinances passed by a strong majority of the voters to forbid military recruiters from going into the schools to recruit boys and girls under 18 years of age.

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and more!

(Arcata Amicus Brief)

After adoption of the ordinances, the U.S. Department of Defense sued in U.S. District Court to invalidate the ordinances and immediately won without a trial on the merits. Now the case is on appeal to the Ninth Circuit Court of Appeals and includes the City of Arcata's Counter-Claim for Declaratory and Injunctive Relief filed in Feb. '09.

The brief supports the legal right of the adult families in Arcata to vote to refuse to permit military recruiters to enter their schools to offer incentives for young boys and girls to join the military before they are old enough to vote.

The brief explains that members of the organizations have experienced the differences when they are present with their boys and girls as someone comes to try to convince them to do something or to offer them inducements to take certain actions. The parents ask questions or help their children ask questions that can make a difference in the decisions their children make.

The brief argues that permitting military recruiters to be present on school grounds for many hours each day talking to boys and girls under the age of 18 violates the U.S. Constitution, the U.N. Charter preamble, the International Covenant on Civil and Political Rights, and the Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict -- all treaties ratified by the U.S. and therefore the supreme law of the land.

Enjoining the Arcata/Eureka Youth Protection Acts also violates the underlying spirit of the U.S. Constitution 9th and 10th Amendments, which protect the rights of citizens and communities against overpowering actions by the federal government, which was a concern of the Founding Fathers.

None of the cases cited by the U.S. Government are based on actions by the voters of a city challenged by the federal government.

The following organizations have signed onto the brief with MCLI: Peaceworkers by David Hart-sough, Executive Director; War Resisters League West by Robert L. Meola; AfterDowningStreet.org by David Swanson; Code Pink Golden Gate Chapter by Cynthia Papermaster; and El Cerrito Dem. Club by Betty Brown. Find the brief at: www.mcli.org
READERS: Contact NGOs in your neighborhood and ask them to sign on to the brief immediately & email us by Dec. 20.

From the Desk of Editor Jim Syfers:

A Milestone for Human Rights

Judge Oscar Magi of Milan, after trial convicted 23 Americans for kidnapping a Muslim cleric in 2003. The cleric, known as Abu Omar, was seized on the street and flown to Egypt where he was tortured, a victim of the U.S. government extraordinary rendition program. Robert Lady, CIA station chief in Milan, was sentenced to 8 years. The other CIA agents together with an Air Force colonel, were given 5 year sentences. Prosecutors were able to identify the kidnappers through cell phone records and credit card bills at luxury hotels in Milan.

The Judge also asked for \$1.45 million in damages for Omar and \$750,000 for his wife. Court appointed attorneys said they would appeal, and in an interview with a newspaper Mr. Lady said of the abduction: "Of course it was an illegal operation. But that's our job. We're at war against terrorism."

This "war" is still ongoing and the Obama administration is continuing the rendition process initiated by President Bush. Now, however, the President will have to cope with the fact that his operatives are likely to be facing international arrest warrants.

Get It In Writing!

Will Alameda Get a Community Benefits Agreement with Developers?

Residents of Alameda, CA, will be voting in the Spring 2010 on a proposed plan for converting a Naval Base to civilian use. The plan, by a developer, includes various amenities such as a sports complex and ferry building. However, there is no Community Benefits Agreement (CBA) with the developer, SunCal, so there would be no way for the community to enforce these promises. Efforts are underway to remedy this situation.

A CBA can include provisions for local hiring, a living wage, community consultation on commercial tenants, types of housing, and indeed whatever people consider important. A primer on CBA's is available online from Good Jobs First, and from California Partnership for Working Families. - *Ed.*

Support MCLI -- Donate at www.mcli.org and look for a new website coming January 2010 -- send us ideas of what you'd like to see: webmaster@mcli.org

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The Mobilization of Shame Is Finally Catching On!

By Susan Scott

Using what Ann Ginger calls “the mobilization of shame,” MCLI has made a name for itself making international human rights treaties work in the US. When the US ratifies a treaty, it agrees to report to the appropriate UN committee on its compliance (or non-compliance), something that Washington has done only tardily and incompletely since ratifying only three out of nine core human rights treaties.

MCLI has embarrassed the US government by submitting its “shadow reports” to the UN Committees charged with reviewing compliance with the Convention on the Elimination of Racial Discrimination and the Covenant on Civil and Political Rights.

More recently, MCLI won its long-fought battle to get the Berkeley City Council to commit to make local reports on human rights treaty compliance – creating a precedent that will be used by local jurisdictions all over the country.

Now, the UN has come up with another way to get member states to report on their compliance with internationally recognized human rights norms. It’s called the Universal Periodic Review (UPR) and it’s succeeding beyond expectations. And MCLI is right in there, working to make it work.

The UPR is a procedure designed by the newly-constituted UN Commission on Human Rights. It provides for a human rights review of every single UN member state, by scheduling reviews over the course of four years (starting in 2007), with 16 countries considered at three different sessions per year. The US review comes up at the end of 2010 and the reports submitted for the review are due next spring.

NGOs are invited to submit reports and attend the hearing on the review. The government under review must respond to the reports and, later, show how it has improved compliance. MCLI will participate in drafting a report focusing on our government’s refusal to ratify the International Covenant on Economic Social and Cultural Rights (ICESCR).

The ICESCR is one of the core treaties to implement the Universal Declaration of Human Rights. Ratified by 162 nations, the ICESCR was actually signed in 1977 by Jimmy Carter, but was never submitted to the Senate for ratification. And it is not likely to be ratified by our current Senate because it would require the US government to recognize health care and housing as HUMAN RIGHTS the government is obligated to provide for

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Busy Days for MCLI in Seattle, Spokane, Stockton, Buffalo, Arcata, and Berkeley

The right to peace and the right to jobs, food, housing and medical care -- MCLI was asked to present the law on all of these issues this fall, to activists, students, lawyers, a city council, and U.S. Court of Appeals.

New MCLI President Susan Scott, MCLI Friends Bill Goodman and Maria La Hood and MCLI Executive Director Ann Fagan Ginger put on a Continuing

Legal Education program at the National Lawyers Guild Convention in Seattle for lawyers, law students and legal workers



MCLI CLE participants at the NLG Convention 2009

from across the country. In Spokane and Stockton Ann talked with activists, lawyers, law students, and union reps on how to use U.N. treaties to strengthen their work on many local issues. As a result, Sara Korol, a law student in Buffalo, is interested in going to work there to get the city to make reports.

Ann worked on preparing a friend of the court brief to support the Arcata Protect the Youth Act (see page 1).

Then Ann was asked to present a Continuing Legal Education program for the American Bar Association International Committee Subcommittee on Human Rights in a one and a half hour Teleconference call.

MCLI is also helping lead the Berkeley Commission on Labor to discuss how to bring WPA and CCC-type jobs to Berkeley now with federal funds already appropriated but not allocated.

Board member Joe Woodard is making audio and video tapes of everything MCLI is doing -- and some with MCLI's early interns on what MCLI did in the 1960s. They will eventually get onto our web page.

Wonderful volunteers Mike Lickwar, Shaleen Shanbhag, Jacqueline LHeureaux all put in hours at MCLI doing many needed tasks, along with Board member Vicki Sawicki.

(Historic Win for Human Rights)

Treatment or Punishment (CAT).

The Council action affirmed a proposal originally made by Ann Fagan Ginger of MCLI.

"This is not being understood in the elegant simplicity for what it is," said Councilmember Kriss Worthington. "The City of Berkeley is setting an example on a small scale that we are going to respect these treaties, and we're going to provide as much information as we reasonably can. ... [I]nstead of lecturing Hillary Clinton and Barack Obama, we're taking small, simple steps ... I think that sends a more powerful message to Washington that little cities can do it, so let's motivate the U.S. to do it."

Diana Bohn, chair of the Commission's Subcommittee on UN Reports, explained that to date the U.S. has filed its reports late and only at the national level, except for one report about four states after the U.N. Committee asked for reports at the local level. She said that her Committee plans to call Public Hearings while preparing the reports so that local residents can have input into the reports, e.g., police misconduct, problems of the homeless.

The Council action affirms that the City reports will be publicized in the City, issued to the media, and sent to the County Board of Supervisors, State Attorney General, U.S. Department of State for inclusion in its reports, and directly to the U.N. Human Rights Committee, U.N. Committee on Elimination of Racial Discrimination, and U.N. Committee Against Torture.

Nov. 23: MCLI contacted Rep. John Conyers' office to propose a Congressional bill to fund reports by local governments to include in the U.S. reports henceforth. Aide Michael Darner expressed interest as Aides to Rep. Barbara Lee are also considering this proposal.

"Now we're starting to sound like Berkeley!" said Councilmember Max Anderson. "We're not equivocating or procrastinating. We're talking about extending the concepts that are contained in the [treaty] articles. ... I want to thank the Peace and Justice Commission for moving this thing forward, and the MCLI for being in solid ally in this effort, and the City Manager for responding in a positive way to see that this thing gets done with the volunteer efforts ..."

Councilmember Anderson added that "I think it's extremely important for young people to take part in something like this so it begins to become clear to them about the relationship, not only with their neighbors or with their fellow Berkeleyans, but with the world we live in."

Continued in column 2

"What are you doing these days?"

Mark E. Merin

Distinguished Attorney of the Year 2009 - Sacramento Co. Bar

"I have filed and settled almost a dozen adult and juvenile class action suits for people who were arrested on charges -- not involving violence, drugs, or weapons -- then strip searched at jail prior to arraignment. This violates the 4th Amendment. I argued *Bull et al. v. San Francisco* before the Ninth Circuit Court of Appeals last March after winning cases against 6 counties from Sacramento to Santa Cruz, CA, and Miami-Dade, FL; Lincoln, NM; Santa Cruz, AZ.

"Mainly I'm working with local layerss representing homeless persons in Sacramento who've been roused out of places where they've been trying to sleep and had their possessions confiscated and destroyed. At issue: ordinances prohibiting homeless persons from "camping" -- defined to include "living" -- on any public or private property for more than one consecutive night -- criminalizing homelessness in Sacramento.

"Now I am challenging an anti-gang injunction in Yolo County the D.A. obtained against an imaginary group he has dubbed 'The Broderick Boys'."

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**Presenté:
Sylvia Bingham**

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Council member Darryl Moore added that when the draft report comes back to Council for its approval before submission to the U.N. Committees, it should specifically include information on Lesbian Gay Bisexual, Transgender and Intersex issues.

The story of the Council's action made international news, since Berkeley is the first city in the world to decide to start making such reports. A law student in Buffalo, residents of Stockton and Spokane are talking about convincing their local governments to make the required reports. "MCLI will be glad to send speakers wherever necessary to help," said Susan Scott, new President of MCLI.

"I think this is profoundly positive and inspirational. It is a small step, but it is an important step and a very creative step," Kriss Worthington said in concluding his remarks.

The Commission plans to submit its first report to the State Department for inclusion in its report to the U.N. Human Rights Committee due Aug. 8, 2010; to the CAT Committee Nov. 19, 2011, and to the CERD Committee Nov. 20, 2011.

[Copies of the Peace & Justice Commission recommendation to the City Council and the Council action are available from MCLI @ www.mcli.org.]

The Right To Medical Care In The U.S. Today

In response to queries to MCLI about whether there is a right to medical care in the U.S. today. [All underlining added]

I. The International Convention on the Elimination of all forms of Racial Discrimination (ICERD) (signed & ratified by U.S.) provides:

Art. 5: "... States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, ... to equality before the law, notably in the enjoyment of the following rights: ..."

e) Economic, social & cultural rights, in particular:
(iv) *The right to public health, medical care, social security and social services;...*

II. The International Covenant on Civil & Political Rights (ICCPR) (signed & ratified by U.S.): Preamble includes language to support a right to medical care:

"Recognizing that, in accordance with the Universal Declaration of Human rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,..."

III. The basic international agreement today, the U.N. Charter, ratified by U.S., spells out human rights in Arts. 55-56, which are the bases for the specific treaties above:

Art. 55: "... the United Nations shall promote: ...
b. solutions of international economic, social, health, and related problems; ..."

Art. 56: *"All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Art. 55."*

IV. The right to medical care as a human right is "recognized" and spelled out in a treaty the U.S. has signed but not yet ratified: International Covenant on Economic, Social and Cultural Rights (ICESCR).

Under customary international law, in Vienna Convention on Law of Treaties, (ratified by U.S.), a nation *"is obliged to refrain from acts which would defeat the object and purpose of a treaty when (a.) it has signed the treaty ... subject to ratification, until*

it [has] made its intentions clear not to become a party to the treaty,..." (Art. 18)

So the U.S. is obligated to refrain from actions that will defeat the following goals: ICESCR, Art. 12:

1. *"The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

2. *The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*
a. *The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*
b. *The improvement of all aspects of environmental and industrial hygiene;*
c. *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
d. *The creation of conditions which would assure to all medical service and medical attention in the event of sickness."*

3. *"The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

Patients and activists can certainly use it.

V. We CAN use the language in the ratified treaties above to argue there is a right to health care. MCLI has briefed 49 cases won in U.S. courts based on U.S. law, (e.g., promoting the "general welfare" preamble of the Constitution) PLUS a U.N. ratified treaty.

Our new book, "Fighting for Justice," includes these cases AND the text of all treaties mentioned, on a disc. (Order form on page 7.)

VI. Patients and activists can certainly use this treaty language, although U.S. courts are not likely to enforce these provisions until the Senate ratifies the treaty.

* We should all work for the Senate to finally ratify ICESCR.

* We should all work for the Senate to ratify the Convention on the Rights of the Child (CRC), the Convention on Elimination of Discrimination Against Women (CEDAW), and the International Convention on Rights of Persons with Disabilities. Each specifically mentions the right to health care.

SO: There is no doubt that the right to medical care IS a human right in the laws of most nations and in the minds of most people in the U.S.

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-- many levels available. Details on Page 7.**

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(Who is Susan Scott?)

MCLI President and helped bring me and others on board. Steve threw himself into bringing MCLI into the 21st century. We re-wrote the old (1965!) MCLI Bylaws and began to plan a future for MCLI -- a special organization that was preparing to lose its guiding light when Ann retires in 2010. (Ann will continue with her speaking and writing, but will retire from her administrative position.)

But then, in September, Steve's 22 year old daughter Sylvia was killed when a truck hit her on her bicycle.

So Steve is taking time off to deal with this tragedy and I am stepping in to serve as Interim President. We are building the MCLI Board into a stronger, more active group by holding a training session on international human rights treaties on November 16th and a "visioning" on December 5th, where we will determine what projects MCLI should take on in the future. We would love to get your input, so feel free to contact me at syscott@prodigy.net.

MCLI's recent victory before the Berkeley City Council has received national attention, especially among groups that are working to "bring human rights home" by using the human rights treaties the US has ratified (Covenant on Political and Civil Rights, Convention on the Elimination of Racial Discrimination and Convention Against Torture). In addition to its efforts to implement the treaties already ratified, MCLI is working to ratify the conventions that the US has signed but failed to ratify Convention on the Elimination of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention on the Rights of Persons with Disabilities (CRPD), and the Covenant on Economic, Social and Cultural Rights (ICESCR). The Obama Administration is believed to be interested in pressing for ratification of the first three (CEDAW, CRC and CRPD) but the ICESCR, which has been ratified by 162 nations and was signed by Jimmy Carter in 1977, is apparently not even on their radar screen. ICESCR commits its nation states to do what they can, given their financial resources, to provide for their people's basic economic and social rights -- including health care and housing.

I want to see Americans start to look at health care and housing as internationally recognized HUMAN RIGHTS, and I see the work of MCLI as essential to that paradigm.

Contact Susan with your thoughts, ideas, suggestions for MCLI at: syscott@prodigy.net

Amicus Brief Against U.S. Enforcing The Material Support Statute Against NGOs Using Free Speech To Help Tamil Tigers And Pakistan Workers Party

Los Angeles, Nov. 16 -- The Humanitarian Law Project and other human rights organizations are filing a cross-petition in the U.S. Supreme Court against U.S. Attorney General Eric Holder seeking a Court ruling that the U.S. Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) can not be enforced against them. They are being charged with giving "material support" to certain organizations, whereas they say they are being charged for speaking and associating with these organizations.

The Center for Constitutional Rights attorneys argued that it violates the First Amendment to use the Act against organizations that provide assistance to the Kurdistan Workers Party (PKK), a separatist militant group seeking to help Kurds living in Turkey and Tamils living in Sri Lanka, and to the Liberation Tigers of Tamil Eelan (LTTE), known as the Tamil Tigers, seeking to negotiate peace agreements between the LTTE and the Sri Lankan government.

Petitioners claim that their activities in support of the named organizations have been solely in the form of speech and assembly, protected by the First Amendment.

The authors of the amicus brief include Prof. David D. Cole, Shayana Kanidal and Jules Sobel, and Carol Sobel.

Twenty-five elders signed onto the amicus brief, each one describing what they suffered because of their exercise of their First Amendment rights during the McCarthy attacks on anyone suspected of supporting the Soviet Union. Those who suffered blacklisting, attacks in the media, and being called before Congressional committees, include some of the Hollywood 10, Yip Harburg, Frank Wilkinson's daughter, Prof. Chandler Davis, and Ann Fagan Ginger.

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(Mobilization of Shame)

and protect. The MCLI report will also address the US failure to publicize the text of the ICCPR, which it has ratified, and to report to the UN on local level enforcement.

We need to bring our country into compliance with international human rights norms and inform our people that we are way behind the rest of the world when it comes to economic and social rights. MCLI is working to make that happen.

I'd like to become an MCLI member for 2010

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On Human Rights Treaties already ratified by U.S.:

1. UN Charter
2. Int'l. Covenant on Civil & Political Rights (ICCPR)
3. Int'l. Convention on Elimination of all forms of Racial Discrimination (ICERD)
4. Int'l. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
5. Int'l. Labor Org. Convention on Elimination of Worst Forms of Child Labour
6. Protocol to Convention on the Rights of the Child on Involvement of Children in Armed Conflict
7. Protocol Against Smuggling Migrants
8. Human Rights treaties pending ratification

And New Berkeley City Council Resoltuion to Make Reports to UN Committees

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