

SPRING 2002 • VOL. 1, NO. 3

respect

A NEWSLETTER ABOUT LAW AND DIVERSITY

Liberty and Justice for All

by Dale Frost Stillman

When it comes to recognizing basic social and economic rights, the state of New Jersey is in the forefront in the United States, according to Elizabeth Defeis, a professor at Seton Hall University School of Law. Defeis, along with the New Jersey State Bar Foundation, is creating a video for high school students focusing on human rights, in particular global citizenship, a respect for diversity, and the pursuit of justice and equity. Professor Defeis believes that “the exploration of the full array of human rights, and their practical examples within our state, will foster a fuller understanding of the concept of human rights.”

Human rights declared

More than 50 years ago, members of the United Nations Commission on Human Rights felt that dignity engendered a sense of value in a human being and should be a basic right for everyone. In response, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights in 1948.

The Universal Declaration of Human Rights is an international statement about the rights all human beings deserve by virtue of belonging to the human family. Containing 30 articles or rights, (see sidebar on page 5 for a complete list) some of those rights include: the right to freedom from torture; the right to a

nationality; the right to own property; the right to freedom of opinion and expression; and the right to equal work for equal pay.

Commitment to human rights in New Jersey

Two New Jersey Supreme Court decisions confirm New Jersey's leadership in the area of human rights. One right mentioned in the Declaration is the right to education. In *Abbott v. Burke*, the New Jersey Supreme Court found that the education offered urban students was inadequate and inferior, and ordered the New Jersey Commissioner of Education to improve urban schools. The *Abbott* case established the educational standards to *>continued on page 5*

Working Toward Social Change with Civil Disobedience

by Karen M. Spring

Breaking the law is usually left to criminals. There are, however, some law-abiding citizens who deliberately break laws for good reason—they want to bring attention to a specific social issue. This is known as civil disobedience.

Civil disobedience is defined as an act of breaking a law to draw public attention to a problem concerning human rights. Civil disobedience is generally nonviolent, and most citizens that participate in such actions are not trying to defy law enforcement, but are looking for expressive, yet peaceful ways to be heard on certain issues.

Coining the term

According to the First Amendment to the U.S. Constitution, Americans have the right to voice their opinions. Groups of people are allowed to demonstrate *>continued on page 2*

This publication was made possible through funding from the IOLTA Fund of the Bar of New Jersey.

Angela C. Scheck
Executive Editor

Jodi L. Miller
Editor

Editorial Advisory Board

Louis H. Miron, Esq.
Chair

John J. Henschel, Esq.

Maria E. Hernandez, Esq.

Desha Jackson, Esq.

Lisa H. James-Beavers, Esq.

Caroline L. Meuly, Esq.

Robin R. Parker, Esq.

Rafael Perez, Esq.

Lourdes I. Santiago, Esq.

Dr. Maria Schmidt

Amy Zylman Shimalla, Esq.

Dr. Paul Winkler

New Jersey State Bar Foundation Board of Trustees

Daniel M. Hurley, Esq.
President

Lisa H. James-Beavers, Esq.
First Vice President

John J. Henschel, Esq.
Second Vice President

Ellen O'Connell, Esq.
Treasurer

Mary Ellen Tully, Esq.
Secretary

Trustees

Mary M. Ace

Richard J. Badolato, Esq.

Robert J. Boland, Esq.

Terry Paul Bottinelli, Esq.

Patricia C. Carney

Anira Clericuzio, Esq.

Barry D. Epstein, Esq.

Stuart A. Hoberman, Esq.

Stuart M. Lederman, Esq.

Edwin J. McCreedy, Esq.

Louis H. Miron, Esq.

Mel Narol, Esq.

John H. Ogden, Esq.

Dr. Maria E. Schmidt

Ronald J. Uzdavinis, Esq.

Daniel M. Waldman, Esq.

Karol Corbin Walker, Esq.

Leonard R. Wismur, Esq.

New Jersey Lawmakers Heed September 11 "Wake-up Call"

by Barbara Sheehan

Before last September, the thought of a terrorist intentionally steering a commercial airplane into the World Trade Center or Pentagon was practically inconceivable. Laws to deal with such acts of evil were far from the minds of most lawmakers. Since September 11, 2001, all of that has changed.

"Everybody got a wake-up call on September 11," said Neil M. Cohen, Deputy Majority Leader of the New Jersey General Assembly. "It's up to us to do whatever we can."

"Most states," Cohen notes, "have found their

criminal code needs to be profoundly updated as a result of what happened September 11."

That includes New Jersey, whose state Legislature has been working diligently since last fall to revise existing laws and create new laws so we will be better prepared to deal with the threat of terrorism in this new climate of heightened alert.

New law creates offense of terrorism

One key piece of New Jersey anti-terrorism legislation, which was sponsored by Assemblyman Cohen, creates the

September 11, 2001 Anti-Terrorism Act. Among many things, this Act, which at press time, had passed the New Jersey Assembly with some amendments, but had not passed the New Jersey Senate, criminalizes terroristic acts as well as acts that aid and abet terrorists.

These offenses were never defined as crimes in New Jersey, points out Assemblywoman Joan M. Quigley, who considers this bill an important step in the state's legislative initiatives against terrorism. Quigley has been closely following the state's anti-terrorism legislation as chair of the Assembly

Civil Disobedience *continued from page 1*

their views as long as they do so in a peaceful manner. The U.S. Constitution does not protect citizens when civil disobedience involves fighting or defamation.

The term civil disobedience was first defined in 1849 when Henry David Thoreau published his famous essay, *Civil Disobedience*. Thoreau wrote the article after being arrested for refusing to pay taxes. His act of defiance was directed against the U.S. government as a protest against slavery, which he considered immoral. Thoreau's essay details how the government's laws sometimes result in injustices. He determined that if such a law calls for people to be treated unfairly, then the law can and should be broken.

The essay, *Civil Disobedience*, as well as the term, became popular in the coming years as more and more abolitionists opposed slavery. Thoreau himself supported John Brown's famous raid near Harper's Ferry, Virginia, which failed in its attempt to cause a slave uprising. Later, individuals like Dr. Martin Luther King Jr. and Mohandas Gandhi were influenced by Thoreau's words and advocated nonviolent civil disobedience.

America founded on civil disobedience

Although Thoreau is known for defining the term civil disobedience, such actions had been taking place long before the famous essay was published. In fact, the United States became a democratic country largely because of civil disobedience. In the 1700s, colonists refused

Homeland Security and State Preparedness Committee, a special committee of the New Jersey Legislature formed after September 11 to develop laws that will enable the government to protect its citizens.

In addition to creating the offense of terrorism, the September 11, 2001 Anti-Terrorism Act make acts of terrorism a death penalty crime, increases the penalty for damaging a nuclear plant and punishes more severely those who perpetuate terror-related hoaxes. The Act also deals with such issues as producing or possessing chemical weapons, biological agents, or nuclear or radiological devices; hindering apprehension or prosecution for terrorism; wiretapping and electronic surveillance; money

laundering; false public alarms; and others. If passed, this law would also remove the **statute of limitations** for crimes linked to terrorism, meaning that there would be no time limit on bringing terrorists to justice.

Security Task Force is established

While updating the state's criminal laws is an important step in the fight against terrorism, Cohen also emphasizes the importance of intelligence gathering in stopping terrorist activity. With this in mind, he notes that New Jersey has enacted the New Jersey Domestic Security Preparedness Act, which was signed into law on October 4, 2001.



This Act establishes the New Jersey Domestic Security Preparedness Task Force within the Department of Law and Public Safety. The Task Force is charged with developing proposals to preserve, protect, and sustain domestic security and to ensure a comprehensive program of domestic preparedness. The Security

Task Force is comprised of the Commissioner of Health and Senior Services, the Coordinator of the Office of Recovery and Victim Assistance, the Superintendent of State Police, the Attorney General and others. Directing the Security Task Force is Assistant Attorney General for Counter-Terrorism Kathryn Flicker, who was named by New Jersey Governor James McGreevey to head the recently created Office of Counter-Terrorism within the Attorney General's Office.

"In the aftermath of September 11, it has become essential to develop plans to protect New Jersey families from a new kind of threat within our nation's borders," Governor McGreevey stated in a press

to pay tea taxes to King George of England because they believed that they were being oppressed by British rule. A group of Americans that included Thomas Jefferson and John Adams banded together and drew up the Declaration of Independence, perhaps the most significant document relating to civil disobedience.

In modern times, groups would later use civil disobedience to draw attention to other social problems. In the late 19th and early 20th centuries, women held silent vigils and demonstrations in an effort to gain the right to vote. During the mid-1930s, workers staged sit-in strikes in factories to protest poor working conditions. Such civil disobedience proved effective. As a result, women

were granted the right to vote, unions were established and companies were required to provide safe working conditions for their employees.

Bringing about social change with civil disobedience

Perhaps the most prominent examples of nonviolent civil disobedience came from the Civil Rights Movement. Rosa Parks, an African-American woman, demonstrated such disobedience in 1955 when she refused to give up her seat on a bus in Montgomery, Alabama. Park's courageous act gained national attention, prompting other African-Americans to boycott public transportation in support of her.

In the 1960s, advocates of civil rights held marches and peaceful rallies to oppose racial segregation. One of the most famous of these demonstrations was the March on Washington, D.C. in 1963. More than 200,000 people held a rally in the nation's capital to bring attention to the Civil Rights Movement. The demonstration culminated with Dr. King's "I Have a Dream" speech.

Other groups during the 1960s protested the United States' involvement in the Vietnam War. People marched, burned draft cards, staged sit-ins, and held rallies in an effort to end the war. Today, citizens engage in civil disobedience for other causes. Those concerned about the future of the environment wage demonstrations

release earlier this year. "The Domestic Security Preparedness Task Force, under Ms. Flicker's leadership and direction, will work aggressively to ensure our safety."

Other anti-terrorism laws

In addition to the laws discussed above, a host of other anti-terrorism legislation dealing with a wide range of issues are pending in New Jersey and some have already been signed into law.

For instance, one new law, signed October 4, 2001, makes it easier for families to obtain death certificates of missing loved ones who are presumed dead as a result of a catastrophic event. Another new law named the

Emergency Management Assistance Compact Act, also signed last October 4, aims to provide mutual assistance between participating states in managing any emergency or disaster that is declared by the governor.

Among the laws being considered by the Assembly Homeland Security and State Preparedness Committee at press time was a law that would require higher training requirements for emergency medical technicians (EMTs) and a law that would require institutions of higher education to develop campus security plans.

Public security vs. constitutional rights

One challenge that New

Jersey and the entire nation faces with regard to anti-terrorism legislation is that of legislative limits. In other words, when does legislation intended to protect the public go too far?

A recent example involves the newly-enacted federal anti-terrorism law named the U.S. Patriot Act, which permits investigators who have a court order to obtain library or university records on an individual's book-borrowing or internet surfing habits. This law has upset and angered many librarians, who claim it violates privacy rights.

In a related matter, lawmakers right here in New Jersey are taking steps to ensure that anti-terrorism legislation in this state does

not undermine people's rights to assembly and free speech, noted Assemblyman Cohen. For instance, he said that legislation intended to stop terrorists should not prevent citizens from holding legitimate public demonstrations, such as the civil rights demonstrations in the 1960s, which played a key role in our nation's Civil Rights Movement.

While lawmakers march forward to heed the wake-up call of September 11, they walk a fine line between protecting the public and preserving the constitutional rights and freedoms upon which our nation was founded. ■

to draw attention to ecological issues. Others hold marches and rallies in opposition to the death penalty. Most recently, some citizens have held demonstrations to protest the war in Afghanistan.

Civil disobedience in New Jersey

In the 1970s, a group of students at Essex County College peacefully demonstrated against the bombing of Cambodia. Jeff Fogel, an attorney in Nutley, represented the group of students that protested.

"They were practicing civil disobedience against what was happening in Cambodia and the war in Vietnam," Fogel said. "The students sat down in the middle of Broad and Market Streets in an

effort to draw attention to these issues. The students later received light sentences for their actions."

In the mid-1990s, a group of students at Rutgers University formed a coalition called Campaign for an Affordable Rutgers Education (CARE). The purpose of this organization was to pressure Rutgers into limiting tuition increases. After several demonstrations, the students took over an administrative building on the campus and refused to leave until the university's president met with them to discuss their demands. The president refused to meet with CARE and the students eventually left after police arrived. CARE's members were prosecuted by the university in municipal court and brought before a disciplinary board. After a lengthy hearing,

13 CARE members were found guilty of violating the student code of conduct and received suspensions.

"The disciplinary board read a statement at the hearing saying that they did not feel that Rutgers handled the issue properly," Fogel said. "The university was criticized because many thought that the president should have met with the students to hear them out."

When all else fails

While there are other ways of being heard on particular issues, such as petitions and letter writing, when all else has failed, the United States has a long history of accepting civil disobedience as a way to promote positive social and legal changes. ■

Universal Declaration of Human Rights

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and “to cause it to be disseminated, displayed, read, and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories.”

Following is an abbreviated list of the Universal Declaration of Human Rights. For an expanded list, visit www.un.org/Overview/rights.

Article 1—Right to Equality

Article 2—Freedom from Discrimination

Article 3—Right to Life, Liberty, and Personal Security

Article 4—Freedom from Slavery

Article 5—Freedom from Torture and Degrading Treatment

Article 6—Right to Recognition as a Person Before the Law

Article 7—Right to Equality Before the Law

Article 8—Right to Remedy by Competent Tribunal

Article 9—Freedom from Arbitrary Arrest and Exile

Article 10—Right to Fair Public Hearing

Article 11—Right to be Considered Innocent Until Proven Guilty

Article 12—Freedom from Interference with Privacy, Family, Home and Correspondence

Article 13—Right to Free Movement In and Out of the Country

Article 14—Right to Asylum in Other Countries from Persecution

Article 15—Right to a Nationality and the Freedom to Change Nationality

Article 16—Right to Marriage and Family

Article 17—Right to Own Property

Article 18—Freedom of Belief and Religion

Article 19—Freedom of Opinion and Information

Article 20—Right of Peaceful Assembly and Association

Article 21—Right to Participate in Government and in Free Elections

Article 22—Right to Social Security

Article 23—Right to Desirable Work and to Join Trade Unions

Article 24—Right to Rest and Leisure

Article 25—Right to Adequate Living Standard

Article 26—Right to Education

Article 27—Right to Participate in the Cultural Life of Community

Article 28—Right to a Social Order that Articulates this Document

Article 29—Community Duties Essential to Free and Full Development

Article 30—Freedom from State or Personal Interference in the Above Rights

Liberty and Justice *continued from page 1*

which every urban student has a right, including “**parity**” funding” with suburban schools. That means that the amount of money spent per student in urban school districts is required to be equal to the amount spent in successful suburban school districts. In fact, the issue of equal funding for all New Jersey students derives from the New Jersey Constitution, which states that all students are entitled to at least a minimum standard of education.

In another landmark case, *Southern Burlington County NAACP v. Township of Mount Laurel* the New Jersey Supreme Court made affordable housing a reality and dealt with another right outlined in the Declaration—the right to an adequate standard of living, including food, clothing, medical care and housing. In that case, the Court decided that Mount Laurel’s exclusionary zoning practices, which were preventing affordable housing from being built, violated the New Jersey Constitution’s “general welfare” requirements. The decision eventually led to the passage of the Fair Housing Act, which led to the establishment of the governor-appointed Council on Affordable Housing (COAH), a council that oversees “fair share” compliance. Fair share compliance means that, according to the Court, all developing municipalities have a legal obligation to provide their “fair share” of affordable housing.

Why should countries protect human rights?

While some recognize the importance of human rights, the world is full of leaders who are not as enlightened. Some rulers wish to perpetuate their rule. Others want to oppress either ethnic or religious minorities. Still others want to impose their personal view of government, economics or religion on a society. Proponents of human rights believe that if a society guarantees basic human rights for its citizens, then negative consequences will not occur.

In the past, many societies did not or could not give human rights priority. During the 1920s and 1930s Joseph Stalin killed millions of Russians as well as other ethnic groups making up the former Soviet Union to further his vision of the Communist state. Similarly, Adolph Hitler caused the death of millions of people during World War II. His barbaric concentration camps murdered Jews and political opponents. With governments that were corrupt and oppressive, Hitler and Stalin attempted to form dictatorships that would crush anyone who opposed them.

A recent example of a country’s leader ignoring human rights is former Yugoslav President Slobodan Milosevic. Milosevic’s vision for his country was to have Christian Serbs reign supreme over all other sections of the former Yugoslavia. He is now on trial before the Nations’ War Crimes Tribunal at The Hague in the Netherlands, where

>continued on page 6

Liberty and Justice *continued from page 5<*

he faces 66 charges of war crimes and **genocide**. If convicted, Milosevic could be sentenced to life in prison.

Social and political unrest can result in violence when basic human rights are denied. After the acceptance of the Universal Declaration of Human Rights, many countries around the world included its provisions in their constitutions. Since a declaration is not legally binding, the United Nations created two **covenants**, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Covenants, conventions and treaties have the force of law. Many countries in the world have **ratified** these two covenants, thereby making the provisions of the Universal Declaration of Human Rights legally binding. The United States signed and ratified the International Covenant on Civil and Political Rights. The United States has signed the International Covenant on Economic, Social and Cultural Rights, but not yet taken the steps to ratify the covenant.

The World Conference on Human Rights in 1993 reaffirmed the human rights principles already in effect and made new strides in protecting the rights of women, children, and the poor. Two years prior to this conference Professor Defeis wrote an article for the *Journal of Women's History* urging the United States Senate to ratify the Convention on the Elimination of All Forms of Discrimination Against Women. To date, the Convention has not yet been ratified by the United States.

"It (ratification) would provide the incentive for legislative reform in the United States where existing

laws do not meet international norms," Professor Defeis said.

Who fights for human rights?

Human Rights Watch, Equality Now, and Lawyers Committee for Human Rights are just a few of the many non-governmental organizations committed to protecting human rights.

Perhaps the most prominent and well-known human rights organization is Amnesty International.

Amnesty International was founded in 1961 after two Portuguese college students were sentenced to 20 years in prison because they publicly toasted "freedom" in a bar. The organization appealed to offending governments to free both the Portuguese students and other such prisoners.

A listing of specific recommendations for the protection and promotion of human rights can be found on Amnesty International's Web site. Those recommendations include, among others, the protection of women's human rights, the prevention of torture, the prevention of disappearances, the prevention of **extrajudicial**

executions, and the implementation of human rights in international peace-keeping operations.

Boasting approximately one million members from 162 countries around the world, Amnesty International believes that "torture is abhorrent." Their campaign against torture demands that torturers be held accountable for their actions and they advocate training in international human rights standards and lawful interrogation techniques for police.

Here in New Jersey, advocates for human rights such as Professor Elizabeth Defeis exemplify our state's commitment to furthering the cause of human rights. ■



covenant—a bond, agreement or treaty. **extrajudicial**—done outside the course of a judicial proceeding. **genocide**—the deliberate destruction of a racial, political or cultural group. **parity**—equivalent in value. **ratify**—to approve or make valid. **statute of limitations**—a maximum time period during which certain legal actions can be brought. **terrorism**—a violent act in violation of the criminal laws of the United States, which is intended to intimidate or influence the policy of a government.