

# Guild Notes

a publication of the national lawyers guild foundation

volume XXXVII, no. 2, summer 2012



**NYC Mounts  
De-Fence Pg. 3**

**NLG Lawyers  
Still Occupied Pg. 4-7**

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**Cover:** Occupy Wall Street protester hoists a homemade barricade during a New York City May Day demonstration.  
Photo by Leonidas Martin

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**Note:** The views expressed in Guild Notes are those of the authors. They do not necessarily reflect the opinions of the NLG as a whole.



# The Guild's Long Road

*The ones who've gone before us will show us the way.*

This is not the column I intended to write. I learned yesterday of the passing of Karen Detamore. It was only last fall that I watched her receive the Guild's Ernie Goodman award for a lifetime of bringing law to the people.

The past few years have not been kind to our ranks. As a result, I have spent a lot of time lately reflecting on the Guild stalwarts who have gone before us and who, for the past 75 years, have been showing us the way.

There are, of course, the legends—people like Maurice Sugar, Ernie Goodman, Haywood Burns, Doris Walker, and so many others. But when I think of them I am reminded of the unknown multitudes who also spent lifetimes in the trenches, fighting for a better world.

Years ago, I was introduced to Barney Rosenstein, whose name I had never before heard. A New York native, Barney was a founding member of the NLG who had retired to Florida. Retired, of course, is a relative term. Barney continued to work, just not for pay. We celebrated his 90th birthday at a Florida regional and he carried on for another whole decade.

No, it is not just the leaders and thinkers—Marx and Lenin, Malcolm and Martin, Mother Jones and Eugene Debs and Amilcar Cabral—on whose shoulders we stand. Unions were illegal until poor workers were jailed, maimed, and killed fighting for the right to organize. The young students who braved Bull Connor's fire hoses, the domestic workers who stayed off Montgomery's buses for over a year, they were the backbone of the Civil Rights movement, just as Martin Luther King, Jr. and Fred Shuttlesworth were its voice. The poor, unknown, suffering masses who fought, bled, and died for freedom, they too went before us and showed us the way. Indeed, without them all the brilliant theories and fine words of our leaders would have been worthless.

Our organization too was built by the selfless work of thousands upon thousands of men and women. In crisis times, they staffed the offices for the Attica Defense and the Wounded Knee Legal Offense/Defense committees. Away from the glare of news cameras, they ran legal services and legal aid offices across the country, building them up from nothing to defend anonymous victims of exploitation and degradation. They worked without rest to restore dignity through mutual resistance.

*And the ones who follow after, will welcome the new day.*

Today, the Guild is in transition. A new generation is taking the reins and reminding us baby boomers of our age. When we were ourselves young insurgents in the NLG, conflicts with those who had held on through years of McCarthyism were often sharp. But those Guild elders were not the "summer soldiers and sunshine patriots"

Thomas Paine reviled. They defended real Communists and refused to kowtow to the FBI in the face of real repression. They were tested in ways I never was. Despite our differences, they showed us the way.

I recall David Rein, one of three Washington Guild members remaining when I joined in 1969. He scoffed when I called his Red Scare stand heroic. His rote response: "I'm not a hero. You're a stinker." He said this because, he explained, all he did was the right thing. Yet he and his partner, Joseph Forer, kept hundreds facing McCarran Act prosecutions out of prison.

People like David and Joe not only showed us the way, but paved it for us. Today, after 75 years, being a member of the NLG continues to be a source of not just honor, but of respect. Still, there are many more miles to traverse before we can reach an ideal society. It is my

hope that our generation too has helped to light the path and show the way.

*And the ones who've gone before us  
Will join in the chorus  
When we do, when we make it through.*

Of course, we will all be part of the chorus. The voices of those who have gone before live on in those who come after. We all will join in the ultimate victory celebration, because we all will have been a part of the struggle to get there.

And Karen's voice will be one of the strongest. She is, I think, entitled to a few solo verses. Her contributions survive her too-short life. She, like so many other great Guild members, is gone but will never be forgotten.

As we proceed from today, at every roadblock and every milestone, NLG members can join farmworkers, disabled people, and GIs in saying: "Karen Detamore ¡presente!"

"The Ones Who've Gone Before Us" written by NLG friend Dorie Ellzey Blesoff.  
[www.dorielzblesoff.com](http://www.dorielzblesoff.com)



President David Gespass

## NLGers Gearing Up for DNC/RNC



Equipped with \$50 million in federal grant money and an arsenal that includes an actual tank, Tampa police are preparing to do battle with protesters at this year's Republican National Convention.

**By Abi Hassen**

Local police in Florida and North Carolina are collaborating with the FBI, Secret Service, Department of Homeland Security, and branches of the military to prepare for this year's major political party conventions. All the usual tactics are being used, from "the anarchists are coming" fear-mongering to exorbitant security spending (\$110 million so far). Once again, the party conventions are shaping up to be examples of the security state run amok.

The city government of Tampa, Florida, host of the RNC, just passed an amended version of a protest ordinance which will create a massive "event zone" around the convention and includes an array of other prohibitions. Among them is a 90-minute limit on parades, a change from the earlier limit of 60 which the city made only after much public outcry. The new version also ups the length of banned string from six inches to six feet. Other prohibited items include squirt guns, face masks, non-plastic containers, bike locks, coolers, camping gear, and much more. But ironically, because of Florida's extreme state gun laws, people with concealed firearms (and carry permits) will be waved through the checkpoints.

The NLG is active in Florida recruiting attorneys, reviewing and commenting on local ordinances, and looking for opportunities to challenge constitutional infringements.

Charlotte, North Carolina, the site of the DNC, is on a similar track in its attempts to stifle free speech. Charlotte's "Extraordinary Event" ordinance affords police expanded powers during designated events, which the

city tested on May Day and during last month's Bank of America shareholder's meeting.

Under the ordinance, police can search without cause anybody's backpack, purse, or bag. The ordinance also bans squirt guns, police scanners, markers, and more. The newly-formed Charlotte chapter has responded with comments to the city council decrying the First Amendment implications of the new ordinances. The chapter has also started a Legal Observer<sup>®</sup> program at Charlotte Law School.

Though there are already experienced people working in both Charlotte and Tampa, in order to defend huge masses of protesters against major police clampdowns, we will need support from NLG members across the country.

The Guild has always been there to support demonstrators at major protest events, and this year should not be an exception. Please sign up to volunteer and start making travel plans now. See you in the streets!

For more info email [abi@nlg.org](mailto:abi@nlg.org).

### CELEBRATE 75 YEARS!

As we all know by now, this year marks the NLG's 75th anniversary. A committee has been meeting about ways to celebrate, and there are a couple we would like to share.

75<sup>th</sup>

First, we are urging chapters to throw birthday parties for the Guild. We plan to circulate a guide, but here are the basics: Find a venue. Come up with a guest list. Invite a cross-section of allies; include some with money. Plan the menu. Before and during the event, get people talking. And when you ask for donations be sure to mention that they are tax-deductible if made through the National Lawyers Guild Foundation.

Also, you have probably seen the online articles publicizing NLG history ([www.nlg.org/about/75years/](http://www.nlg.org/about/75years/)). You can do this too. Your local history is a great resource that can energize your fellow members by tying their work to the heavy lifting of the past. Identify your local elders and archival resources and get to work.

To volunteer or offer suggestions email David Gespass at [president@nlg.org](mailto:president@nlg.org).

## Calling the Kettle Wack: Suit Seeks to End Protest Pens



Attorneys from the Law Office of Rankin Rankin & Taylor are suing New York City police on behalf of Occupy Wall Street protesters kettled during a protest of President Obama. From left: Mark Taylor, Roger Goldfinger, David Rankin, Deborah Diamant, and Robert Quackenbush. Photo by Andrew Hinderaker

### By Mark Taylor

Just one day before tens of thousands took to the streets of New York City on May 1, the Guild firm of Rankin & Taylor filed a putative class action suit on behalf of Occupy Wall Street protesters detained by police during a protest of President Obama's November visit to the city.

Shortly after the November 30 protest began, police encircled the group of approximately 100 protesters with metal barricades and prevented them from exiting the enclosure for several hours. The detention of the protesters apparently violated sections of the NYPD patrol guide which were enacted in 2008 as part of settlement of NYCLU's case of *Stauber v. NYC*.

In addition to monetary relief the action seeks an injunction limiting the NYPD's use of metal barricades. Upon hearing of the underlying incident, Rankin & Taylor were excited by the opportunity to challenge the NYPD's use of barricades, an issue that has been coming up at New York demonstrations for years. After meeting with many of the protesters, the firm moved ahead with a class action and partnered with Beldock, Levine, & Hoffman for their expertise in class action litigation.

The protest at New York's Sheraton Hotel on Seventh Avenue between 52nd and 53rd Streets sought to reach the president as he held a fundraiser at the hotel. Protesters were initially ordered into a "U" shaped pen across the street from the hotel. Officers then closed the entrance to the pen and prevented demonstrators from leaving, while also barring journalists and NLG Legal Observers<sup>®</sup> from entering. One protestor was taken away by ambulance only after fainting inside the closed pen. While the protesters were penned Seventh Avenue remained open to pedestrian and vehicular traffic. After hours of detention, police opened the pens and allowed protesters to depart the area.

Rankin & Taylor has its roots in fighting NYPD limits on public assembly. Involvement began with the Republican National Convention in 2004, when David Rankin interned with the local chapter providing legal support to demonstrators and both Rankin and partner Mark Taylor were arrested while legal observing. The firm went on to litigate wrongful arrests in the crackdown on New York's Critical Mass bicycle rides during 2005 and 2006.

The current suit, *Berg v Kelly* (12CV3391), was filed in Federal Court in the Southern District of New York and has been assigned to Judge Thomas Griesa.



## Occupy Police Accountability: Suit Seeks NYC Monitor



Guild lawyer Garrett Wright faces physical intimidation from high-ranking NYPD officers as he legal observes at a May Day march. Photo by Jefferson Siegel

**By Wylie Stecklow, Leo Glickman, Yetta G. Kurland,  
with research by Jason Stowe and Daniel Shockley**

“Who are you protecting?” It is a frequent chant directed at police by Occupy Wall Street protesters in New York. We can find some answers in the massive police presence that has become a familiar sight over the past seven months: the horses, the metal barricades, and the officers in military gear blocking peaceful protesters from Wall Street proper and from public spaces near power centers around the city. There are also clues in the countless reports of excessive force, pepper spray, and kettling, plus policies like stop-and-frisk that target communities of color. Add to that equation Chase Manhattan’s record \$4.6 million donation to the NYPD at the outset of this movement and the picture becomes clearer still.

The NYPD has chilled participation in OWS by overcharging protesters, making arrests without probable cause, upgrading charges from desk appearance tickets to overnight arrests, and creating an atmosphere of tension and fear during peaceful gatherings. By referring to OWS protesters as “anarchists” and “terrorists,” the NYPD seeks to justify these tactics which run afoul of the First Amendment’s protection of press, speech, assembly, and the right to petition the government for redress of grievances.

### “The whole world is watching!”

In the name of “public safety” and “combating terrorism,” police kept journalists and elected officials blocks away from the eviction on the night of November 15, lest the brutality be recorded. In all, 26 journalists and two City Council members were arrested solely for exercising not only their rights but their institutional obligations to observe the proceedings.

“The whole world is watching” is another frequent chant directed at police officers. Indeed, in their year-end Freedom Index, Reporters Without Borders lowered the U.S. ranking to 47th in the world for press freedom, in large part due to suppression of the press during Occupy protests.

### Guild lawyers file suit

The day before May Day, in conjunction with a lawsuit by NLG firm Rankin & Taylor challenging police use of barricades, the authors filed a 146-page federal suit seeking redress for NYPD’s widespread civil rights violations and asking for a federal monitor. Plaintiffs in the suit, *Rodriguez et al. v. Winski et al.*, include City Council members

(continued from page 4) Ydanis Rodriguez, Letitia James, Jumaane Williams, and Melissa Mark-Viverito, as well as citizen journalists, professional reporters, OWS protesters, and a veteran of the Iraq War. Brought under both the U.S. and New York Constitutions, the complaint charges the defendants with violating freedom of speech, assembly, and press, as well as the right to petition government for redress of grievances. The plaintiffs also seek damages for violations of state privacy laws and for Fourth Amendment violations including false arrest and excessive force. Additionally, the complaint charges abuse of executive power under the New York City Charter and alleges that the civil rights violations are a result of unlimited corporate influence on government.

Some have stated that the lawsuit is also notable for its non-municipal named defendants. Along with Mayor Michael Bloomberg, the City of New York, NYPD Commissioner Ray Kelly, and MTA Police Department Commissioner Koan, Deputy Inspector Edward Winski and other members of the NYPD, the complaint brings claims against private corporations who have allegedly acted with the municipal defendants in barring OWS from public space. The suit alleges that these entities, acting with the NYPD, suppressed the right of free assembly by clearing and closing public spaces that were lawfully occupied.

The NYPD's protection of private corporate interests at the cost of constitutional liberty is the most transparent example of the undue corporate influence that underlies this federal complaint.

## Seeking a federal monitor

*Rodriguez et al. v. Winski et al.* also seeks an independent federal monitor to ensure best practices are followed by the NYPD in line with the federal and state Constitutions. There is presently no monitoring of civil lawsuit claims against NYPD officers and the current trio of oversight bodies are widely viewed as failures. The type of oversight *Rodriguez et al. v. Winski et al.* seeks has proven available and potentially effective in other jurisdictions.

For background, in 1994, Congress passed the Violent Crime Control and Law Enforcement Act (VCCLEA), to stop local law enforcement officers from engaging in pattern and practice of conduct that deprives persons of rights protected by the Constitution. In the ensuing years, the Justice Department has filed pattern or practice lawsuits against Pittsburgh, PA, Steubenville, OH, Columbus, OH, Detroit, MI and the State of New Jersey. More recently, the Department of Justice concluded a lengthy investigation into the police department of Puerto Rico, issuing a 2011 report which found that a pattern and practice of unconstitutional conduct did exist, including unreasonable force and other misconduct designed to suppress the exercise of

protected First Amendment rights.

Although the VCCLEA did not create a private right of action, federal litigation has been used before to seek an audit and appointment of a federal monitor, even without the Justice Department initiating an investigation. In 2003, an Oakland lawsuit brought by NLG members resulted in a monetary settlement to victims of police abuse, along with the establishment of an "independent monitor" comprising a three-person, court-appointed panel.

Since 2006, New York City has paid out over \$500 million in civil rights lawsuit settlements involving police abuse. Even more surprising than the NYPD's pattern of disregard for the civil rights of New Yorkers is that the NYPD fails to track civil lawsuits brought against its officers, ensuring that the only people negatively impacted by unconstitutional NYPD conduct are the victims of such conduct and the taxpayers of New York City.

Attempts by local lawmakers to rein in abuse and improve accountability have also proven inadequate. In 1994, the City Council voted to establish an independent police oversight board. Mayor Rudolph Giuliani vetoed this measure on multiple occasions, set up his own internal oversight board, and sued the City Council. Nearly 20 years later, with its blatant attacks on OWS, the NYPD has proven that there is still no effective independent oversight.

## Thanks

As lead counsel for this litigation, we acknowledge our gratitude to the team of contributing attorneys who continue to help us. Moreover, we recognize the contributions of our clients, who each play a pivotal role in this litigation and in ensuring that the rights contained in the Constitution can be more than mere words on parchment.

In mid-September when the first calls for help were heard at OWS, many NLG (and non-NLG) attorneys and legal workers sprang into action. We would like to express our thanks to attorneys and legal workers that have helped with pro-bono criminal defense, research, and more.

# FOIA Files Show Feds Keeping Close Eye on Occupy

By Mara Verheyden-Hilliard

In the wake of the apparently coordinated law enforcement crackdown on the Occupy movement last fall, the Partnership for Civil Justice Fund joined the NLG Mass Defense Committee and filmmaker Michael Moore to mount a major Freedom of Information Act initiative. Together, we are working to force public disclosure of government coordination between federal and local law enforcement in the assault on the Occupy movement.

We filed the first series of FOIA requests on November 16, 2011, directly after Occupy Wall Street's eviction from Zuccotti Park in New York, and as Occupy camps faced nearly simultaneous crackdowns nationwide.

The requests sought documents from agencies including the Department of Justice, the Central Intelligence Agency, the Federal Bureau of Investigation and its field offices, the Department of Homeland Security, the National Park Service, as well as local law enforcement agencies and mayor's offices.

Explaining his participation in the FOIA effort, Michael Moore stated: "We, the people, have a right to know whether local governments may be operating in tandem with the federal government to suppress a movement that has inspired the country and the world."

So far, the campaign has forced disclosure of over 1,000 documents from around the country, which reveal a nationwide network of surveillance and information sharing between federal and local authorities.

Recent document highlights include:

- Federal law enforcement agencies began their coordinated intelligence gathering and operations on the Occupy movement before the first tent went up in Zuccotti Park. A Secret Service intelligence entry dated September 17, 2011 records the opening of the Occupy Wall Street movement. The location that the Secret Service was protecting? The "Wall Street Bull." The name of the protectee? "US Government." As Michael Moore put it on his website, "They'd take a bullet for capitalism."
- DHS documents show that the department has monitored and reported on Occupy protests across the country, from Atlanta to Washington, DC to El Paso to Detroit.
- The DHS National Operations Center (NOC) ordered the collection of identity data of activists arrested at an Occupy Dallas protest against Bank of America. The DHS describes the NOC as, "the primary national-level hub for domestic situational awareness, common operational picture, information fusion, information sharing, commu-

United States Secret Service  
Intelligence Division

PRISM DEMONSTRATIONS ABSTRACT

CASE TITLE: Demonstration  
CASE NUMBER: 127-873-009639  
DATE ESTE: 09/18/2011  
DATE UPDATED: 11/08/2011

DEMONSTRATION DESCRIPTION

TITLE: Demonstration  
CIO: NYC  
SECTION BRANCH: Risk Management  
DATE FROM: 09/17/2011  
DATE TO: 09/17/2011  
STREET #:   
STREET: Broadway and Wall Street  
CITY: New York  
STATE: NY  
COUNTRY: United States  
INJURIES: NO  
FATALITIES: NO  
ARRESTS: YES  
VIOLENT ACT: NO  
REMARKS: Occupy Wall Street

PARTICIPATING GROUPS

GROUP NAMES  
ANONYMOUS  
OCCUPY WALL STREET  
SECONDARY SITES  
SITE NAMES  
DIRECTION OF INTEREST  
NAME: US GOVERNMENT  
TITLE:  
STATE:  
COUNTRIES CONCERNED  
AREA  
COUNTRY

A Secret Service document obtained through FOIA requests includes a confusing take on just what needed protecting during Day 1 of Occupy Wall Street.

nications, and coordination pertaining to the prevention of terrorist attacks and domestic incident management." The NOC reports directly to the White House Situation Room and works with other federal, state, and local agencies, as well as private companies

- The NOC went into high gear requesting urgent communications for President Obama's DHS Secretary in advance of the December 12th port protests. The requests ask field offices from Houston, Portland, Oakland, Seattle, San Diego, and Los Angeles for information about "what actions they will be taking to prepare."
- A DHS "Significant Incident Report" reflected step-by-step reporting on a ceremonial meeting on the Rainbow Bridge in Niagara Falls, New York by a small group of OWS members from Toronto, Niagara, Buffalo and Philadelphia.
- The DHS communicated directly with the White House for approval of public statements denying DHS involvement in Occupy crackdowns.
- U.S. Park Police communicated their actions relating to Occupy DC with the Secret Service, DHS, police agencies, and personnel affiliated with LEO.gov, the FBI's



(continued from page 6) national network and alert system for law enforcement and the military. As its website states: "LEO supports the FBI's ten priorities by providing cost-effective, time-critical national alerts and information sharing to public safety, law enforcement, antiterrorism and intelligence agencies in support of the Global War on Terrorism."

- The CIA refused to process our request, apparently asserting that because its involvement in a law enforcement crackdown on the Occupy movement would be barred by law, it is not possible for the CIA to conduct

an effective search for such information. In other words, because the actions would be illegal, they would also be off the books.

Still other documents show that federal agencies and local police were in close communication with business interests that wanted to rid America's parks of Occupy encampments.

For example, the private corporate entity Brookfield Properties, which manages Zuccotti Park, had its security agency in communication with police and city agencies across the country about eviction actions. Brookfield security also sought information

about Park Police plans to evict DC's encampment just 48 hours before the OWS eviction.

We are continuing to push for release of documents and preparing legal action where necessary. We are also working with NLG members around the country to make public records requests in their localities. If you are interested in joining this effort to pull the cloak off the government's efforts to suppress this movement, please contact us at [mvh@justiceonline.org](mailto:mvh@justiceonline.org).

Read documents at [www.justiceonline.org/our-work/ows-foia.html](http://www.justiceonline.org/our-work/ows-foia.html).

## Occupy Augusta Jury Win

By Lynne Williams

Guild lawyers in the Maine chapter have represented many people arrested for acts of civil disobedience. The only time we won outright acquittals was in 2008 when we argued that six anti-war protestors truly believed that they were legally permitted to be where they were at the time of their arrests. When attorney Phil Worden and I prepared for a recent trial of five Occupy Augusta protestors, we believed that this argument would again be our best hope.

I researched the jury pool and ran them through my usual positive profile—liberal, non-authoritarian, open to various sides of an argument. But while I waited for jury selection to begin another attorney pointed out his handyman from the names on the list. The man was, he said, a loyal Limbaugh listener. I should strike him.

In that moment I realized my usual juror profile had just flown out the window. This was just the sort of person I wanted on my Occupy jury: a GED-holding blue-collar worker who listens to radio rants about the government taking away his rights.

The handyman made it onto the



Maine Guild lawyers Phil Worden (middle) and Lynne Williams (far right) with their clients, acquitted of all charges for civil disobedience as part of Occupy Augusta.

jury, as did a man on SSI, and a female auditor who I found out had filed a human rights complaint against the state. Not surprisingly, the prosecution used its peremptory challenges to eliminate the people we would usually strive to keep.

During trial the jury sent notes to the judge requesting copies of the Constitution and the Bill of Rights, plus a tour of the "crime scene." Their requests were denied, but the message was clear: this was not your average jury.

After several hours of deliberation, the judge received a note signed

by eight jurors stating that the other four didn't trust the government and that those writing thought they could never reach a unanimous verdict. The judge kept them for another hour but our four jurors held to their positions. The outcome was a hung jury: 8-4.

In light of Occupy, we movement lawyers need to recognize the potential presented by Tea Partiers and libertarians. While we may not agree with them, their take on law and the Constitution provides an opportunity to advance the First Amendment arguments we have been making for so long.

## Activists Unbudging Against Big Coal SLAPPs



Legal Observer<sup>®</sup> surveys a mountaintop removal site during the 2010 Mountain Justice summit.  
Photo by Daniel Gregor

**By Larry Hildes and Karen Weill**

When we left our intrepid lawyers (*Guild Notes*, Spring 2011) they were attempting to negotiate a settlement on the original five SLAPP suits filed by Big Coal against environmental activists in state and district courts.

Some 33 Defendants had been sued by Massey Energy for having the audacity to protest against the company's catastrophic mining practice of Mountaintop Removal (MTR).

MTR is arguably the worst act of environmental destruction industry has ever inflicted. The technique works by literally blowing the tops off mountains, leveling the beautiful landscape of Appalachia and setting off long-term environmental disaster.

Once a mountain has been blown to rubble, the resulting "fill" is dumped in streambeds to get at the thin seam of coal missed by underground mining, a much less destructive practice. The fill contains heavy metals which, along with toxic chemicals used (including cyanide) pollutes the water table of a region that depends on wells.

The leveling of more than 250 mountaintops in Appalachia has sparked major opposition. Coal companies have responded to anti-MTR outcry by simply ratcheting up the rate of destruction in an effort to extract every ounce of coal they can before they are stopped.

Last spring, the lawyers of the Appalachian Justice Center (Guild members Terry Lodge, Larry Hildes, Roger Foreman, Dave Dawson, and Tom Rist) had fought Massey to a standstill in three of the five cases. A ruling

from U.S. Magistrate Judge Clarke Vandervort said that defendants did not have to answer written discovery or deposition questions about political affiliations, contacts, or how the demonstrations were organized. The judge based the ruling on freedom of association privilege and the irrelevance of the subjects.

Later, when questioned by a circuit court judge about what Massey hoped to get out of the lawsuit—after Hildes pointed out that the defendants were broke and that Alpha Natural Resources was in the process of buying Massey for several billion dollars—Massey's lawyer could not muster an answer.

Shortly thereafter, Massey offered to waive all monetary claims in all five cases, in return for a permanent injunction barring the individual defendants from participating in or organizing additional acts of civil disobedience against Massey or its successors. In the process, Massey abandoned the more than \$19,000 in contempt sanctions they had been awarded in the other two cases.

Defendants accepted the offer, Alpha bought Massey, and the settlement went through.

Meanwhile MTR continued on Coal River Mountain, the last intact mountain in a large area. In July and August 2011, four more activists were arrested for participating in and supplying a tree sit to stop the Coal River blasting.

The four were almost immediately sued by Alpha for trespass and civil conspiracy to deprive Alpha of income, the identical allegations to those of the previous cases, using the same corporate counsel.

Hildes and Lodge immediately signed on to represent

(continued from page 8) the defendants. Recent law school graduate and new attorney Carter Lloyd joined as local counsel.

Alpha's counsel tried to ensure victory by filing the case in Raleigh County Circuit Court, where Massey had been awarded \$19,000 in sanctions for the previous round. In a further strategic move, they filed with West Virginia subsidiary Marfork Coal as the sole plaintiff, not Alpha. Since one of the defendants, Junior Walk, was a West Virginia resident, they believed that they could defeat diversity and prevent the defendants from removing the case to federal court.

After much research, Hildes and Lodge determined that Marfork maintained no offices in West Virginia, that its address was Alpha's headquarters in Abington, Virginia, and that all Marfork maintained in West Virginia was the minesite and a registered agent for service of process, something out-of-state corporations maintain in states where they are not headquartered.

Based on these facts, the defense petitioned for removal to federal court based on diversity, and on the federal question doctrine because the conspiracy allegation was based on protest organizing, thus raising significant federal First Amendment issues.

The case was removed before the plaintiff-sympathetic judge could rule and, despite much plaintiff pressure, the case remains in federal court today.

Both sides have now made offers, and the case appears close to settlement on more favorable terms than the last round.

We have learned that determination and creative lawyering can prevail against massive corporate budgets. Taking inspiration from our courageous and committed clients, we are not afraid to take on corporate power, and sometimes even win.

## Philly U-Visa Clinic Offers Refuge

By Traci Yoder

The Philadelphia Chapter of the National Lawyers Guild recently launched a free direct service project dedicated to helping some of Philadelphia's most vulnerable immigrant populations. The project focuses specifically on U-Visas, which grant temporary legal status and employment authorization to immigrants who have been the victims of certain types of crimes.

The NLG Philly U-Visa Project began in Fall 2011, when it became clear that there was a long (and growing) waiting list of people in the Philadelphia area qualified to petition for U-Visas. From the beginning, the clinic has worked in close cooperation with Nationalities Service Center, the Hebrew Immigrant Aid Society, and other Philadelphia agencies to serve the many clients who are in need of assistance, especially since funding for this work was recently lost.

U-Visas offer a rare chance for immigrants who have been victims of certain crimes to get on a path to citizenship. Those victims of qualifying crimes who possess information about the crime, cooperate with law enforcement in the investigation or prosecution of the crime, and are able to show sufficient physical or emotional harm as a result of the crime can petition for U-Visa status, and eventually attain permanent residency and citizenship.

As such, the U-Visa can strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes while offering protection to the victims of such crimes. As a result, many crimes that would otherwise go unreported are disclosed to the authorities,

allowing the victims to help make the community safer without fear of immigration consequences.

According to project organizer and NLG legal worker Amelia Marritz, "It's an incredibly unique opportunity. We can help provide security and independence to a group of truly vulnerable people and at the same time help to make our neighborhoods safer. It's really a win-win."

The U-Visa Project is organized into teams of volunteer attorneys, legal workers, and law students who assist qualifying immigrants to file petitions for U-nonimmigrant status. Experienced immigration attorneys are paired with attorneys who have little or no experience working on U-Visas, allowing for training and mentorship. Each team is given a case referred from local immigration legal nonprofits and is responsible for the case from beginning to end.

The project is currently working on six petitions, and will continue to take cases from its waiting list. Thanks to dedicated Guild volunteers, the U-Visa Project will be able to aid these victims who may otherwise have no options for staying in the country with legal status. In addition to the services of the project, NLG Philly has also held trainings and CLEs on the topics of U-Visas. The chapter is applying for grant funding to ensure that the project will continue and grow in the coming years.

Those interested in volunteering or obtaining more information should email [amelia.marritz@nlgphilly.org](mailto:amelia.marritz@nlgphilly.org)



## Never Forget: 8/11 Attack on Democracy



Bay Area Guild legal workers Daniel Spalding and Marcus Kryshka legal observe at a September "No Justice, No BART" protest in response to the transit authority's August 11 telecommunications shutdown.

Photo by Steve Rhodes [www.flickr.com/photos/ari/](http://www.flickr.com/photos/ari/)

By Mike Lee

On August 11, 2011, a demonstration was planned in response to yet another killing by the Bay Area Rapid Transit (BART) private police force. Before the protest could begin, however, BART took the unprecedented step of intentionally blocking cell phone networks for all users within a four-station radius. Every device that relies on a radio, cellular, or Wi-Fi signal, was instantly removed from the network. There was no way for commuters or protesters to call family or friends, no way to check the news or social media, no way even to reach emergency responders.

Despite clear federal law prohibiting such action, the FCC is seeking public input to assess the legality and practicality of repeating this action in the future. The NLG Committee on Democratic Communications (CDC) partnered with the Media Alliance to file formal FCC comments condemning BART's actions and arguing against perpetuating the practice.

Last spring, the U.S. government condemned Egyptian dictator Hosni Mubarak for shutting down telecommunica-

tions to quell dissent, calling the technique undemocratic, yet the same government is currently contemplating the same thing for upcoming National Special Security Events like the Republican and Democratic National conventions.

We encourage fellow NLG members to join our effort to protect large-scale protests of the conventions this summer, as well as Occupy protests, and freedom of expression wherever people choose to exercise it. The shutdown of communication networks by state and corporate interests for the sole purpose of stifling protest is, we believe, an un-democratic interference with our very way of life.

And on that evening last August, no elected official was consulted, much less members of the public, before BART pulled the plug. As it stands now, the decision of one BART official, one corporate executive, one bureaucrat in any city or town can completely freeze communication networks.

As attorneys, activists, and students, we express our opposition to social inequality through our work and our actions, enabled by the connections we maintain. On August 8, 2011, BART attempted to break those connections.

The FCC is still seeking guidance about this very important issue. Join the CDC in a resounding NO!

To learn more about getting involved with the CDC contact [cdc@nlg.org](mailto:cdc@nlg.org).

# Want to get noticed?

Take an ad in the NLG Referral Directory.  
Listings are **\$50** for lawyers  
and **\$35** recent law school graduates.

For more information contact Nathan Tempey  
at [communications@nlg.org](mailto:communications@nlg.org).

## Haywood Burns Fellows 2012

Every year the NLG funds the summer work of five law students in honor of civil rights attorney, educator, and longtime Guild member Haywood Burns. The fellowship program is now in its 38th year.

**Khalid Sammarae**, a Tulane Law student, will be assisting the Juvenile Justice Project of Louisiana in its efforts to transform the state's juvenile justice system into one that builds on the strengths of students, families, and communities to ensure children are given opportunities to grow and thrive. He will gain experience working against the School-to-Prison Pipeline within a judicial, legislative, and grassroots context. His work will address juvenile justice issues such as: minors serving life without parole, unwarranted use of force by school security officers, conditions of confinement, and education reform within juvenile detention centers.



**Tyler Whittenberg**, also a Tulane Law student, will also work with the Juvenile Justice Project of Louisiana. His efforts will focus on the early stages of the School-to-Prison Pipeline, working with the Recovery School District, students, parents and community members to minimize the number of students suspended or expelled and promote the implementation of Positive Behavior Interventions and Supports (PBIS). He plans to use the experience to further the NLG tradition of "providing legal, political, and educational support to the important progressive movements of the day."



**Meghan Barner**, a student at Lewis and Clark Law School in Portland, Oregon, will be working on the Death Penalty Project at the recently-established Oregon Justice Resource Center. Her work will include research and litigation assistance in capital appeals and policy-based research aimed at repealing Oregon's death penalty.



**Elizabeth Spellman**, a student at Vermont Law School, will work with the Center on Race, Poverty & the Environment. Her work will support establishing healthy and equitable land-use and sustainable development practices that are accountable to low income, rural communities of color. These efforts, which are crafted by impacted communities, use a variety of legal and organizing tools to build community power and address environmental inequality.



**Bacilio Mendez II**, a New York Law School student, will work in conjunction with the Law Office of Rankin & Taylor and the Center for Constitutional Rights to create data visualization of the NYPD Stop, Question and Frisk Report Database. This will culminate in a set of NLG reports, which practitioners will be able to reference and cite.



Connect with Bacilio at [bacilio.com](http://bacilio.com).

If you would like to help fund a fellow, contact Membership Coordinator Jamie Munro at [membership@nlg.org](mailto:membership@nlg.org).

# Mass Incarceration Committee Takes Shape

By Talitha Hazelton

It's official—the NLG's new Mass Incarceration Committee is up and running. The National Executive Committee approved the formation unanimously at its April meeting. The Mass Incarceration Committee came in part from the mass incarceration panel at the Philadelphia convention last fall which began a conversation about the lack of NLG action around this issue. Initial participants include Guild members from the Bay Area, Chicago, South Florida, Hartford, Indianapolis, New Hampshire, New York, Philadelphia, Pittsburgh, and Portland.

## The Provisional Mission Statement

The Mass Incarceration Committee of the National Lawyers Guild exists in recognition that the use of incarceration in the United States has reached epidemic proportions. The U.S. has the highest incarceration rate in the world with less than 5% of the world's population and more than 25% of the world's prisoners. The U.S. criminal justice system locks people up for a range of offenses that rarely produce prison sentences in other countries and people are kept behind bars for far longer than prisoners in other nations. U.S. law enforcement at every level falls disproportionately on African-Americans and other racial minorities, as well as immigrants, the poor and the disabled. The Committee believes the consequences of this over-reliance on incarceration is the foremost civil rights, racial justice and human rights concern of our time. The Committee stands against the many manifestations of racially discriminatory policies and practices including racial profiling (e.g. "stop-and-frisk," "driving while black," etc), zero tolerance policies, mandatory minimum drug sentencing, prison warehousing, over-use of solitary confinement, the death penalty, post-conviction civil sanctions, criminalization of poverty and other 'status' offenses, and continuing stigmatization of consumers of criminal justice services.

Our mission is to challenge the prison industrial complex in all its forms and advocate for prison abolition and alternatives to incarceration. We seek to dismantle the existing prison system in alliance with grassroots groups that share this goal, as well as to promote policies and practices that reduce incarceration and fundamentally alter the conversation about crime and punishment. Our Committee also aims to connect practitioners, jailhouse lawyers, and Guild members nationwide who do similar work in order to strengthen our collective and individual efforts.



NLG attorney Nora Carroll (left) joins veteran prison activist Dorsey Nunn on the 2011 convention panel that sparked the committee's formation.

*Photo by Roxana Orrell*

## Up and Coming

The Committee is still in its infancy, but it is full of energy thanks to its dedicated members. This year we will offer a panel at the October national convention in Pasadena. We also hope to promote awareness of our Committee and our work throughout legal circles and beyond, and to develop and coordinate local and national efforts to fight mass incarceration. This battle will be a long and difficult one—but the reward will be worth it. Join us as we fight to further the NLG's commitment to human rights.

## How to get involved

The Committee welcomes all NLG members, including jailhouse lawyer members. We are in the process of establishing a way to regularly communicate with jailhouse lawyer members by mail.

If you're interested in joining the Mass Incarceration Committee listserv, please visit: [lists.nationallawyersguild.org/mailman/listinfo/massincarceration](https://lists.nationallawyersguild.org/mailman/listinfo/massincarceration).



## TUPOCC May Day Party

By Aliya Karmali

The United People of Color Caucus of the National Lawyers Guild (TUPOCC) held its second annual May Day benefit in Berkeley, California on the heels of the Far West Regional conference, as Guild members prepared to take to the streets in the Bay Area and around the country.

TUPOCC is a network of lawyers, law students, and legal activists of color within the Guild that seeks to foster the growth and empowerment of all people of color, particularly within the Guild community. It is dedicated to the advancement of racial justice and ending other forms of intersecting oppression within society, including a commitment to justice for workers, immigrants, women and LGBTQQIA people, the incarcerated, and those living under occupation.

*Pictured clockwise from top left: Karen Jo Koonan, Koonan's granddaughter Asiya Sulaiman, and Renee Quintero Sanchez; Aliya Karmali and Melyssa Mendoza; Anne Befu and Pragma Bobby Shukla; Anne Weills and Vylma Ortiz.*



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## NATIONAL OFFICERS AND STAFF

**President**

David Gespass

**President-Elect**

Azadeh Shahshahani

**Executive VP**

Ian Head

**Treasurer**

Roxana Orrell

**National VPs**

Teague Gonzalez

Adrienne Wheeler

Zachary Wolfe

**Legal Worker Co-VPs**

Marcus Kryshka

Traci Yoder

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Mumia Abu-Jamal

Mark Cook

**National Student Co-VPs**

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**Regional VPs**

*Far West*

Lisa Knox

*Northeast*

Aaron Frishberg

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*Mideast*

Tony Paris

Rachel Rosnick

*Mid-Atlantic*

Steve Gotzler

Michele Grant

*Midwest*

Molly Armour

*Northwest*

Martha Schmidt

Erica Rothman

*South*

Anne O'Berry

*Southwest*

Sarah Erlinder

*Tex-Oma*

Robert Schmid

James Branum

**National Office Staff**

*Executive Director*

Heidi Boghosian

director@nlg.org

*Membership Coordinator*

Jamie Munro

membership@nlg.org

*Mass Defense Coordinator*

Abraham Hassen

abi@nlg.org

*Communications Coordinator*

Nathan Tempey

communications@nlg.org

### GIVE BACK TO THE GUILD

Do you value the work of the National Lawyers Guild? Has a Guild attorney helped you or someone you know? For the past 75 years, the Guild has fought to defend civil and human rights. Reach out and help the Guild continue its work, so that as long as we're needed, we'll be there.

To ensure that the Guild continues when you are gone, please consider the following: remembering the NLG in your will or living trust, naming the NLG as a beneficiary on your life insurance, or establishing a charitable gift annuity.

For more information about opportunities to support the Guild through planned giving, contact Marjorie Suisman, Esq. at (617) 589-3869 or msuisman@davismalm.com.

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# NATIONAL COMMITTEES, PROJECTS & TASK FORCES

*Amicus Committee*

Zachary Wolfe  
amicus@nlg.org

*Anti-Racism Committee*

Garrett Wright  
Jessie Hahn  
antiracism@nlg.org

*Anti-Sexism Committee*

Aliya Karmali  
antisexism@nlg.org

*Committee for Democratic Communications*

Michael Lee  
cdc@nlg.org

*Disability Rights Committee*

Aaron Frishberg  
frishberga@aol.com

*Drug Policy Committee*

Shaleen Aghi  
Steven Gotzler  
drugpolicy@nlg.org

*Environmental Justice Committee*

Joel Kupferman  
environmentaljustice@nlg.org

*International Committee*

Jeanne Mirer  
international@nlg.org

*Labor and Employment Committee*

Matt Ross  
mross@leonardcarder.com

*Legal Workers Committee*

Marcus Kryshka  
Traci Yoder  
legalworkervp@nlg.org

*Mass Defense Committee*

Mara Verheyden-Hilliard  
mvh@justiceonline.org  
Carol Sobel  
carol.sobel@gmail.com

*Military Law Task Force*

Kathy Johnson  
mltf@nlg.org

*Next Generation Committee*

Beth Baltimore  
Jessica Fry  
nextgen@nlg.org

*Prison Law Project*

Ian Head  
plp@nlg.org

*Queer Caucus*

Nebula Li  
Dana Christensen  
queercaucus@nlg.org

*TUPOCC*

Bacilio Mendez II  
Malika Chatterji  
tupocc@gmail.com

*National Immigration Project*

Dan Kesselbrenner  
14 Beacon St., Ste 602  
Boston, MA 02108  
(617) 227-9727  
dan@nationalimmigrationproject.org

*National Police Accountability Project*

Brigitt Keller  
14 Beacon Street, Ste 701  
Boston, MA 02108  
(617) 227-6015  
npap@nlg.org

## National Lawyers Guild Foundation

132 Nassau Street, Room 922, New York, NY 10038  
Tel: 212-679-5100 Fax: 212-679-2811 www.nlg.org

*President:* Bruce D. Nestor

*Treasurer:* Jeffrey Petrucelly

*Secretary:* Jerome Paun



# For 75 More Years of Law for the People Become a Sustainer!

**T**his year marks the **75th Anniversary** of the founding of the National Lawyers Guild. To celebrate this great milestone, we invite you to become a Sustainer and give your radical bar association the best gift possible—a long, vibrant future of fighting for the people.

## **Why is it important to become a Sustainer?**

We love the generosity of our members. Yet, yearly appeals create variable revenue and times of “feast or famine” in cash flow. Sustainers stabilize the income of our National Office, allowing us to spend more time building the Guild, not just covering bills!

## **What does it mean to become a Sustainer?**

Sustainers ensure the future of our organization by committing to fund the Guild not just on a one-time basis, but each and every year. Your pledge, which can be paid monthly or annually, will automatically be renewed every 12 months. Those who pay by check will receive a renewal notice, and those who pay by credit card will automatically be charged when it is time to renew.

## **How much will it cost to become a Sustainer?**

In honor of our 75th Anniversary, new Sustainers will commit to donating \$750 per year. We are happy to spread the Sustainer gift out monthly with automatic credit card payments.

In addition, we have created two other options for our Sustainers—the People’s Advocate level of \$7,500 per year, which will be dedicated to maintaining and growing the National Office, and the Student Sustainer level of \$75 per year, which will automatically terminate the year after graduation.

## **Can my law firm become a Sustainer?**

Certainly. The Sustainer program is not limited to individuals, or even Guild members. Any supporters of the Guild, from clients to allied organizations or businesses, are welcome.

## **Do I get any goodies if I become a Sustainer?**

Aside from assuring our Sustainers of our undying gratitude, we want to thank them in more material ways.

- \* Sustainers will be featured in our annual report, the national convention dinner journal, and on our new website.
- \* Practicing Sustainers who meet the directory criteria will receive a free listing in our online referral directory.

## **Is my Sustainer gift tax deductible?**

Why yes, it is. Sustainer gifts are made to the National Lawyers Guild Foundation, a 501(c)(3) organization. In turn, the NLGF will disburse these funds to the National Office through grants for specific activities.

## **Can my Sustainer gift be dedicated to a particular purpose?**

No. The National Office is always innovating, so Sustainer funds will be used wherever they are most needed.

## **How do I learn more?**

For more information, contact Treasurer Roxana Orrell ([treasurer@nlg.org](mailto:treasurer@nlg.org)) or Executive Director Heidi Boghosian ([director@nlg.org](mailto:director@nlg.org)).

national lawyers guild foundation

132 Nassau Street, Rm. 922  
New York, NY 10038

**SAVE THE DATE!**

October 10-14, 2012

**The 75<sup>th</sup> Anniversary Convention—Pasadena**



**Hilton Pasadena** 168 S. Los Robles Avenue, Pasadena, CA 91101