# Guild Notes

a publication of the national lawyers guild foundation

volume XLII, no. 1, spring 2017



- 80 years of the NLG and the struggle ahead
- NLG-coordinated #LawStrikesBack day of action backed by 40 legal groups in 17 cities
- NLG delegation to Mexico meets with parents of 43 disappeared Ayotzinapa students
- A Tilted Guide to Being a Defendant empowers activists targeted by legal system to fight back

#### National Committees, Projects and Task Forces

Amicus Committee amicus@nlg.org

Animal Rights Activism Committee Bina Ahmad Amanda Schemkes animalrights@nlg.org

Anti-Racism Committee Meghsha Barner John Bruning antiracism@nlg.org

Committee for Democratic Communications Larry Hildes Jesse Woo cdc@nlg.org

Drug Policy Committee
Jesse Stout
Endria Richardson
drugpolicy@nlg.org

Environmental Justice Committee Joel Kupferman Tehniat Zaman environmentaljustice@nlg.org

Housing Committee Patrick Tyrrell housing@nlg.org

International Committee
Jeanne Mirer
Suzanne Adely
Jordan Winquist
international@nlg.org

Labor & Employment Committee Anthony Prince anthonyd.princelaw@yahoo.com

Legal Worker Caucus
Judith Mirkinson
legalworkervp@nlg.org

Mass Defense Committee King Downing massdef@nlg.org

Mass Incarceration Committee
Nora Carroll
massincarceration@nlg.org

Military Law Task Force Aaron Frishberg frishberga@aol.com

Next Generation Committee Priscilla Orta-Werner nextgen@nlg.org

Political Prisoner Support Committee Benjamin Evans politicalprisoners@nlg.org

Queer Caucus queercaucus@nlg.org The United People Of Color Caucus (TUPOCC)
Karol Ruiz
Gil Bayonne
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
499 7th Ave., Ste. 12 N
New York, NY 10018
(212) 630-9939 phone
npap@nlg.org

#### NATIONAL OFFICERS AND STAFF

#### President

Natasha Lycia Ora Bannan president@nlg.org

**Executive Vice Presidents** 

Ria Thompson-Washington Elena Cohen

**Treasurer** Roxana Orrell

treasurer@nlg.org

**National Vice Presidents** Claire White

Ken Montenegro

Legal Worker VP
Judith Mirkinson

Judith Mirkinson legalworkervp@nlg.org

Jailhouse Lawyer VPs Mumia Abu-Jamal

National Student VPs Joelle Lingat Tracey Jackson Regional VPs

Far West Anthony Prince farwestrvp@nlg.org

Mideast Sarah Coffey Robert Burton-Harris mideastrvp@nlg.org

Mid-Atlantic
Michele Grant
Ann Wilcox
midatlanticrvp@nlg.org

Midwest Molly Armour Robin Martinez midwestrvp@nlg.org

Northeast Benjamin Evans Tyler Ingraham northeastrvp@nlg.org

Northwest Neil Fox northwestrvp@nlg.org

South Miriam Haskell southernryp@nlg.org Southwest Johanna Hendley southwestrvp@nlg.org

Tex-Oma
Daphne Silverman
texomarvp@nlg.org

National Office Staff Executive Director Pooja Gehi director@nlg.org

Director of Membership Lisa Drapkin membership@nlg.org

Director of Education and Research Traci Yoder traci@nlg.org

Director of Communications Tasha Moro communications@nlg.org

Director of Mass Defense King Downing massdef@nlg.org

NLG Foundation Managing Director Daniel McGee nlgfoundation@nlg.org Guild Notes is published triannually by:

National Lawyers Guild Foundation 132 Nassau Street, Rm. 922 New York. NY 10038

Edited and Designed by: Tasha Moro

Cover: Hundreds gather at Foley Square in NYC, across from the NY State Supreme Court, for #LawStrikesBack (Greg Butterfield)

Copy deadline for next issue: Mon., May 22, 2017.

To subscribe to *Guild Notes*: Contact Tasha Moro at <a href="mailto:communications@nlg.org">communications@nlg.org</a> or call 212-679-5100, ext. 15#. One year subscription for non-member individuals: \$50. One year subscription for institutions: \$75

Previous and current issues of *Guild Notes* are available for download online at <a href="nlg">nlg</a>, <a href="org/resource/guild-notes">org/resource/guild-notes</a>.

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.

## **Building on 80 Years of Radical Lawyering in the Age of Trump**

#### By Natasha Lycia Ora Bannan, NLG President

Eighty years from now, when future generations look back at the Trump candidacy and presidency and reflect on how institutions responded to the spread of neo-fascism and the attack on fundamental rights, I am confident that the Guild will stand out as a clear example of what social justice lawyering means. We will have stood with those who refused to be silent or complicit in state-sanctioned oppression. We have been doing this since our founding in 1937. For eight decades we have defended social justice movements and protected constitutional and human rights fearlessly in the face of tyranny and state violence. The advent of the Trump administration will only mean a rededication and continuation of our work—perhaps in ways we did not expect, but that we are prepared for.



U.S. Marshals drag Arthur Kinoy out of a 1966 hearing of the House Un-American Activities Committee.

The election of Donald J. Trump brought to light some tendencies in our national fabric many of us thought had been driven deep underground. For veteran Guild lawyers and activists, the 2016 election environment hearkened back to the days of McCarthyism, when constitutionally-protected speech questioning U.S. policies or expressing sympathy with groups and individuals targeted by the government could be branded as "un-American" and lead to prison. Others were reminded of the '60s, when anti-war protestors and draft resisters refused to fight in an unjust war because they believed in peace and an alternative political model, while our government deemed them a threat to "democracy." Each of these eras of repression from the last century were backed by our legal system.

As an anti-racist organization, we have long fought white supremacy and the laws and policies it engenders, regardless of who occupies the White House. We have called out the folly of trickle-down economics used as an excuse to eliminate social protections. We have fought against militarism, the expansion

of empire, drone strikes, targeted assassinations, CIA black sites, and torture. We have pushed back against the war on drugs and its destructive effects on either side of the

IN ESSENCE, WE'VE
BEEN FIGHTING
TRUMPISM, BEFORE
THE TERM WAS
COINED, SINCE 1937.

U.S.-Mexico border. We have challenged the surveillance and harassment of other countries' socially progressive movements. We continue to challenge in the courts (and in the streets) the unlawful concentration of power into the executive branch of government. In essence, we've been fighting Trumpism, before the term was coined, since 1937.

We see the structural racism Trump embraces and seeks to exacerbate in the widespread police occupation and violence against communities of color, in the detention of immigrant families, in the warrantless wiretapping and surveillance of Arab and Muslim communities, in the over-regulation of poor citizens and in the under-regulation of corporations. Economic and state violence has always operated in these communities, and we have always been ready to challenge the unregulated exercise of state and corporate power. And we are ready now.

The promise to "Make America Great Again" is the language of imperialism and war. It is language that sends chilling signals to who may be targeted by a Trump administration. Once we clearly identify the "us" against "them," any variations on dictated behavior and conduct can lead to harassment, discrimination, abuse, torture and aggression against other nations and peoples. We will be called upon to defend these communities in the streets, courtrooms, schools, churches, homes, and community centers.

Trump's actions and rhetoric foreshadow an effort to privatize public services and facilitate the corporate takeover of government. The Guild has long recognized that neither democracy nor social justice is possible anywhere where dramatic economic stratification exists. His threats to cut the social safety net for millions of people, to roll back labor protections, and to make it harder to earn a living wage threaten democracy and violate core principles of international human rights laws that the Guild has long supported.

The tactic of the Trump administration to rule based on fear, domination, power, and privilege is something we've seen before. We've fought against politicians, here and abroad, who have deemed themselves unaccountable to anyone but themselves. Challenging unchecked presidential power and its inevitable abuses is at the core of the Guild's long history of international solidarity work, especially in countries and regions where the United States has intervened militarily and economically to prop up oppressive regimes, finance coups, and

cont. on next page

## Our 100 Human Rights: How We Can Exercise Them and Get Them Enforced



Ginger at the 2016 Law for the People Convention. (Shanna Merola)

#### By Ann Fagan Ginger, NLG member since 1946

After being asked by several Bay Area law schools, colleges, and NGOs to present summaries of current U.S. human rights law, I decided to prepare a book describing all of the human rights of everyone in the U.S. today. Several NLG members have helped me. Publication date: May Day 2017.

The unique feature of the book: for each human right — from HR 1 The right to life: not to be shot by the police, to HR 100 The right to exercise our rights using new tactics when possible — there is a description of someone exercising the right, the U.S. law in the Bill of Rights, U.S. statutes and court opinions, AND the law in the U.N. Charter and in three U.N. human rights treaties the U.S. has ratified, in the ratified Organization of American States treaty, and in three U.N. treaties the U.S. has signed but not yet ratified.

Guild lawyers, law professors, and law students will find it very

helpful to cite the language in these treaties that are "the supreme law of the land," to be enforced by every U.S. government body — local, state, and federal, although few judges know this until you cite Filártiga v. Peña-Irala, 630 F.2d 876 (2d Cir. 1980), explicitly upholding this.

It turns out many lawyers have won some points in their cases by citing the U.N. Charter, International Covenant on Civil and Political Rights, Convention on the Elimination of Racial Discrimination, Convention against Torture, which are much more specific than the first Ten Amendments.

Sections of the book include:

- Basic Little-Known Human Rights
- Personal Rights
- Political Rights
- Economic and Social Rights
- Rights of Workers
- Rights of Women
- Rights of Youths and Children
- Rights of African Americans
- Rights of Native Americans
- · Rights of Latinos
- Right of Asian-Americans, Muslims, Pacific Islanders, and all immigrants
- Rights of Veterans
- · Right of LGBTQs
- Right of Seniors
- Rights of the Sick and Disabled
- Rights of Prisoners
- Basic Rights of Everyone

NOTE: If you have time now to check some citations, please contact me at annfginger@gmail.com

#### President's Column - cont. from previous

install dictators. We are familiar with the hand of the state in silencing dissenting voices and squashing opposition through the violent tactics of state repression, here and abroad. We've fought alongside the Occupy movement and #BlackLivesMatter. We've represented independentistas and freedom fighters in Puerto Rico and defended Water Protectors in Standing Rock, North Dakota. We are prepared to work with our social justice allies around the world to challenge any efforts to reach beyond the constitutional limits of the Executive branch or use state resources to suppress, repress, punish, isolate, humiliate, or torture those who refuse to stay silent in the face of a government hostile to the genuine democracy we seek to promote.

As unprecedented as this election is, the National Lawyers Guild has withstood 80 years of attempted repression, surveillance, wars, attacks on social services, state-sanctioned or -administered violence, imprisonment and political persecution. Guild members have a deep history of resistance

to draw upon. Many of our elders remain to guide us. The political and legal landscape may shift, but as movement lawyers, law students, and legal workers, we will not relent in our defense of fundamental rights nor in the pursuit of a righteous justice.

We will undoubtedly be called upon to think more expansively and creatively about our work. But, whatever happens, this much is certain: we will be called upon and, as the people's advocates, we will show up, as we always have. There is no doubt that there are trying times ahead and our communities will be attacked in a myriad of ways. But we will prevail and we will do so under a united and expanded front. As difficult as the years ahead will be, jvencerémos!

For the complete version of this article which originally appeared in the *NLG Review*, visit www.nlg.org/nlg-review/ article/building-on-80-years-of-radical-lawyering-in-the-age-of-trump/).

## Water Is Life: Wayne State NLG Supports the Standing Rock Water Protectors

By Henry Schneider, WSU NLG Facilitator

Beginning in October 2016, the Wayne State University Chapter of the NLG began collecting donations for the Sacred Stone Camp and the Water Protector Legal Collective (WPLC). In January 2017, the WSU NLG organized a panel that would

(1) orient the audience to the legal claims the Standing Rock Sioux Tribe (SRST) have against the Army Corps of Engineers (ACE), (2)familiarize the audience with the tools available to resist the DAPL and projects like it, and



Detroit solidarity at Standing Rock. (Curtis McGuire)

(3) generate monetary support for the WPLC.

For legal expertise, we enlisted the help of Dr. Kirsten Carlson and Professor Nick Schroeck from WSU Law School. Nick Schroeck is the Director of the Transnational Environmental Law Clinic at WSU. Professor Kirsten Carlson is an expert in Tribal Law and began the panel with an outline of the legal claims the SRST have against ACE. Ultimately, the SRST are challenging the DAPL permitting process under the Clean Water Act and NEPA. The SRST allege that the pipeline passes through lands of cultural, religious and spiritual significance and the studies have failed to adequately address both these considerations and the indirect environmental consequences posed by DAPL.

Professor Nick Schroeck discussed the health risks associated with pipelines and the permitting process required for such projects. Schroeck said, "We're going to be transporting crude, refining oil, making gasoline as long as oil is part of our economic engine. There are consequences whether you have it in a pipeline, truck or rail." Professor Schroeck discussed how many of the legal tools available to resist oil pipelines can only hope to delay projects until money or political willpower run out. "Part of this [effort] will be civil disobedience," Schroeck said.

To address this aspect, the WSU NLG enlisted the help of Shanna Merola and two Detroit-based indigenous activists who all traveled to Standing Rock in the fall of 2016. Shanna Merola, Legal Observer Coordinator for the Detroit & Michigan NLG, spoke to her experiences with the militarized police response in Standing Rock and the legal support

network that developed for Water Protectors. Working under the WPLC, Shanna served as a liaison between the medic and legal support tents, assisted daily Water Protector trainings, and observed police at prayer ceremonies.

Soufy is a hip-hop artist and indigenous activist with

The Raiz Up, an indigenous art and hip-hop collective based in Southwest Detroit. Lisa Bruck is a Detroit-based Ojibwe activist and performer, who organizes around environmental justice in Michigan and abroad. Before Standing Rock, both had organized around water justice in Flint and in Detroit and both spoke to the historical novelty of the Standing Rock movement. Never before had so many Native Americans come together for a single purpose. "This was prophesized," Soufy said. "A black snake would come and the tribes would unite."

Lisa stressed the idea that we can engage in water rights activism at home, and in doing so we are joining with the Water Protectors in Standing Rock. "Everyone can't go out there, but what you can do is divest from those banks. Wells Fargo, U.S. Bank, JP Morgan-Chase..." Lisa said. As Lisa concluded, "Ultimately the goal is to find a new source of energy. Oil has to stay in the ground, or it will spill. It's not if, but when. We have to think seven generations ahead. There's nothing wrong with thinking that way."

If you would like video of the panel for yourself or your NLG chapter, please contact Henry Schneider at <a href="ec7421@wayne.edu">ec7421@wayne.edu</a>. For a detailed timeline of events relating to Standing Rock, please visit sacredstonecamp.org/dapl-timeline/.

### Announcing the 2016 NLG Foundation Guild Grants Recipients

By Daniel McGee, NLG Foundation Managing Director

The National Lawyers Guild Foundation (NLGF) is pleased to announce the recipients of the 2016 Guild Grants Program. A total of \$25,000 was awarded to seven grantees to support the educational and social justice goals of the Foundation, promote membership in the NLG, and strengthen programmatic work between Guild chapters, committees, and the National Office.



NLGSF Prisoner Advocacy Network (PAN) at their retreat in February. (Margot Brennan)

After announcing the availability of the grants at the 2016 NLG Convention, the NLGF received nineteen requests for funding. Applications were carefully reviewed by the NLGF Grants Subcommittee, which considered how well each proposed project would increase membership in the NLG and strengthen the Guild as a whole. Other considerations included whether or not the project would serve as an example to other parts of the NLG and the ability of the requesting entity to raise matching funds and to carry out and promote the proposed work.

Recipients were awarded small grants between \$2,500 and \$5,000 to grow membership and strengthen the Guild. Whether it's by working collaboratively with community

partners, promoting the project on social media with a call to join the Guild, highlighting the successes of the project in membership drives, or providing resources to the broader legal community, each of the selected projects are finding creative ways to build the Guild.

The NLGF is excited to support the work of the following projects, committees, and chapters through this small grants program.

#### 2016 Guild Grants Recipients

- International Committee Human Rights Framework
  Project to survey and train Guild members about the value
  and use of the international human rights framework.
- Legal Worker Caucus to hold a national meeting of legal workers to increase recruitment and more strongly integrate legal workers into the Guild.
- Los Angeles Chapter to support their Police Misconduct Clinics to assist complainants in filling out personnel complaints against local police departments and compile a database of instances of police abuse.
- NLG FOIA Project to build a FOIA resource bank and connect NLG members, prospective members and nonmember activists with resources to support their work.
- Parole Preparation Project for political education seminars and trainings to educate and mobilize volunteers to work with parole applicants.
- Prisoner Advocacy Network of NLGSF to advocate for and with people experiencing long term isolation, including solitary confinement, administrative segregation, and gender-based segregation in California prisons.
- San Francisco Bay Area Chapter Demonstrations
   Committee to produce videos and conduct outreach to
   educate activists, cop watchers and community members
   about their rights and options when engaging police
   during actions and on the street.

CELEBRATING 80 YEARS OF LAW FOR THE PEOPLE



NLG.ORG/DONATE

### Diane "Cookie" Polan: An Extraordinary Life

By Anne M. Hamilton

Reprinted with permission of The Hartford Courant



Diane "Cookie" Polan

sister.

Cookie Polan's political sensibilities became apparent in high school when she refused to stand for the National Anthem at a Jets game. Her sense of right and wrong shaped her career as a courageous, committed, outspoken criminal defense lawyer. "She was all about protecting people's rights and making sure they were treated fairly," said her

"She was a tiger; smart, relentless, a renowned civil rights attorney extraordinaire," said Superior Court Judge Patrick Clifford, the presiding judge of the New Haven Superior Court. "She was fearless. It didn't matter how hard the case was" said Jim Bergenn, a Hartford lawyer and close friend. "She was strong and zealous."

Diane Polan—everyone called her Cookie —died October 21 of a rapid-moving, rare brain tumor. She was a resident of New Haven, where she had lived since being part of the first class of women undergraduates at Yale. She was 65.

She arrived in New Haven in the fall of 1969 to study political science, the year that Yale President Kingman Brewster disappointed many conservative alumni by opening the college to women.

Polan soon discovered that admission was not the same as equality: the number of women admitted was a fraction compared to the number of men, and the college climate reflected more than a small amount of male privilege. "It wasn't a very welcoming environment for women; the vibe wasn't positive," said her sister, Kelly Polan. The time she spent in New Haven, however, politicized Cookie.

In the spring of 1970, New Haven was rocked by the trial of Black Panther leader Bobby Seale, who was accused of murdering a party member thought to be an FBI informant.

There were protests against the war in Vietnam, and many students also became immersed in civil rights and women's issues.

Polan worked as a paralegal for Catherine Roraback, a lawyer representing Ericka Huggins against murder charges. The jury was unable to reach a verdict on either Seale or Huggins' case, and a judge dismissed the charges against both.

Polan joined New Haven's first feminist law firm, Levine, Kuriloff and Polan. In her mid-30s, she decided she wanted a child, and had twin daughters, raising them as a single mother. She opened her own law practice, and worked with a partner, Max Simmons, until she became ill.

When the New Haven Public Defender's office needed a lawyer in private practice to take a case, she was at the top of his list, said Tom Ullmann, a senior public defender in New Haven. Once, after a conference in chambers, the judge remarked: "Diane: every time you leave my chambers I feel like I have to check my pockets." It was a backhanded compliment. "He was really saying, you put one past me again," Ullmann said.

In 1985 Polan was asked to participate in the trial of 16 advocates for Puerto Rican independence who were accused of robbing \$7 million from a Wells Fargo delivery truck. The legal team was comprised of some of the country's top criminal defense lawyers—and Polan, who was only five years out of law school.

"She was wicked bright," said Bergenn, another member of the defense team. Charges against Polan's client were ultimately dismissed.

A longtime member of the National Lawyers Guild, Polan was honored in October with the Champion of Liberty Award by the Connecticut Criminal Defense Lawyers Association. In remarks at the ceremony, which Polan was too ill to attend, "She is steadfast in her work for the poor and the disadvantaged, and tireless in her advocacy against racism and gender discrimination," Ullman said.

Polan is survived by her wife, Linda Barrett, two daughters, Maya and Rosa, a sister, Kelly, and a brother, Michael Miller. Her older sister Susie died in 1993.

Editor's Note: Read the original version of this piece at http://www.courant.com/obituaries/hc-extraordinary-life-diane-polan-0205-20170205-story.html

## **Remembering People's Lawyer Lynne Stewart**

[EDITOR'S NOTE] As this issue was going to print, we learned of the passing of longtime NLG stalwart, civil rights attorney, and former political prisoner, Lynne Stewart. We will be featuring her life and legacy in the following issue of *Guild Notes*. Read tributes to Lynne at <a href="https://www.lynnestewart.org">www.lynnestewart.org</a>.



## In Loving Memory of Brother and Comrade, M. Jon "Jonny" Posner

By John Royal, NLG Detroit/Michigan Chapter President



M. Jon ("Jonny") Posner

On January 11, 2017, we lost a longtime member of the NLG Detroit/ Michigan Chapter and prominent local criminal defense attorney, M. Jon ("Jonny") Posner. Jonny fought heroically against his illness to the very end, just as he did in life for his clients and social justice activists. Jonny had been an active member of our NLG Chapter for all of the 47 years since he was sworn in as an attorney in 1970. During that time, he filled many

leadership roles, most notably serving as Chapter Treasurer for years. But what Jonny really loved was defending social justice activists in court.

Jonny was well known for his superior trial advocacy skills—but lesser known was that he was a skilled negotiator. He employed a process that was so personal to him, and so overpowering, his friends came to call it "Posification." None of us could ever figure out exactly how "Posification" worked. In the early days of radio, there was a hero known as "The Shadow" who was reputed to have "the power to cloud men's minds." "Posification" seems to have had something in common with this.

Time after time, Jonny would enter a courtroom with a hostile prosecutor, and an ornery Judge; he would sit down with both of them and talk, remaining so good-natured, reasonable, friendly and concerned. He would just talk to them, and be pleasant and humorous. And then, at the end of it all, the prosecutor and the judge would agree to do exactly what Jonny wanted. When he returned and told us what he had accomplished, we would just look at each other in wonderment, and say: "He Posified 'em again."

Jonny played a major role in the defense of strikers and supporters during the Detroit Newspaper Strike from 1995-1999, when hundreds were arrested during picket line confrontations and other protests. At the beginning of the strike, our NLG Chapter had taken on primary responsibility for the legal defense of arrestees. Eventually, once the union legal defense fund was exhausted, our Chapter organized attorneys to represent arrested strikers. Jonny's skills as a negotiator really came into play during the strike, because strikers and many of their supporters were not interested in having dramatic, political trials. They wanted to work out a settlement so they would not have a criminal conviction, which would mean the permanent loss of a job. Jonny brought his negotiating skills to bear in courtrooms all over southeastern Michigan, negotiating settlements of cases so that strikers and strike supporters would not end up with a criminal record.

Jonny's skills in this regard were so renowned that the labor movement remembered Jonny's contributions. A few years ago, our NLG Chapter was contacted by labor attorneys for the SEIU, requesting NLG assistance in the Fight for \$15 campaign. We informed them we could provide NLG Legal Observers and criminal defense attorneys, when one of the union attorneys responded: "You don't understand. We don't want just any attorney. We are requesting Jon Posner to represent our protesters in Court." And so for the last several years, Jonny spent a lot of time acting as a Legal Observer at Fight for \$15 protests. He would then appear in 36th District Court to negotiate settlements so the arrested activists did not end up with criminal convictions.

Jon Posner exemplified tireless, dedicated, and determined devotion to the defense of social justice activists, and to the principles for which the NLG stands. While we miss him terribly, we will remember his example, which will serve as an inspiration for us as we face the difficult times that lie ahead.

### Law and Disorder. Increasingly Relevant

By Heidi Boghosian former NLG Executive Director and Michael Steven Smith, NLG-NYC



NLG members across the country can now be heard on *Law and Disorder Radio* on the Internet and broadcast on 100 stations across the country. The 60-minute civil liberties program

was launched in New York City and Pacifica's WBAI in 2004 by Heidi Boghosian, the late Michael Ratner, and Michael Steven Smith. Boghosian was the Executive Director of the Guild at the time. Ratner, a former President of the Guild, was the legal director at the Center for Constitutional Rights. Smith is a long-time NLG member and New York City author who also served on the board of CCR.

All three lawyers and activists were aware that government crackdowns on civil liberties would swiftly accelerate after the

September 11, 2001 attacks. It was evident to them that the militarization of the police, and the vast government-corporate surveillance apparatus could, and likely would, be turned at some point against the American people.

With the election of Donald Trump, this is what is happening. The show is necessary now more than ever.

Because *Law and Disorder* can be heard nationwide and on the Internet guests from the Guild who have appeared on the show have had an amplified voice. Recent shows featured Guild Mass Defense Committee Director King Downing, former NLG President David Gespass, and National Immigration Project Litigation Director Trina Realmuto. CCR's Legal Director Baher Azmy has been a guest, as have several CCR attorneys since the show's inception. Of the many activists, legal practitioners and authors interviewed, recently, disaffected Washington insider Mike Lofgren talked about his recent book "The Deep State."

So tune in. Find us at: <u>lawanddisorder.org</u>.

## NLG Delegation to Mexico Highlights US-Supported Human Rights Atrocities

By Stephanie Bello, 2016 Delegation Member



Central American migrants board freight train "La Bestia" at the Tenosique, Tabasco stop on their way North. (Stephanie Bello)

Two days after the 2016 election, 10 lawyers and human rights advocates from the NLG traveled to Mexico on a human rights delegation to follow up on the 2014 Permanent Peoples' Tribunal and the 2015 International Tribunal of Conscience on the Human Rights Crisis in Mexico. From November 10-20, 2016, the delegation collected testimonies from different cases of human rights violations, presented at various panels and met with the US

in Mexico with one of the highest rates of impunity. The victims we met with included affected indigenous communities fighting displacement by transnational companies colluding with cartels to expropriate lands for their inherent natural resources and the ease of transport of drugs across the territory.

After leaving Guerrero, we visited the migrant shelter La 72, a few miles from the Mexico-Guatemala border. The shelter is run by Franciscan friars in Tabasco, Mexico and is a refuge for migrants (mainly Central American from the northern triangle countries). Along the southern border and throughout the migration route to the U.S., migrants are seen as ripe for exploitation in a land where foreign policy has created a depletion of jobs, security and liberty. Aside from participating in the local economy by purchasing necessities from locals, migrants must pay "guides" to cross them from one place to the other (across the border and within Mexico), as well as paying bribes to the immigration authorities and drug cartels. When the migrants have been fully exploited, blackmailed, assaulted, raped, and kidnapped, their bodies are held for ransom, killed and organs sold for thousands, as one 19-year-old from El Salvador shared nearly happened to him.

Throughout our delegation, human rights defenders expressed concern that the violence and human rights violations would only get worse in Mexico and were doubtful of any improvement in U.S. foreign policy under the new Trump administration. During our time in Mexico, we were able to observe up close what happens to a country that dehumanizes immigrants, defunds education, attacks social movements, and puts corporations over people. Our work continues as we draw parallels between Latin American countries and the United States and the role U.S. interventionism, funding of military alliances, criminalizing of dissenters and immigrants and ultimately neoliberalism plays in the destabilization of our countries and movements.

#### Embassy in Mexico City.

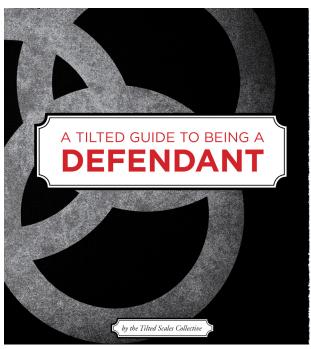
The delegation stayed at the Raul Isidro Burgos Rural School in Ayotzinapa, Guerrero, home to the 43 students who were forcefully disappeared in 2014. There we met with parents, family members, and fellow students of the disappeared students, who gave testimony of their repeated attempts to bring the

Ayotzinapa case to justice. They recounted different attempts by government officials to bribe parents into accepting what independent forensic experts have declared to be an impossible course of events, including that the students were incinerated despite documented heavy rains in the area. The school is part of the rural teacher's school system, which are located throughout rural areas and trains rural, mostly indigenous, teachers so that they may educate thousands of other children. At its core, this educational model promotes a radical pedagogy of social transformation through collective social movements and education. Its success is also why these schools have been under attack by the government through aggressive defunding reforms and over-militarization. In addition to Ayotzinapa, our delegation was received by other human rights defenders and survivors who spoke to us of cases of human rights violations in the state of Guerrero, one of the most violent states



NLG Delegation with parents of the 43 disappeared students of Ayotzinapa. (Natasha Lycia Ora Bannan)

## A Tilted Guide to Being a Defendant Empowers Activists Targeted by Legal System



By Jude Ortiz, Tilted Scales Collective member and NLG Mass Defense Committee Chair

As the NLG community knows all too well, the legal system often uses criminal charges and incarceration to quell dissent and undermine social movements. The new book, *A Tilted Guide to Being a Defendant* aims to educate and empower activists ensnared in the criminal legal system by providing practical guidance on how defendants can navigate and confront the system without compromising their activism. Below is a Q&A between Tilted Scales Collective member and Chair of the NLG Mass Defense Committee Jude Ortiz and NLG Communications Director Tasha Moro about the book.

### TM: What are A Tilted Guide to Being a Defendant and the Tilted Scales Collective?

JO: The idea for *A Tilted Guide to Being a Defendant* came about at an Anarchist Black Cross (ABC) conference a few years ago, during a discussion on how the government has for decades used criminal charges to disrupt, destroy, and neutralize radical and revolutionary organizing. We realized we had to interrupt that process. We weren't deluding ourselves that we would no longer have prisoners in our movements or no longer have to deal with the criminal legal system, though. Instead, a few of us resolved to create a guide for defendants that offered a way of confronting the inevitable criminal charges we'll face with the aim of strengthening radical/revolutionary struggle.

Following the conference, Tilted Scales Collective was formed—a small group of anarchist legal workers with years of experience supporting political prisoners and prisoners of war.

We drew on our knowledge and experience to create outlines for *A Tilted Guide to Being a Defendant* ("the defendant's guide") and a companion guide for lawyers, which will be our next project. We solicited feedback from about 100 people nationwide, including about 40 current or former political prisoners/prisoners of war.

## TM: What are some of the social movements/activist experiences that inspired this book?

JO: Our own involvement and experiences in contemporary radical struggles in the US directly inspired the defendant's guide. Likewise, seeing comrades across the country being entrapped by cops and the FBI, or catching serious charges from militant actions, contributed to this impetus. But we knew that our struggles are part of a historical current that includes many other movements, such as Black/New Afrikan liberation (including Black Lives Matter), Chicano rights (and current struggles in Chicanx/Latinx communities), Puerto Rican independence, Native American sovereignty, animal and earth liberation struggles, queer/trans/gender non-conforming struggles, and on and on. We couldn't include every struggle that inspired us, but we hope that the ones we were able to include inspire others.

#### TM: What are your goals for the defendant's guide?

JO: We aim for liberation and the destruction of all systems of oppression and hierarchy, and hope that the defendant's guide can play a part in this revolutionary project. We don't expect it will end government repression—only abolishing prisons and the state can do that. But we do hope it can help defendants and their supporters figure out how to fight these charges in ways that can benefit the struggles they are a part of. This book was written in the spirit of resistance, and we hope it helps bolster the spirits of all those targeted by the state and facing the possibility of losing their freedom, health, safety, and/or lives—and from all those who they love.

## TM: Did your experience with the Guild influence this project at all?

JO: Speaking for myself, my involvement with the Guild has definitely been important in the writing of this book and my efforts to get it (or more specifically, the ideas in it) out to those who will likely benefit from it the most. Many members of the Guild shared their wisdom as we were shaping our ideas for the book. I've been a member of the Guild since 2008, when I joined prior to the Republican National Convention (RNC) in St. Paul, MN. At that time, I was part of a legal collective that was helping organize legal support in advance of the RNC, and I also helped support the 800+ arrestees in the years that followed. Since then, I've remained involved in legal support

### **Introducing the 2017 NLG Haywood Burns Fellows!**



Steven DeCaprio is a Bay Area legal worker who is an expert in occupying, improving, and re-purposing abandoned properties. He is founder of Land Action, co-founder of the Association of Legal Apprentices, and principal author of the Emergency Tenant Protection Ordinance. Steven was featured in the film "Shelter: a

Squatumentary" and was named one of 12 Visionaries of 2012 by the Utne Reader. As a Haywood Burns Fellow, Steven will be working with the Legal Apprentice Committee of San Francisco Bay Area NLG Chapter.



Elizabeth Horton is a 2L at Boston College Law School. Elizabeth has interned at the State Department, the U.S. Attorney's Office in the Special Proceedings Division, the Committee for Public Counsel Services, and the UN Security Counsel with the International Coalition for the Responsibility to Protect. This summer, Elizabeth will be a

Martin Luther King, Jr. Intern at Legal Aid of North Carolina and work in a medical-legal partnership.



Morgan Moone is a 3L at Loyola University New Orleans College of Law. Morgan has worked with Amnesty International, U.S. Human Rights Network, Human Rights Watch, and Hebron Rehabilitation Committee. With the support of the Haywood Burns Fellowship and Refugee Solidarity Network, Morgan will be working with Refugee Rights Turkey, providing

legal services to refugees and working to promote a rights-based response to humanitarian crises.



Kevin Rafael Varela is a 2L at CUNY Law, where he is President of CUNY LALSA, a Fellow for the CUNY Law Center for Latina and Latino Rights and Equality, and a member of CUNY Law Review. Rafael worked at Brooklyn Defender Services and Make the Road NY. This summer, he will work with the NAACP Legal Defense and Educational

Fund on economic justice, political participation, education reform, and criminal justice.



Hunter Lee Weeks is a freelance paralegal who got his start with the NLG in December 2011 while he was incarcerated. He quickly became skilled at law and began his career as a jailhouse lawyer in April 2013. He received his Certificate of Paralegal Studies in February 2015 and is now released and pursuing a paralegal career. As a

Haywood Burns Fellow, Hunter will be writing a report on the current state of prison law reform.

#### **SUPPORT OUR FELLOWS!**

For over four decades the NLG has been funding the summer work of law students and legal workers committed to social justice. Inspired by former NLG president and movement lawyer, the late Haywood Burns, this fellowship provides financial support and mentorship to five committed legal workers and law students to work on social justice issues.

Each fellow receives a \$2,000 stipend to help offset expenses while they work on self-designed projects or with public interest organizations engaging in essential legal services in underserved communities.

Contribute today at www.nlg.org/donate/haywoodburns

and prisoner support, including helping with legal support efforts with the NLG for massive protests such as those against the RNC/DNC, NATO, and G20. More recently, I was elected as Chair of the Mass Defense Committee. These are scary times, and I'm glad to be part of the Guild now more than ever.

#### TM: How can folks get a copy of the book?

JO: A Tilted Guide to Being a Defendant is being published by Combustion Books in NYC (combustionbooks.org), where it will be available for purchase in the near future. The book is a fundraising project that will both support Combustion as well as Prison Activist Resource Center (PARC) (prisonactivist.org), a prison abolitionist project based in the Bay Area, CA. Additionally, it is being distributed by AK Press, based in the Bay Area: akpress.org. Prisoners or their supporters can order

books through them by writing: AK Press, 370 Ryan Ave. #100, Chico, CA 95973. For those with internet access, we will also have an e-book version of the defendant's guide available in the future.

For a sneak peek at the book or a chapter excerpt (available as a zine), visit our collective's website: tiltedscalescollective.

org. We will list book-release events across Turtle Island (the so-called United States) on that website. Prisoners can request a free copy of our zine (Chapter 2 from the book, the chapter about setting personal, political, and legal goals for criminal charges) by writing us at Tilted Scales Collective, c/o PARC, P.O. Box 70447, Oakland, CA 94612. We will send one copy of our zine for free to any prisoner who requests it; unfortunately, due to costs, we cannot commit to sending copies of the full book for free.

### **Updates from the #NoDAPL Movement at Standing Rock**



A scene from the Oceti Sakowin camp at Standing Rock in November 2016. (Shanna Merola)

#### By WPLC Members and Staff

The Water Protector Legal Collective (WPLC) is the on-the-ground legal team working in partnership with the NLG to provide representation for Water Protectors engaged in resistance to the Dakota Access Pipeline (DAPL) at Standing Rock. WPLC provides emergency legal support on a daily basis, is coordinating the criminal defense effort for the over 750 arrests to date, and has filed a federal civil rights lawsuit challenging law enforcement excessive force toward Water Protectors.

Police repression escalated throughout the fall. In September, DAPL private security used attack dogs to bite peaceful Water Protectors. Following that incident the Morton County Sheriff took over, calling in law enforcement agencies from all over North Dakota and surrounding states who responded in an increasingly militarized and violent fashion.

On October 22, police, sheriffs and National Guard surrounded a peaceful prayer march and arrested more than 100 people, including two Legal Observers, without any warning or opportunity to disperse. The arrestees were bused to jails all over North Dakota where they were strip-searched and otherwise treated in an inhumane manner. On October 27, law enforcement attacked a camp that had been set up on the pipeline route using Humvees, helicopters, an LRAD sound weapon, a directed energy device, impact munitions and chemical agents. They again arrested over 100 people.

Law enforcement's response to a November 20 protest on Backwater Bridge was the most violent yet, resulting in many serious injuries. Officers used a water cannon and fire hoses to spray hundreds of Water Protectors despite sub-freezing temperatures. At the same time, chemical agents were used, including explosive teargas grenades, and impact munitions such as lead-filled "beanbags" and rubber and plastic impact rounds were fired indiscriminately into the crowd. A 21-yearold woman lost part of her arm as a result of one of the explosive grenades. Dozens of people were hospitalized and hundreds more treated by medical personnel at the camp.

On November 28, 2016, WPLC filed *Dundon v. Kirchmeier*, a federal civil rights class action lawsuit challenging law enforcement excessive force. Navajo lead plaintiff Vanessa Dundon, who was attempting to aid another person, was struck in the face and eye by a teargas canister and may never regain vision in her right eye. The lawsuit seeks damages and injunctive relief against further indiscriminate use of dangerous weapons such as impact munitions, explosive teargas grenades and canisters, and water cannons and hoses, for crowd dispersal.

On February 7, 2017, the same day that the Trump administration granted the easement for DAPL to drill under Lake Oahe, the federal district court summarily denied the preliminary injunction without a hearing. Illustrating the enormous bias the Water Protectors are facing in the local North Dakota courts, U.S. District Presiding Judge Daniel Hovland acknowledged that the weapons were used indiscriminately against people who were entirely peaceful but that he had formed opinions about the facts based on local television and other media coverage which led to his conclusion that the force was justified.

The *Dundon* legal team, which includes NLG attorneys Rachel Lederman, Melinda Power, Janine Hoft, Lauren Regan, and Carol Sobel, has filed an interlocutory appeal to the Eighth Circuit. In the meantime, we are fighting a motion to dismiss the case.

In the criminal cases, WPLC is working closely with several North Dakota admitted attorneys, including NLG members

Chad Nodland and Bruce Nestor, as well as coordinating the effort to bring in and support volunteer attorneys, law students and legal workers from out of state to work on the criminal defense representation.

Despite a jury survey that shows 88% of jurors in Mandan (Morton County) are biased against Water Protectors, Mandan judges have thus far summarily denied motions for change of venue, jury questionnaires to pre-screen jurors, sequestered *voir dire* and any in-depth probing of prospective jurors for their attitudes about Water Protectors and any inclination to pre-judge these cases.

While there are a few Water Protectors who had their charges dropped entirely or who have taken deferred judgment deals, we have over 700 cases still pending that continue to move towards trial, including approximately 40 felonies.

Of the approximately one dozen misdemeanor cases that have gone to trial so far, we won three upon motions for a directed verdict at the close of the State's case and the remainder were found guilty of either disorderly conduct or trespass. After convictions, the court has been imposing high fines and court costs and Water Protectors who had public defenders are being billed for those services and informed that any appeals will also be charged to them. Meanwhile the North Dakota legislature has greatly increased the potential length of prison sentences and fines that Water Protectors and other protestors will face in the future.

In December, WPLC filed a Petition in the North Dakota Supreme Court. Led by NLG attorney Bill Tilton, the request sought to amend the state's onerous rules governing *pro hac vice* admission for out of state attorneys in order to allow us to meet the urgent need for quality criminal defense lawyers to represent Water Protectors who have been arrested. On January 18 the Court ruled largely in our favor, and WPLC began to recruit experienced criminal defense attorneys willing to travel to North Dakota to take on pro bono criminal

representation pursuant to these new rules.

NLG members Sandra Feeman, Bruce Ellison and Jeff Hass are leading WPLC's pro hac vice recruitment effort and are assigning these new volunteers to represent Water Protectors who either have no attorneys or are not happy with their court appointed lawyers. Indigenous people are being prioritized to receive new volunteer lawyers, as are people facing the most serious charges. Lawyers with criminal defense experience who would like to join this effort as a volunteer in our pro hac program please apply by sending an email to: volunteer4water@gmail.com.

We are also experiencing increased efforts by federal authorities to interview, investigate and charge Water Protectors. We are aware of a sitting federal grand jury that is investigating water protection activities and has subpoenaed at least one Water Protector to testify. Steve Martinez has made public his intention to resist the grand jury and is being represented by NLG attorneys.

On February 8, DOJ unsealed a federal indictment charging five Water Protectors with felony civil disorder and use of fire to commit a federal crime, allegedly connected to incidents on October 27, when riot police violently cleared the "1851 Treaty Camp." If convicted, they face up to 15 years in prison.

Water Protectors are being subjected to increased harassment from local and federal law enforcement agencies, experiencing police use of excessive force, wrongful arrests and groundless felony prosecutions as 700 criminal cases move towards trials in hostile courts and with a deeply prejudiced jury pool. We can expect that this situation will only worsen as Trump sends in additional federal officers and work on the pipeline continues.

For information about how to support WPLC's work, please visit our website at: <a href="https://waterprotectorlegal.org/ways-support-us">https://waterprotectorlegal.org/ways-support-us</a>

#### NLG CELEBRATES 80 YEARS OF LAW FOR THE PEOPLE!

It's our birthday! Let's keep going for another 80 years!



#NLG80

On February 20th, 1937, the National Lawyers Guild was born. At its founding convention, more than 600 legal professionals from across the country gathered to create the first racially integrated national bar association in the United States, that declared the organization's mission as "...in the service of the people, to the end that human rights shall be regarded as more sacred than property interests."

To help us celebrate all year long, please spread the word about the NLG on social media with **#NLG80**, and perhaps gift a Guild membership to a friend!

We also hope you'll join us in Washington, DC, August 2-6, for our 80th anniversary #Law4thePeople Convention at the UDC David A. Clarke School of Law!

A heartfelt thanks to our members for decades of hard work and support. Here's to another 80 years of resistance!

## **#LawStrikesBack! NLG Rallies 40 Legal Orgs for Day of Action**



By Tasha Moro, NLG Communications Director

In just the few weeks since Donald Trump has taken office, we have seen a flurry of executive orders targeting immigrants and intensifying law enforcement; racist, unqualified millionaires appointed to the nation's highest positions; assaults on the press; a crackdown on dissent; the rolling back of rights for transgender youth, and "alternative facts" presented as truth. However, we have also witnessed communities engaging in profound organizing and direct action—from the streets to airports and schools—to reject the current administration and disrupt business as usual. On February 17, we brought the resistance to courthouses.

The NLG organized the <u>#LawStrikesBack</u> day of action on February 17—in coordination with the <u>nationwide</u> <u>#GeneralStrike</u> planned for the same day—for the legal community to express solidarity with the growing movements against the new regime and its white supremacist agenda. Lawyers, legal workers, law students, and law professors gathered in front of courthouses across the country, where they spoke out on the responsibility of legal professionals to resist

the Trump administration and hold it accountable.

A total of 40 legal organizations participated in 17 cities, representing diverse fields including immigration, racial justice, mass incarceration, LGBTQIA rights, and civil liberties and human rights. Even the Haldane Society of Socialist Lawyers and the European Association of Lawyers for Democracy issued a solidarity statement "from across the Atlantic," in which they affirm that "the legal community has an important role to play in the necessary fightback by (1) acting as an institutional check on executive power, (2) showing up, and (3) refusing to legitimize the Trump administration and its bigotry."

Actions took place in: Boston, MA, Buffalo, NY, Chicago, IL, Detroit, MI, Harrisburg, PA, Newark, NJ, Los Angeles, CA, New York, NY, Philadelphia, PA, Pittsburgh, PA, Portland, OR, Providence, RI, Sacramento, CA, San Jose, CA, St. Louis, MO, Tucson, AZ, and Washington, DC.

For press coverage of the event, visit <a href="www.nlg.org/legal-community-strikes-back-on-f17">www.nlg.org/legal-community-strikes-back-on-f17</a>

#### Many thanks to all our Co-Sponsors!

Center for Constitutional Rights, Law4BlackLives, People's Law Office, Sugar Law Center for Social and Economic Justice, National Immigration Project, National Police Accountability Project, Water Protector Legal Collective, LatinoJustice PRLDEF, Abolitionist Law Center, Palestine Legal, TGI Justice Project (TGIJP), Defending Dissent Foundation/ Bill of Rights Defense Committee, Sylvia Rivera Law Project, Civil Liberties Defense Center, Law at the Margins, National Conference of Black Lawyers-Michigan Chapter, National Conference of Black Lawyers-NYC Chapter, Black and Pink, National Jericho Movement, Black Movement Law Project, New York Civil Liberties Union (NYCLU), Human Rights Defense Center, Wind of the Spirit Immigrant Resource Center, MetroLALSA, UAW Local 2325-Assoc. of Legal Aid Attorneys, Prison Radio, Community Activism Law Alliance, 5 Boro Defenders, Homeless Youth Law Clinic, Brooklyn Legal Services Corporation, Uptown People's Law Center, Potter Bolaños LLC, Northern Illinois Justice for Our Neighbors, Community Development Project-Urban Justice Center, Global Justice Center, Asian American Legal Defense & Education Fund, Rankin & Taylor, Gender Equality Law Center, Liberty Tree Foundation

Opposite page (T-B, L-R): NLG National VP kt crossman speaks at the NLG Massachusetts rally (Tim Plenk); Amy Tabor of the NLG RI Chapter outside the federal district court; NLG-Chicago rally draws 200 at Federal Plaza (Shubra Ohri); Powerful sign at the NLG Boston rally reads, "When INJUSTICE becomes law, RESISTANCE becomes duty." (Tim Plenk): Legal professionals gather in front of the federal courthouse in Boston (Ben Evans).



## 2017: A Busy Year for NLG Mass Defense

By Jude Ortiz, Chair, NLG Mass Defense Committee, King Downing, NLG Director of Mass Defense

Following a strong year's end of mass defense support for Black Lives Matter, the Standing Rock pipeline encampments, and presidential primary/post-election protests, NLG mass defense efforts surged into 2017.

While the above issues continue to receive NLG mass defense attention, this is a brief update on the first two major 2017 actions to receive Guild attention: the inauguration protests and actions at airports and elsewhere in response to the Trump executive order against immigrants.

Inauguration protest plans in the early stages were focused on DC: J20 actions against the installation of Trump as president, and the national Women's March, less directly, but clearly, aimed

at the new regime.
The Guild began by
joining the legal support
planning for both
actions, and it became
clear that not only
would both DC actions
be large, but that large
support actions would
happen in cities across
the country.

To plan for DC, parallel meetings were held with the DC chapter and their allies, including the main convener Disrupt J20, and between the chapter and legal reps for

the Women's March. A call was put out for legal observers (LOs), jail support and DC barred lawyers: 250 people responded. The Guild organized LOs, lawyers and the arrest hotline, while the Law4BlackLives DC handled jail support. Because a crush of LOs was needed, especially for the Women's March (predicted attendance then topped 100,000), an LO training webinar was held, as well as a series of live trainings in DC. Law students attended in overflow numbers.

On Inauguration Day in DC, a half-dozen groups blockaded inauguration parade entrances, with LO teams at each site. LOs also covered splinter events and marches, including the notorious police kettle at 12<sup>th</sup> and L. Without the <u>required warning</u>, police held people for hours, arresting over 220 people, at first at the rate of one person each 15 minutes. Protesters, journalists, bystanders and five LOs were arrested and grossly overcharged with <u>felony riot</u>. To date four journalists, four LOs and several others have had cases dismissed. However, more than 200 people could still be formally charged with felony riot. The DC chapter released an <u>FAQ</u> for <u>arrestees</u>, and is working on a meeting of the defense lawyers. Defendants are organizing themselves to strategize around their cases, and the Guild is supporting the effort. There is also call for court solidarity with the upcoming

court dates

The DC Women's March and its sister marches across the country were massive, but uneventful from a mass defense perspective. NLG chapters across the country provided LO coverage. Guild support at J20 and Women's' March events included: Denver, Buffalo, Philadelphia, San Francisco, St. Louis, New Orleans, Bellingham (WA), Boston, Albany, Washington DC, Atlanta, Birmingham, New York City, Madison (WI), Des Moines, Traverse City (MI), and Ypsilanti (MI), Chicago, Minneapolis, Albuquerque, and Santa Fe.

Without missing a beat, NLG chapters were back in the streets with the airport protesters across the country in the wake of the Trump Muslim ban executive order. As actions sprang up across the country, complaints were filed in multiple jurisdictions, a refusal to litigate letter was released from the then-acting US

attorney general and a letter of protest from 16 state attorneys general supported our position that the order violated due process, equal protection and the separation of powers doctrine. The Guild dispatched lawyers to monitor detained immigrants, and LOs and lawyers to watch police at the airports and other locations and stand by for arrests. Guild chapters that provided support included:



NLG-NYC Legal Observers at a #NoDAPL action at Foley Square in Manhattan, January 2017. (Tasha Moro)

Buffalo, San Francisco, St. Louis, Boise, Birmingham, Boston, Albany, Minneapolis, Detroit, Phoenix, New York City, Washington DC, Atlanta, Detroit, Hamtramck (MI-the only US city with a majority Muslim city council), Denver, Albuquerque, and Newark.

The J20 actions, airport protests and Women's Marches in DC and across the country were large and intense. Many LO teams were sent out, mostly without incident. Solving the mass defense logistics of these large consecutive national DC protests, with simultaneous, equally large actions in other cities, has been valuable prep for the nonstop actions we will likely see over the next four years.

We expect the protests to increase in size, frequency and intensity, reminiscent of 1968, when the Mass Defense Committee began. We ask you to support these and future actions:

- *Show solidarity with J20 arrestees: Attend* the court dates for DC arrestees and/or those arrested in other cities.
- *Donate* to the <u>NLG Mass Defense effort</u>, to <u>DC J20 support</u> , or local efforts in your area
- *Join or renew* your Guild membership
- *Volunteer* in support of the <u>Guild chapter</u> in your area



"Beyond Bars" is a collection of articles, poetry and artwork now appearing in each issue of *Guild Notes* by people in prison. "Beyond Bars" aims to provide people in prison with an outlet for political and artistic expression while shedding light on the country's broken, inhumane, and racist criminal (in)justice system.

#### Who Is the Worst Fool?

William A. Larson Licking, MO

I have been under the loving care of the Missouri Penal System (MDOC) since 1981 and had been previously incarcerated in 1963-64. I am 77-years-young and it is pragmatically improbable that I will live long enough to walk the streets free again.

The MDOC is the exemplar of the eternal truism that "power corrupts, and absolute power tends to corrupt absolutely." The "good ole' boys" from the *Shawshank Redemption* days are still firmly in control. According to the local news media, the MDOC paid out more than \$7,500,000 this past year to settle staff sexual harassment suits.

For the past 35 years I have been diligently documenting, via the grievance procedure, the blatant corruptive culture that permeates the MDOC; especially when it comes to sadistic reprisals.

MDOC staff has honed their ruthless reprisals skills to a fine edge since they had their wrists slapped in *Scher v. Engelke* 943 F2d 921, 924 (8<sup>th</sup> Cir. 1991). Unfortunately, *Scher* was pre-Clintonian PRLA/AEDPA; which has returned prison litigation to the stone-age.

It is phenomenally impossible to go through a day without violating some obscure prison policy/rule. Said policies/rules are purposely constructed so vaguely, they can be arbitrarily interpreted to mean or prohibit almost anything. Staff takes full advantage of this when it comes to retaliation.

I usually file grievances to combat the frustration caused by dealing with staff who treats us like three-year-olds, with no personal rights whatsoever (a "slave owner's mentality").

As I am the typical Aspie, filing grievances is very cathartic for me, even though I know there is very little chance of being successful. I usually rate my success on how inauspicious the reprisal is. I can fill a myriad of volumes with arrant reprisal events that have been perpetrated against me, and others, in the past 35 years.

In the early 2000s, I was having problems getting CRCC staff to respond to my grievances in a timely manner. I filed an informal complaint.

When I didn't receive a timely response, per policy, I advanced it, sans response, to the grievance stage. I didn't get a timely response to the grievance of the first appeal stages; I advanced them, sans response.

I finally received a response to my second appeal, 90 days late. The response facetiously stated: "I agree with the previous responses, grievance denied."

At about the same time, I was involved in a civil action concerning staff deliberately forcing non-smokers to cell with smokers, regardless of their known medical disabilities. *Larson v. Kempker* 414 F3d 654 (8<sup>th</sup> Cir. 20015). Needless to illuminate, I was subjected to relentless sadistic reprisals by CRCC staff prior to and during the litigation of the case. There was no doubt that the reciprocation was approved by staff at the highest levels. The blatant reprisals drastically increased shortly after Mr. Arthur Benson deposed Director Lombardi and Superintendent Kemna.

I and my cellmate were locked up in Ad. Seg. for months with heavy smokers, under a pretended investigation. I still do not know today what the investigation was supposedly about. This is a very common retaliatory practice of MDOC staff.

On 5/4/05, I was called into the caseworker's office, given a copy of the court's mandate (which is not standard practice) and told to pack my personal property. I was transferred to SCCC the next morning and placed directly into Third level Ad. Seg. For almost six months, without issuance of a violation or benefit of a mandatory hearing.

All this brings to mind the venerable question of who is the worst fool: The fool himself (staff) or the one who argues with the fool (grievant)?

This old fool has survived 35 years like a Timex watch, takes a licking and keeps on ticking, outlasting six different Directors.

Our new incoming Governor has just named a new Director for the MDOC. She comes from the North Carolina DOC. I wish her all the luck in the world; she will surely need it. •

### Reflections on 40 Years of NLG-JHL Activism

By Iron Thunderhorse

Teague, TX

I began working with NLG as a jailhouse lawyer membership coordinator in the early 1970s. That was the year when the monster of all prisoner lawsuits began, and *Ruiz v. Estelle* was launched under the Institutionalized Persons Act. Multiple complaints were consolidated

and the United States intervened as a party. I've heard lots of rumors about how this litigation began but the truth is that the late William Wayne Justice who presided over the case was responsible (See: "The Origins of Ruiz v. Estelle," Stanford University Law Journal, Lecture of March 21, 1996).

WE ARE IN HERE FOR YOU, AND YOU ARE OUT THERE FOR US. TOGETHER WE MUST REMAIN STRONG AND STRUGGLE FOR TRUE JUSTICE.

*Ruiz* was the most comprehensive litigation [on prison conditions] ever litigated in the history of federal jurisprudence. It went to trial on October 2, 1978, and lasted 159 days where 349 witnesses gave testimony and 1,565 exhibits were entered into evidence.

As the appeals went through the courts I wrote a column for *Guild Notes* predicting the outcome of the case. I stated that the TDC (Texas Department of Corrections) Director would be asked to step down and be replaced, wardens and administrators would be fired and some prosecuted for egregious crimes; a Special Master would be appointed to oversee compliance with the Court's orders.

Although everything I predicted did in fact occur, my cell was ransacked, my typewriter confiscated, and I became targeted as a "troublemaker."

Key Plaintiff-Witnesses such as David Ruiz, Lawrence Pope, Lorenzo Davis and Martha Quinlin opted to go to the feds for protection. I elected to stay and continue the struggle on the front lines. I organized CSPR (Committee to Safeguard Prisoners' Rights) with an outside Watchtower Network of lawyers, law students, professors, activists and loved ones who had our backs. Inside the infamous Texas prison system I organized groups of jailhouse lawyers—each jailhouse lawyer was assisted by a team of typists, researchers and our outside network kept up periodic correspondence, visitation and fundraisers for postage, supplies, etc. and to keep the momentum

moving forward.

The *Ruiz* Court approved two consent decrees (April 1981 and July 1992), and the final compliance hearing was convened on March 1, 1999 and the final appeal was ended in 2001. Once it was over, TDCJ (Texas Department of Criminal Justice) assembled a new administration and began

systematically taking steps backward to reverse all the progress we made. So the changes are mainly cosmetic now and I have five active federal cases pending to address violations and contract agreements broken.

The sad part is this: Most of the new inmates coming through the Texas prisons don't know about this case, all we suffered to make changes and provide better accommodations in prison. So, this column is dedicated to all those who gave everything for prison reform and died in prison as a result.

The Huntsville Item obituary printed after David Ruiz died in TDCJ quoted him as saying, "All I ever wanted was to be treated like a human being." I am a LIFER, I have spent 40 years in prison and I will probably die here behind these bars, razor wire and the demarcation line for humanity. Please never forget, "The degree of society can be measured by entering its prisons." Our motto once was, "We are in here for you, and you are out there for us. Together we must remain strong and struggle for true justice." •

"Beyond Bars" Submission Guidelines & Instructions: Submissions must relate to the issue of prison, prisoners' rights, or mass incarceration in some way. While we will not publish writing detailing the writer's own legal case, drawing upon personal experience as an illustration of a broader topic is encouraged. Hand-written submissions must be printed clearly and sent to: Guild Notes Submissions, 132 Nassau St. Rm 922, New York, NY 10038. Writings submitted via email may be sent to communications@nlg.org with the subject line: "Guild Notes Submission." Articles have a limit of 500 words. Always include a suggested title for your writing or artwork. Submissions may be written anonymously, or under a pseudonym. In addition to publication in *Guild Notes*, submissions may be considered for online publication (e.g. NLG blog, social media). While all submissions will be considered for publication, there is no guarantee of publication. Articles may be edited for grammatical accuracy and readability, but no substantive changes to content will be made. Anyone in prison, regardless of NLG membership status, may submit writing and/or artwork for publication consideration.

## Legal Espionage: The Degradation of the Brady Doctrine

**By S. Gabriella Kiely** Romulus, NY

The US legal system is built on fair and equitable legal proceedings in criminal cases; securing fundamental rights for defendants, and restricting malicious behaviors by the lawyers. Over the years, many appellate cases have changed the face of criminal defense law; one of those cases was *Brady v. Maryland* (US Supreme Court 1963).

*Brady*, resting upon the Fourteenth Amendment of the Constitution, changed discovery for criminal defendants by requiring prosecution to disclose exculpatory evidence potentially in their favor, ensuring fair trials and constitutionally equitable plea deals.

Unfortunately, as constitutional obligations made to protect liberty interests of the accused are distinguished by courts, those who wish to undermine them fine-tune their tactics. Over the years while reviewing appeal cases, I have noticed a disturbing trend I call "legal espionage." This trend is one that shakes the trust and foundation of criminal defense law to the core. This is where, no matter if done in good or bad faith, the defense attorney withholds exculpatory "Brady" evidence disclosed by prosecution from their client. This is especially distressing when it involves DNA evidence.

In one memorable case I worked on for a young man,

who at twenty-two pled guilty to "First Degree Murder" and "Twenty-five to life," this espionage was glaring. He'd been adamant regarding innocence and trial, but caved to a plea after being badgered and told there was no exculpatory evidence recovered. He pled guilty out of fear, and naiveté. It wasn't until a year later after getting a copy of his lawyer's case records that we discovered that blood and sperm DNA was recovered from the crime scene and victim's body that was unidentified and not a match to the defendant or victim. His attorney had flat out lied and withheld evidence.

Defense attorneys must vehemently defend their clients and should only enter plea deals if they are equitable and uncoerced. Withholding exculpatory evidence, like blood and sperm, is clear coercion and fraud. "Brady" rights are not cognizable rights at all if defense counsel can undermine the integrity of discovery by withholding evidence to persuade a guilty plea.

We must demand the sanctity of the discovery disclosures, and defendants' "right to know," by requiring mandatory disclosure rules for defense counsel as well.

As a transgender jailhouse lawyer I work solely on LGBTTIQ rights work, both civil and criminal. A case must encompass an LGBTTIQ rights issue, or involve a LGBTTIQ client.

### Lifers' Group and CURE-ARM Team Up, Meet with Mass. Legislators at Prisons

By Timothy J. Muise Norfolk, MA

Two groups, one an old war horse in the push for common sense criminal justice reform and the other fairly new on the scene, have teamed up in an attempt to get the voice of the informed prisoner back into the Massachusetts Sate House.

The Lifers' Group, Inc., founded in 1973, and Citizens United for the Rehabilitation of Errants-Adherence to the Rehabilitation Mandate (CURE-ARM), founded in 2013, have joined forces and are conducting meetings with several members of the Massachusetts Legislature; both representatives and senators. Their goal is to have prisoners travel to the Massachusetts State House to testify concerning proposed legislation which would impact the prison system and general public safety affected thereby.

In October 2015, the process began its formal proceedings when members of both the Lifers' Group and CURE-ARM afforded presentations to several members of the General Court at MCI Shirley, a medium-security prison. These presentations were designed to display to the

representatives and senators that these men were "experts" on prison related topics and therefore qualified to testify in the Senate Chamber and House of Representatives. The presenters challenged the legislators to construct questions on the topics presented and then return for a roundtable talk.

On February 26, 2016, the group of senators and representatives returned to the prison in Shirley and directed those well thought-out questions to the prisoner presenters. By all reports it was an outstanding showing with the legislators agreeing to work on getting these men into the State House during the next legislative session.

Then on September 20, 2016, Massachusetts State Senator William N. Brownsberger traveled to MCI Norfolk, another medium-security prison in the state, where he met with members of the Lifers' Group and CURE-ARM and further plans to bring the informed prisoners into the state house to offer testimony were developed. The process is ongoing, but it surely looks like the voice of the informed prisoner will be heard, and heard loudly, in the Massachusetts State House. •

#### national lawyers guild foundation



@NLGnews



132 Nassau Street, Rm. 922 New York, NY 10038 www.nlg.org

