



Guild Notes

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- ***NLG International Committee Files Amicus Brief in Support of Hawaiian Kingdom***
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online at nlg.org/guild-notes

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.

We want to hear about your NLG work—NLG members are
welcome to submit to the next issue of *Guild Notes*!

Deadline for the next issue:
Monday, September 19, 2022

See nlg.org/submission-guidelines to learn more.
Beyond Bars guidelines available at the URL above and also
printed in this issue's *Beyond Bars* column.

Cover: Attica Brother Shango (Bernard Stroble), second from right, returns to D Yard with his NLG legal team,
attorneys Haywood Burns and Ernie Goodman, and investigator Linda Borus. *Photo by Michael Layne, courtesy
of William Goodman.*



Attica Brother Shango (Bernard Stroble), second from right, returns to D Yard with his NLG legal team, attorneys Haywood Burns and Ernie Goodman, and investigator Linda Borus.

Photo by Michael Layne, courtesy of William Goodman.

NLG Reflections on the 50th Anniversary of the Attica Prison Rebellion

Franklin Siegel
NLG-NYC

The NLG played a leading role in the 50th anniversary commemoration of the Attica prison rebellion. The New York City Chapter's Committee to Commemorate the Attica prison rebellion organized four panels: two streamed nationally on September 9th, the 50th anniversary of the rebellion, and two on September 13th, the 50th anniversary of the massacre. The Committee was convened and led by Sarah Kunstler, joined by Soffiyah Elijah of the Alliance of Families for Justice. The Committee has built an archive which can be viewed, along with

videos of the panels, at www.AtticaisAllofUs.org.

A workshop, "Attica & the NLG," was presented at the national NLG Convention in October. The workshop was a deep dive into the NLG's role defending 63 Attica Brothers charged in 1972 in 42 felony indictments with 1289 crimes, and the historic civil damages case on behalf of the Attica Brothers, which took over 24 years to resolve. [You can watch the Convention workshop on the NLG Vimeo account.](#)

What is the Attica rebellion?

In September of 1971, an uprising by the incarcerated men of Attica, a maximum security prison located in western New York, ended in the bloodiest attack by state authorities in United States history.

The Attica rebellion played a foundational role in the development of today's anti-prison movements.

For a more comprehensive overview, visit the [Attica is All of Us website](http://www.AtticaisAllofUs.org).

Funding Opportunities for Jailhouse Lawyers

By Ursula Curiosa

Greetings, Beloved Guildies! I have good news to share regarding two ways to aid people in getting some money: (1) updating one's address with the Internal Revenue Service, and (2) writing for the Breaking Point Project.

See my essay "*Let's Get Stimulated: Reflections on Scholl et al. v. Mnuchin et al.*" in Guild Notes Vol. 46, No. 1/2, Spring/Summer 2021, for information about the struggle to get the IRS to send out Economic Impact Payments to incarcerated folks (EIP1 & EIP2) from the CARES Act of 2020. According to the *Scholl v. Mnuchin* decision, the IRS and Treasury Department cannot withhold the EIPs from taxpayers just because of incarceration status. EIP3 from 2021 is also available for prisoners who otherwise qualify for it.

"Diesel therapy"—moving prisoner-organizers between prisons—is a common form of retaliation at the barest sniff of insubordination, I've been told by several trustworthy people. No prisoner is going to miss out on the stimulus money owed to them if I can help it. It sparks joy to provide this tax information to all of the Guild, but especially for our Jailhouse Lawyer members' use. To change one's address, one could tell the IRS at an appointment; on the telephone at 800-829-1040 for English and Spanish, at 833-553-9895 for other languages, and at 800-829-4059 for TTY/TDD; or with IRS Form 8822, Change of Address.

For those who want to contact the IRS by mail without having Form 8822, here are two steps of instructions on how to change your address with the IRS. Step 1: Write a letter to the IRS that contains this information: (1) full name; (2) old address; (3) new address INCLUDING one's corrections department-assigned identification number; (4) social security number, ITIN, or EIN; and (5) your signature and the date you signed the letter. Step 2: Mail the signed statement to the address to which you sent your most recent tax return or to Department of the Treasury, Internal Revenue Service, Austin, TX 73301-0003, which is the address the IRS has set up to segregate tax claims by prisoners from the general population's tax returns for separate but supposedly equal treatment. It seems to me that the IRS moves in strange, slow, and mysterious ways, so it may require nearly-superhuman patience to get paid out. Time, precious time!

Speaking of time: There are many lockups in Amerikkka and the Breaking Point Project wants to pay writers to tell their tales of incarceration towards the goal of abolition through narrative. "The Breaking Point Project seeks to create social change through storytelling and art. By sharing the experiences of incarcerated disabled and/or chronically ill people, then bringing those stories to life through art, we hope to impress upon viewers the urgency of prison abolition and inhumanity

of the current criminal-legal system" (from www.thebreakingpointproject.com/). I shared my story with the BPP and got paid an honorarium of \$100. It's called "No. 11: Brain Freeze in a Quiet Room," about my 16.5 days detained against my will inside a filthy psychiatric "hospital."

Powerful authorities frequently stuff willfully disobedient crazies (like me) and so many more people into restrictive hell-holes of various formations. The organizers at the BPP, Maya Goldman and Lucy Triesmann, want to expand the project and give more honoraria to more writers. They agreed that publicizing about the project in *Guild Notes* is perfect: many people reading will have personal stories of incarceration to share anonymously with the world and/or can reach out to people who do. From the BPP website: "This project would not be possible without stories. If you are disabled, d/Deaf, neurodivergent, Mad, chronically ill, etc. and have experienced incarceration, reach out to share your experiences. Modest compensation is available." Write to them at Breaking Point Project, P.O. Box 22513, Brooklyn, NY 11202. Alternatively, email BPP at hello@thebreakingpointproject.com.

The Guild is an organization of organizers and I am so happy to share this information so that it can be utilized and distributed further along: each one, teach one. Love, rage, and solidarity!

NLG Portland Chapter: Expunge Records Oregon Project

Emilie Junge
NLG-PDX

We are a group of lawyers, students and volunteers who are helping people expunge their eligible criminal records throughout Oregon. Included in this project are: The Rural Oregon Expungement Project, headed by Michael Zhang; Leni Tupper, Co-director of the PCC Clear Clinic; Emilie Junge, pro bono criminal justice attorney, and numerous students and volunteers. We use Record Sponge, a software program for analyzing criminal records and streamlining the process of determining eligibility. The software was developed by Michael Zhang with a team of volunteer coders and programmers.

The goal of this project is

to make expungement available to all Oregonians, regardless of their ability to pay. It further seeks to provide these services in the communities that need them the most. The project is based on the campus of Portland Community College's Clear Clinic, but we also conduct community clinics throughout the state. We have conducted expungement clinics in Medford, Albany, Newport, Bend, and with the Klamath Tribal community. We also partner with organizations like the Oregon Cannabis Association and many community partners in Portland, like North by Northeast Clinic and other BIPOC organizations.

Through these clinics as well as the PCC Clear Clinic, we assist people in getting their records cleared so that they can move on to get jobs, education,

housing, and many other opportunities which are blocked by their criminal past. We also train community partners in the use of Record Sponge software. All of this is free of charge.

As a project of the National Lawyers Guild Chapter in Portland, Oregon, this project has and will continue to recruit volunteers, not only from Lewis and Clark Law School, but also from the PCC paralegal program (taught by Leni Tupper), and from the NLG-PDX Chapter at large. This recruitment has resulted in enthusiasm for the project as part of the decarceration movement in general but also increasing connections with community in need. As a Guild project, it will also present opportunities to recruit new members of the Guild.

NLG Military Law Taskforce Responds to DoD Instruction on Extremism and Protest

January 3, 2022
Originally published online

[The Military Law Task Force of the NLG](#) has released the following statement about the Department of Defense's Dec. 20 release of an updated instruction on extremism in the military:

After months of delay and empty promises, the Department of Defense has finally adopted an expanded policy on extremist activity in the military. The Military Law Task Force of the National Lawyers Guild is disappointed that the DoD has once again failed to protect military personnel from violence and harassment. [DoD Instruction 1325.06](#) (PDF),

effective 12/20/2021, fails to mention "racism" or "white supremacy" but instead defines extremist activities as "to deprive individuals of their rights" and "advocating widespread unlawful discrimination based on race."

The new instruction places the onus of detection and enforcement on commanders. While there are reporting requirements for local commands, it's not clear the commander must report if she or he doesn't think active participation or real extremism is occurring. This will make for uneven enforcement, and allow commanders with extremist sympathies to avoid action.

In addition, the instruction retains the highly problematic language that members of the Armed Forces are prohibited from participating in demonstrations where "violence is the likely result." This language has been used to attempt to [discipline those who have participated in Black Lives Matter protests](#). This looks suspiciously like something designed to target progressives rather than white supremacists.

All in all, the instruction amounts to only a small improvement in the military's attempt to eliminate racism within its ranks. Much more is needed if the military is indeed serious about this goal.

NLG San Francisco - Bay Area: Year in Review

The past year has brought new and immense challenges. We have faced the loss and isolation of COVID and the inequity it has laid even more bare. We have felt the urgency and threat of environmental devastation and injustice, and survived an administration that fueled and advanced fascism and white nationalism. We have also seen the power, resilience, and courage of humanity and the tenacity of the movements for justice that we are part of and defend.

In that same time, the National Lawyers Guild, San Francisco Bay Area chapter (NLG-SFBA) has expanded our steadfast demonstrations and anti-repression work and launched new programs to meet the needs of the political moment and frontline struggles of today. We share some of the projects, programs, and committees that NLG-SFBA has either expanded or launched in the past year in hopes of highlighting our work to continue the safety, solidarity, and defense of the movement.

List edited for length

BE BOLD - BE SMART

Digital Security and Doxing Defense

Given the pervasiveness of surveillance, NLG-SFBA has addressed the crucial need for movement security by providing trainings on digital security, surveillance, and social media safety to people engaged in activism and organizing.

Know Your Rights: Movement Security for Diverse Movement Sectors

In response to uprisings this past May in support of Palestinian liberation, NLG-SFBA

hosted a series of Know Your Rights and Movement Security trainings for young activists engaging in internationalist and third world solidarity activism. We provided similar trainings for young activists, sex workers, and formerly incarcerated activists.

Defense Against Federal Repression

NLG-SFBA's FBI hotline was created and continues to provide legal advice and lawyers for people contacted by FBI or other federal agencies, or subpoenaed to a Grand Jury in domestic security investigations.

SOLIDARITY

Santa Rita Jail Hotline

A free, confidential hotline to support collective organizing and provide an outlet for the concerns of people incarcerated in Alameda County's Santa Rita Jail. The Hotline has engaged in several successful advocacy campaigns for medical accommodations and access to Economic Impact Payments, challenging the jail's abusive conditions while uplifting the agency and self-determination of incarcerated people.

International Committee

In 2021, NLG-SFBA launched a local International Committee, fighting against the targeting of third world communities in the United States most impacted by U.S. imperialism, combating narratives and policies of liberal imperialism, and defending political prisoners in the U.S. and other parts of the world.

Law Student Clinics

In partnership with local

law school NLG chapters, NLG-SFBA piloted two pro bono clinics: an Open Records Clinic at Hastings Law and a Pro Se Clinic at Berkeley Law, supporting incarcerated litigants representing themselves in court.

DEFENSE

Eviction Defense Legal Support Network

The Eviction Defense Legal Support Network is a newly piloted program that seeks to defend the rights of those most impacted by forced displacement and mass eviction. In partnership with local legal organizations and unhoused activists, the Network supports trained legal workers working in and closely with impacted communities with Know Your Rights and Pro Se training.

Immigration Court Observation Project

NLG-SFBA is part of a coalition-run campaign to hold accountable San Francisco Immigration Court, and immigration courts broadly. The program is an important way to keep eyes on the courts, let the Court know the community is watching, raise public awareness about the inequities in immigration proceedings, and document failures of due process. In April 2021, racist Immigration Judge Nicholas Ford left the bench in San Francisco after public pressure from a complaint filed by the NLG Immigration Justice Committee with the Department of Justice Executive Office for Immigration Review.

Announcing the 2022 Haywood Burns Fellows

The NLG National Office is thrilled to introduce our 2022 Haywood Burns Fellowship recipients! The Fellowships sponsor law students and legal workers to spend the summer working for public interest organizations across the country in order to build their legal skills, strengthen their long-term commitment to social justice, and provide much-needed legal support to under-served communities. This initial exposure to movement lawyering is often the single most significant event that

influences a person's decision to become a people's lawyer.

This year we will send five fellows to work on projects focusing on environmental struggles, immigrant justice, food justice, representing social movements, and abolitionist criminal defense. Our fellows will be working at the law firms of movement lawyers and with social justice organizations including Honor the Earth, the Public Justice Food Project, and the Staten Island Legal Services Immigration Unit.

Want to support future Haywood Burns Fellows?

Our Haywood Burns Fellowship is 100% funded by donations. To help guide the next generation of people's lawyers, visit

www.NLG.org/donate/HaywoodBurns



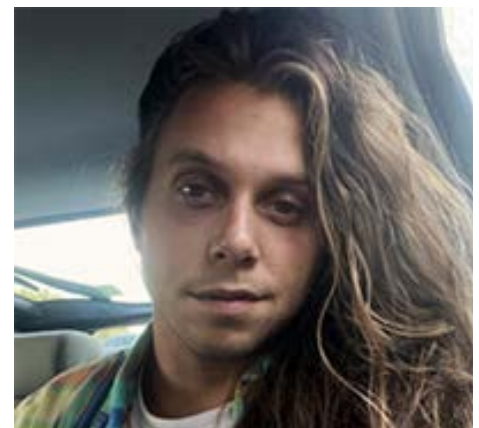
Arabella Colombier
Honor the Earth

Arabella is a student at Columbia Law School and a member of NLG's CLS chapter, NLG-LA, and NLG-International Committee. Arabella has explored her interests in justice, care, and liberation as a student attorney in the Immigrants' Rights Clinic and Abolition Practicum, an intern at Movement Law Lab and the COVID-19 Eviction Moratorium and Housing Policy Project, and a staff editor for the *Columbia Human Rights*

Law Review (HRLR) and *A Jailhouse Lawyer's Manual*. She currently interns at the Center for Constitutional Rights, volunteers as an articles editor for *HRLR*, and organizes support in solidarity with Wet'suwet'en land defenders resisting the Coastal GasLink pipeline. She is grateful to receive the Haywood Burns Fellowship to support her internship at Honor the Earth, where she will assist with its Water Is Life campaigns.

Jamie is a 1L at University of North Carolina School of Law. Jamie is a queer and trans organizer from Charlotte, NC. Before coming to law school, Jamie worked with mutual aid collective Charlotte Uprising to start a grassroots community bail fund that raises money to bail people out of jail and support them through court, regardless of charge. Jamie believes that no one should be in a cage, and dreams of a world where

we can prevent and respond to harm in our communities without relying on prisons or police. Jamie plans to use a law degree to do criminal defense in NC. As a Haywood Burns fellow, Jamie will be working at the Law Office of Habekah B. Cannon, an explicitly abolitionist, public interest criminal defense firm. The goal is to be a movement lawyer, and this summer Jamie is lucky enough to support and learn from one of the best.



Jamie Marsicano
Habekah B. Cannon



**Eli Massey
Stanley Cohen**

Eli is a 1L at DePaul University. He sits on the board of the Chicago National Lawyers Guild chapter and is also involved with the DePaul NLG. Before beginning law school, Eli worked as a freelance journalist, researcher, and editor at the socialist magazine *Current Affairs*. Much of his work focused on the Middle East, terrorism, and the criminal punishment

system. As a Haywood Burns fellow, Eli will spend his summer working for radical criminal defense attorney Stanley Cohen, whose past clients include Occupy Wall Street protesters, members of the hacktivist collective Anonymous, East Village squatters, the Mohawk Warrior Society, ACT UP, Hamas, Hezbollah, and the IRA.

Jessica is a first generation college student, the daughter of Colombian immigrants, and a 2L at Lewis & Clark Law School. Jessica is a former fellow with Equal Justice Works Rural Summer Legal Corps, where she worked as the law clerk for Legal Aid of Oregon's Farmworker Program. In this role, she worked extensively with migrant and seasonal farmworkers challenging discrimination in the workplace and advocating for their communities. Jessica is passionate about climate justice

and amplifying the voices of the Latinx community. She is focusing on environmental law and immigration in order to advocate for climate migrants throughout her legal career. As a Haywood Burns Fellow, Jessica will be working with the Public Justice Food Project, using targeted litigation to support the larger "good food" movement and redress the structural and institutional inequities upon which the current food system is built.



**Jessica Olave
Public Justice Food
Project**



**Noor Zara Sheikh
Staten Island Legal
Services Immigration
Unit**

Noor is a 2L student and graduate fellow at the City University of New York School of Law (CUNY Law). Noor is passionate about immigration law reform and aspires to be a movement and social justice lawyer for her community. At CUNY Law, Noor is a volunteer student attorney with the Creating Law Enforcement Accountability & Responsibility (CLEAR) Clinic. Currently, Noor is a legal intern with the American Civil Liberties Union (ACLU) Immigrants' Rights Project. Last summer, Noor worked as a legal intern with the Vera Detained Minors program

at The Door's Legal Services Center, serving minors seeking asylum in the United States. Before law school, Noor worked as a case manager for survivors of intimate partner violence with the Arab American Family Support Center and Family Justice Centers. Noor was born in Lahore, Pakistan and raised on Staten Island, New York. As a Haywood Burns Fellow, Noor will intern on Staten Island, New York with the Staten Island Legal Services' (SILS) Immigration Unit to serve immigrant communities on the island and support SILS's impact litigation work.

Attica Prison Rebellion: What Actually Took Place and Why So Much is Still Unknown

Joe Health

Originally printed in New York History

The horrific events at Attica Prison on September 13, 1971 are still largely unknown to the public, but more details continue to emerge as more light is shed and the truth becomes better known. Former Governor Nelson Rockefeller went to great lengths to obfuscate and cover up both the killings by law enforcement officers during the armed assault, and then the “orgy of brutality” that followed throughout the prison and in its dark corners, as the guards and other law enforcement officers enacted their revenge on the prisoners who had rebelled.

This article documents some of the details of this horrendous brutality, which was clearly motivated by white supremacy and systemic racism. This information comes from the fifty years of legal work that I have done for the Attica Brothers.

My third day of law school at SUNY Buffalo was September 9, 1971—the day the rebellion began thirty miles away. So I was fortunate to have been able to attend federal court hearings that were held shortly after the rebellion and assault, one block from the law school. I began doing legal work in support of the prisoners that first semester; by the spring of 1972, I was able to begin visiting the Attica Brothers, who were isolated in “the box,” or solitary confinement, at Attica. These prison visits and the discussions with several of the Brothers

were of huge educational value to me, particularly in helping me begin to understand the systemic problems of racism in our prisons and beyond.

I worked on the criminal defense of the Brothers while in law school, assisted with the early criminal trials, and eventually took on the representation of one of the Brothers, charged in Indictment 5, along with eighteen other Brothers, with thirty-two counts of first-degree kidnapping.

After the criminal prosecutions were halted in 1976 by former Governor Hugh Carey, I next joined with other National Lawyers Guild lawyers Liz Fink, Michael Deutsche, and Dennis Cunningham to prosecute the federal civil rights class action of the Brothers. I worked on that class action case until the state settled in 2000, when they agreed to pay the Brothers \$12 million. This phase of the work included three trials in Buffalo, one for six months in 1991 and 1992, and then two more in the spring of 1997. Much of our proof at those three trials focused on and exposed the brutality inflicted on September 13, 1971, and the days that followed.

One of my primary duties during all of these phases of the Attica work was the locating and interviewing of hundreds of participants and witnesses. These included hundreds of prisoners, National Guard personnel, doctor and nurses,

a former hostage, and many of the observers. Eventually, I helped prepare many of these witnesses for testimony at one or more of the trials.

Unfortunately, Rockefeller and other state officials engaged in immediate and extensive efforts to distort the historic record to hide their mistakes and brutality. Once it was clear that the troopers’ guns had killed ten of the hostages, a calculated disinformation campaign was quickly launched. It began with Deputy Corrections Commissioner Walter Dunbar’s clear lies to the press before the CS (tear) gas had cleared, in which he claimed that the hostages had all died due to slashed throats, with one even castrated. Within forty eight hours, this was proven false by the medical examiners who performed the autopsies, but the impact of these falsehoods is still present. Rockefeller repeatedly lied about the events at Attica during his Senate confirmation hearing to become vice president in 1974, and that same year a jury survey found that over 60 percent of potential jurors in Erie County still believed the slashed throats false narrative.

This is an excerpt of a longer piece; the full article can be found online at www.NLG.org/guild-notes/

Announcing the 2021 Guild Grant Recipients

National Lawyers Guild
Foundation

The NLG Foundation (NLGF) is pleased to announce the recipients of the 2021 Guild Grants! Now in its seventh year, the Guild Grants Program continues to support NLG chapters, committees, and projects by providing small grants to help build the Guild. Thanks to the generosity of Guild members and donors, the maximum grant amount was raised to \$7,500 this year. The NLGF approved grants to ten different educational campaigns and programs that will help build capacity, promote membership, and enhance coordination across the Guild.

These projects were selected from a total of 29 requests for funding. The NLGF Grants Selection Committee reviewed the applications and prioritized projects that could serve as a template or example for other chapters and committees, those that would encourage membership growth especially in under-resourced areas, as well as the project's ability to raise matching funds and to carry out and promote the proposed work.

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

Guild Grants Recipients

The United People of Color Caucus - to conduct a strategic planning process and retreat.



NLG Indiana Chapter hosts 2021 #Law4thePeople Convention panel "Prison Legal Support Network: A Model to Supporting Jailhouse Lawyers and Prisoner-Led Organizing"

NLG International Committee - to prepare a series of youth and student-focused materials and toolkits.

NLG International Committee - to support the People's Tribunal on US Imperialism and Economic Coercive Measures.

NLG: Harvard Law School Chapter - to hold a month-long training series to provide students and community members with an abolitionist skill set.

Military Law Task Force of the NLG - to develop a 2-track training and CLE series on advocacy and activism in military law.

Arkansas Chapter - to support Know Your Rights Car Clinics where the public can have their vehicle inspected at no cost and receive training on police interactions.

NLG: Rutgers Law School, Camden Chapter - to organize a hybrid remote/in person movement lawyering panel.

NLG-SFBA Eviction Defense Legal Support - to support the Eviction Defense Legal Support Network to dispatch LOs to encampment sweeps/evictions, track loss or damage of personal property, and support pro se claims against public agencies.

Indiana Chapter of NLG Prison Legal Support Network - to support the Prison Legal Support Network's Committee for Freedom and the Rights Defense Committee to provide legal aid for pro se litigants pursuing sentence modifications, clemency, parole, and post-conviction relief, and enforcement of their legal rights.

NLG: University of Toledo Law Chapter - to host Know Your Rights events on LGBTQ+ and eviction issues.

Federal Court in Hawai'i Acknowledges Its Authority Is In Question After Granting Leave for Amicus Brief Filed by Guild Members

Keanu Sai
Hawaiian Kingdom
Subcommittee of the IC

In December of 2019, the Guild membership passed a resolution submitted by the Hawaiian Kingdom Subcommittee calling "upon the United States of America immediately to begin to comply with international humanitarian law in its prolonged and illegal occupation of the Hawaiian Islands." On January 13, 2020, the Guild then called "upon the United States to immediately begin to comply with international humanitarian law in its prolonged and illegal occupation of the Hawaiian Kingdom since 1893." The following year, the International Association of Democratic Lawyers also called "upon the United States to immediately comply with international humanitarian law in its prolonged occupation of the Hawaiian Islands—the Hawaiian Kingdom."

On August 11, 2021, the Hawaiian Kingdom filed an amended complaint for declaratory and injunctive relief with the United States District Court for the District of Hawai'i for United States violations of international law in its prolonged belligerent occupation since January 17, 1893. In the nineteenth century, the Hawaiian Kingdom was an internationally recognized independent State and in 1997 its government was restored by a Council of Regency. The Hawaiian Kingdom addressed the court's presence within Hawaiian Kingdom territory in its jurisdictional statement.

Since 1959, the federal court in Hawai'i has been operating as an Article III court by virtue of section 9(a) of the 1959 Hawai'i Statehood Act, but its presence is unlawful as American municipal laws, including congressional legislation, have no effect beyond United States territory. In *United States v. Curtiss-Wright Export Corp.*, the U.S. Supreme Court stated, neither "the Constitution nor the laws passed in pursuance of it have any force in foreign territory." Justice Story, in *Picquet v. Swan*, noted that "no sovereignty can extend its process beyond its territorial limits, to subject either persons or property to its judicial decisions. Every exertion of authority beyond this limit is a mere nullity." The

Hawaiian Kingdom stated in its amended complaint that the court's "jurisdiction is found as a de facto Article II Court," which are federal courts operating in foreign territory under the occupation of the United States such as Germany from 1945-1955.

On August 17, 2021, the International Association of Democratic Lawyers, the National Lawyers Guild, and the Water Protector Legal Collective, as Amici, filed a motion for leave to file an amended amicus curiae brief. The authors are Guild members Natali Segovia and Joseph Chase, with Marti Schmidt as copy editor. The Amici's request for leave noted the brief was submitted "to ensure a proper understanding and application

No. 1:21-cv-00243-LEK-RT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

HAWAIIAN KINGDOM,
Plaintiff,

v.

JOSEPH R. BIDEN, President of the United States, et al.,
Defendants.

BRIEF OF AMICI CURIAE
INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS,
NATIONAL LAWYERS GUILD, AND
WATER PROTECTOR LEGAL COLLECTIVE
IN SUPPORT OF PLAINTIFF'S AMENDED COMPLAINT

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of the international law and historical precedent relevant to this case regarding Article II occupation courts. The amici are additionally human rights organizations that have an interest in ensuring an informed interpretation of international human rights law in domestic jurisprudence."

In a September 30, 2021, order, Federal Magistrate Judge Rom Trader granted leave. The Amici filed their amicus brief on October 6. In it, they stated that the "purpose of this brief is to bring to the Court's attention customary international law norms and judicial precedent regarding Article II occupation courts that bear on the long-standing belligerent occupation of the Hawaiian Kingdom by

the United States at issue in this case." The brief also went on to state that the "question here is not whether the Hawaiian Kingdom has standing in an Article III court. The question is whether this court can sit as an Article II occupation court and whether the claims of the Hawaiian Kingdom can be redressed. The answer to both questions is yes."

Magistrate Judge Trader's order noted that the "Court, having carefully reviewed the Motion and attached brief, records and files in this case, and the applicable law, GRANTS the Motion." The Order further stated when "determining whether to grant leave to file an amicus brief, courts consider whether the

briefing 'supplement[s] the efforts of counsel, and draw[s] the court's attention to law that escaped consideration. ... The amicus may be either impartial or interested individuals, whose function is to advise or make suggestions to the court. ... 'The district court has broad discretion to appoint amici curiae.'"

The order and the amicus brief's significance cannot be overstated. In what is believed to be the first time ever, a U.S. federal district court acknowledged that its status as an Article III Court is in question. If the court thought otherwise, no doubt it would have denied leave and dismissed the complaint, sua sponte, as a political question.

NLG Statement of Solidarity with Wet'suwet'en Nation

Originally published online

The National Lawyers Guild (NLG) strongly supports the sovereign Wet'suwet'en nation in demanding an end to Canada's militarized occupation of their lands and a complete halt to the Coastal Gaslink pipeline, as outlined in their [recent submission to the United Nations Human Rights Council \(UNHRC\)](#).

[Wet'suwet'en Hereditary Chiefs have unilaterally opposed the Coastal Gaslink pipeline](#) and have not consented to its construction. By licensing and building the pipeline anyway, the Canadian government is violently disregarding Wet'suwet'en sovereignty. Wet'suwet'en land defenders and allies are condemning both the environmentally disastrous consequences of this pipeline project and the illegal invasion

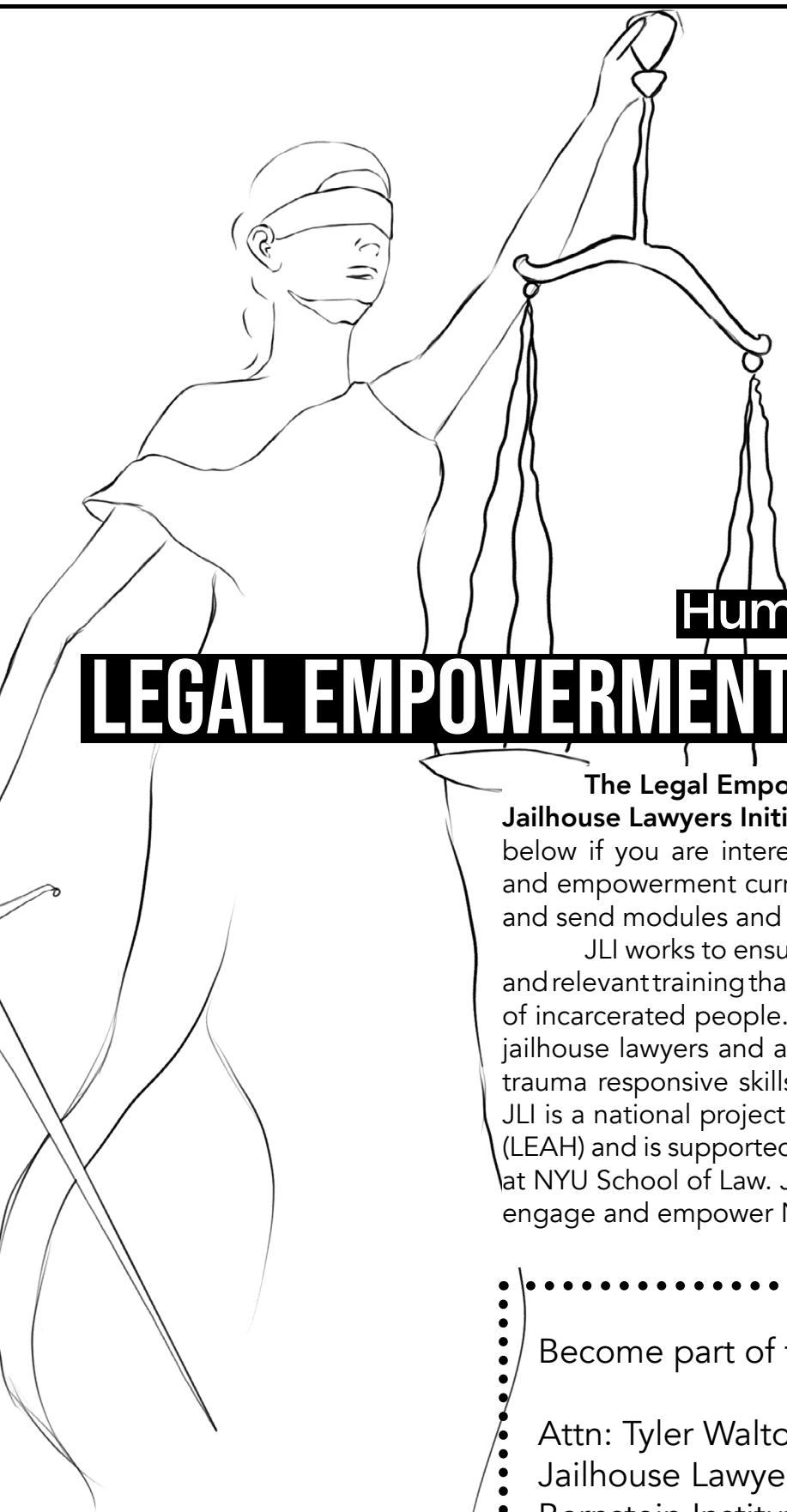
of their sovereign, unceded territory; in response, Canada has arrested, jailed, evicted, and surveilled Wet'suwet'en land defenders. It is impossible to separate the ecological harm from the anti-Indigenous violence caused by the Coastal Gaslink pipeline, because they are intertwined impacts of settler-colonial resource extraction.

Now is a critical moment for the international community to rally together in solidarity with the Wet'suwet'en nation. The NLG joins many other organizations in demanding that Canada be held to the standards outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) by recognizing the sovereignty of the Wet'suwet'en nation and their right to govern their own land. However, the NLG also

recognizes that liberation of Indigenous peoples globally will require that we both meet and exceed UNDRIP. To work toward justice beyond what the law currently has to offer, the NLG asks that members and allies look to mutual aid efforts to provide more comprehensive, restorative support to the Wet'suwet'en people and in their struggles to protect the planet and their sovereignty.

For more context and legal analysis, read the [NLG International Committee's 2020 Statement of Solidarity with the Wet'suwet'en People](#).

More information, including Wet'suwet'en-led calls to action, can be found on the [original statement on the NLG website](#).



Human Rights Advocacy

LEGAL EMPOWERMENT TOOLKIT SERIES

The Legal Empowerment Toolkit Series is a project of the **Jailhouse Lawyers Initiative (JLI)**. Please write to us at the address below if you are interested in receiving detailed legal education and empowerment curriculum. We will add you to the JLI network and send modules and newsletters on a regular basis.

JLI works to ensure jailhouse lawyers have access to effective and relevant training that equips them to meet the diverse legal needs of incarcerated people. JLI is rooted in the legal empowerment of jailhouse lawyers and advocates for leadership, peer support, and trauma responsive skills as a part of the jailhouse lawyer training. JLI is a national project of the Legal Empowerment Advocacy Hub (LEAH) and is supported by the Bernstein Institute for Human Rights at NYU School of Law. JLI has partnered with NLG's *Guild Notes* to engage and empower NLG jailhouse lawyer members nationwide.

.....
• Become part of the conversation. Write to JLI at:

• Attn: Tyler Walton
• Jailhouse Lawyers Initiative
• Bernstein Institute for Human Rights at NYU Law
• 139 MacDougal Street, B23
• New York, NY 10012
•

LEARNING OBJECTIVES:

1. Identify the five important sources of human rights law
2. Identify nine protected rights of people who are incarcerated
3. Learn five ways to use human rights to advance the rights of incarcerated people

INTRODUCTION

Human rights are inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Everyone is entitled to these rights, anywhere in the world without discrimination, just for being a human being. This includes people who are incarcerated.

There are human rights frameworks, guidelines, and rules that establish protections and standards for the rights of incarcerated individuals. Jailhouse lawyers can use the language, standards, and mechanisms of human rights to hold the government accountable. Although the United States government typically follows an approach of American Exceptionalism—the idea that the United States and its laws take priority over international law and global consensus—international human rights can still be used as a tool for advocacy. Incarcerated individuals have an opportunity to raise awareness of the injustices they suffer and seek accountability for violations of prisoners' rights through a range of community-driven strategies. Too often, those most directly impacted by human rights violations are not engaged in the human rights process. Your voices, experiences and demands should be central to human rights protections,

monitoring, and accountability work.

SOURCES OF HUMAN RIGHTS

There are many sources to find human rights law. The majority of human rights law is found in binding treaties or non-binding declarations that countries sign onto. While many of these rights also exist under U.S. law, international human rights law provides another foundation for these rights, and in some cases, expands upon them. Friends or families on the outside can retrieve the text of the treaties freely online. You can also write to the Office of the High Commissioner on Human Rights to receive a physical copy of *the Core International Human Rights Treaties* (ISBN 92-1-154166-2). In this toolkit, we will discuss five key sources for international human rights law:

1. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

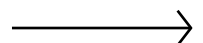
The UDHR was written at the beginning of the modern human rights movement after World War II. It is a milestone document in the history of human rights. It was drafted by representatives from many parts of the world with different legal and cultural backgrounds and was presented by the United Nations General Assembly in Paris in 1948. It sets out, for the first time, the fundamental human rights that need to be protected everywhere. Since

1948, the UDHR has been translated into more than 500 languages—making it the most translated document in the world—and has inspired the constitutions of many newly independent countries and many new democracies.

2. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS (ICESCR)

One of the most important human rights treaties is the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The ICESCR covers many things that affect your daily life, including protecting your rights to an education, a safe home, adequate food, medical care, and a job that supports you and treats you with respect.

The ICESCR recognizes that it takes time and resources for governments to fulfill these rights, and instead of immediate compliance, calls for the **progressive realization of rights**. This means that countries take active and deliberate steps as part of a long term plan to achieve full compliance. This also means that no matter what level of resources they have, countries must take immediate steps within their means. If a country takes a step backwards from their obligations, then that's considered a violation of the ICESCR.



3. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

Another important human rights treaty is the International Covenant on Civil and Political Rights (ICCPR). Many things that affect you in your daily life are covered by the ICCPR. Your rights to life, to be free from torture, privacy, a fair trial, freedom of speech, press, movement, religion, assembly, and association are all fundamental rights protected by the ICCPR. Countries that sign onto the ICCPR must comply with it immediately.

4. NELSON MANDELA RULES

The Nelson Mandela rules lay out agreed minimum standards for how countries should treat all people they detain, whether pre- or post-trial, with the 122 rules covering all aspects of prison management. The Standard Minimum Rules for the Treatment of Prisoners (its original name) were first adopted in 1957, and in 2015 were revised and adopted as the Nelson Mandela Rules. The Mandela Rules are the key framework used by the United Nations to assess the treatment of prisoners, its protections

include the right to a clean and adequate sleeping area, healthy food, enough ventilation and sunlight, and procedural fairness in the administration of prisons.

5. BANGKOK RULES

The Bangkok Rules supplement existing international standards on the treatment of prisoners to be specifically tailored to the treatment of women prisoners, including admission procedures, healthcare, search procedures, and children who accompany their mothers into prison.

CORE HUMAN RIGHTS OF INCARCERATED PERSONS

Below is a list of some specific rights that are protected by international law, including the source of the right. This is not an exhaustive list, but it includes many of the rights that jailhouse lawyers can use in litigation and advocacy efforts.

Right	Description	Sources of the Right in IHRL
Right to access information	Incarcerated individuals must be given information about the rules of their institution and information about any disciplinary action that is taken against them. The right to access information also establishes the right to access newspapers, periodicals, lectures, and other sources of information to be able to keep up with the news.	UDHR ICCPR Mandela Rules
Right to access justice	No one can be subjected to arbitrary arrest or detention; everyone is entitled to a full, fair, and public trial; and everyone has the right to access the courts.	UDHR ICCPR Mandela Rules
Right to adequate living conditions	Adequate living conditions include: <ul style="list-style-type: none"> - The right to occupy a cell or room by oneself at night (unless due to temporary overcrowding); - The right to one's own bed and clean bedding, windows for light; - Clean and adequate clothing; and - Sufficient food and water. 	UDHR Mandela Rules

Right	Description	Sources of the Right in IHRL
Right to sanitation	Incarcerated individuals are able to comply with the needs of nature in a clean and decent manner. This includes adequate bathing and shower installations so that individuals can shower at a minimum once a week, and free menstrual hygiene products.	UDHR ICESCR Mandela Rules Bangkok Rules
Right to medical care	Incarcerated individuals should receive the same level of health care as is available in the community, and individuals should have access to necessary health care services for free, without discrimination on the grounds of their legal status.	UDHR ICESCR Mandela Rules Bangkok Rules
Right to contact with the outside world	Incarcerated individuals must be allowed to communicate with friends and family through letters (and emails where available) and visits; prisons must house incarcerated individuals close to their homes or places of social rehabilitation to the extent possible.	UDHR ICCPR Mandela Rules
Right to access education, programming, and training	Incarcerated individuals must have access to education, recreational and cultural activities, and vocational training and work.	UDHR ICESCR Mandela Rules
Right to property	This includes the right to have one's belongings kept in safe custody during incarceration and returned upon release.	UDHR Mandela Rules
Right to be free from torture and other cruel, inhuman, or degrading treatment or punishment	An act is considered torture if it: - causes severe pain or suffering; - is intentionally inflicted to obtain information, punish, intimidate, coerce, or discriminate; and - is committed by or with the permission of a government official or anyone acting in an official capacity	UDHR ICCPR Mandela Rules

HOW JAILHOUSE LAWYERS CAN USE INTERNATIONAL HUMAN RIGHTS LAW

When and how to use human rights law is a strategic choice. Some methods like submitting a complaint to a regional body may require "exhaustion" of your own country's courts, but others—like writing a complaint to a special rapporteur (an independent UN official who reports on whether or not countries are properly protecting human rights)—do not. Here are some ideas on how you can use human rights law:

1. Using human rights in community-led campaigns
2. Citing to human rights law as persuasive authority in lawsuits
3. Campaigns to raise awareness around ratification/recognition of international human rights in the United States
4. Naming and shaming campaigns
5. Filing complaints with international bodies

LEGAL EMPOWERMENT TOOLKIT SERIES

LEARNING OBJECTIVES:

1. Define data and data justice
2. Understand how data can be collected and used for legal advocacy efforts
3. Identify strategies for collecting and using data

INTRODUCTION TO DATA AND DATA JUSTICE

This training guide will provide you with an introduction to the tools to collect, analyze, and use data for legal advocacy purposes.

What is data?

Data is knowledge or information, including individual facts, raw numbers, or stories. Data is often collected, analyzed, and used to better understand a situation, demonstrate a pattern, tell a story, or provide evidence to support a case.

What is data justice?

Incarcerated people are often the subject of data collection rather than active participants in the process of creating and analyzing data. Data justice offers a set of tools to empower individuals to collect, analyze, and use data for advocacy.

A note on ethics:

Before we dive in, it is important to note that as with all types of legal advocacy work, collecting information on conditions of confinement may come with personal security and safety risks. When working with data, it is important to prioritize and

protect people's right to consent to how their data is collected and used, privacy and confidentiality, and security and safety. Always remember to evaluate the risks and benefits of data collection or analysis and understand the potential harms of working with data. It is also important to be transparent and accountable to those who you collect data from by being open about how their data will be used and protected.

HOW TO COLLECT DATA

Data collection is a process of gathering information in a systematic way. Data collectors observe patterns, collect information, and gather evidence to try to answer a question and tell a story. Jailhouse lawyers can collect data on their everyday lives on the inside and use the data to try and change their conditions and create better systems.

Identifying relevant data

Before you begin collecting data, it may be helpful to develop a research question that will help you identify what you want to investigate through your data collection. You will then collect information to answer that question. There are two types of data collection categories that

may be relevant for jailhouse lawyers:

Data for an individual case, claim, or advocacy:

This type of data collection will involve collecting and tracking details related to one's own experience or case, or related to another person's case.

Example of data for an individual case, claim, or advocacy:

An individual in state prison believes that he is being denied adequate access to the law library and wants to file a claim that he does not have adequate access in court. To make this claim, he will need to document the days he tried to access the library, what days he successfully accessed the library, how long he accessed the library for, what items were available in the law library, and what the impacts of his limited access were. This individual will need to compare his own experience with the legal standard for adequate access to the courts.

Research question: Am I receiving adequate access to the library? Why or why not?

Identifying relevant data: To answer this research question,

you should consider what information is relevant for advocacy around adequate access to courts. You will want to understand what is permissible under state statutes and case law. In *Bounds v. Smith*, the Supreme Court held that “the fundamental constitutional right of access to the courts requires prison officials to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.” In *Lewis v. Casey*, the Supreme Court held, among other things, that a prisoner must show that the inadequacy of the law library or legal assistance caused an “actual injury” and “hindered his efforts to pursue a legal claim.” Therefore, when answering this research question, you should look at your state-specific policy as set forth by the Department of Corrections and Community Supervision (“DOCCS”) on library access and see where the gaps are between the Supreme Court decisions and case law, state policy, and the reality on the ground. This will help you determine what data is relevant to your claim.

Collective / Systems Advocacy: evidence to be collected and tracked to support advocacy around a collective or systemic issue affecting a community of people:

This type of data collection often involves collecting data from others based on their experiences or from direct observation of a situation.

Example of collective/systems advocacy:

A jailhouse lawyer notices that the commissary does not have necessary items available and wants to advocate for the inclusion of additional items. She decides to log the availability of items at the commissary over time and notes which items are missing. She also keeps a daily diary tracking the number of items that are available.

Research question: Does the commissary have necessary items available for prisoners?

Identifying relevant data:

Consider what evidence you need to collect to show that the commissary is not providing all of the necessary items and review the institutional policies of the commissary and relevant laws or regulations in order to show that the prison is improperly restricting the available items at the canteen. Identifying the relevant data to support your claim will involve seeing the gaps between the reality in the prison and what is required under the relevant laws, rules, and regulations.

DATA COLLECTION PLAN

After you identify the type of data you need, make a plan to collect reliable data and document important facts. Consider the following guiding questions:

- What data do you need to collect to answer your research question?
- What is the best method for

collecting this data?

- What types of data will be considered legitimate and persuasive, and by whom?
- Who is your audience?
- What kind of data will your audience consider legitimate?
- What kind of data might persuade your audience?
- How will you incorporate ethics (consent, privacy, confidentiality, security and safety) into your data collection strategy?

Data can be collected in many ways. Consider the following methods of data collection:

Direct observation: Observation is a way of collecting data by watching behavior, events, or noting physical characteristics.

Questionnaires and Surveys: A survey asks questions to a sample of individuals about their opinions, knowledge or experiences.

Interviews: Interviews may shed light on a particular issue through understanding people’s opinions, interpretations, experience, or other expertise.

Accessing government records: Accessing publicly available government records, through Freedom of Information Act (FOIA) requests, state records requests, medical records requests, or other formal processes, can be a powerful form of data collection.

Publicly available data: Many organizations publish research and reports on a variety of issues which can be a powerful spark for meaning making.

DATA ANALYSIS AND PROCESSING: WHAT STORY DOES YOUR DATA TELL?

Data analysis and processing will help you to identify patterns and key takeaways from the data you collected. Consider the following methods to help you analyze your data:

Organization: Once you have collected your data, it is important to organize the data so that you can categorize and classify the data accordingly. Your goal is to determine the stories that emerge from your data.

Visualization: Data visualization is a graphical or pictorial representation of data or information collected. You can create tables, charts, logs, or graphs to keep the collected data organized. This can help reveal patterns, communicate essential information, and find areas where more data is needed.

HOW TO USE DATA FOR ADVOCACY

After you have collected and analyzed data on a certain issue, you are ready to use it to support your advocacy efforts. Consider the following principles when using data for advocacy:

Privacy and Informed Consent: Security and confidentiality of data are important to protect yourself and others. You should provide confidentiality to others and protect any sensitive information collected. Do not

publicly disclose or divulge the information others shared with you, and only use the data in the way you originally told them it would be used.

Detailed Documentation: Document your complaint with as many details as possible.

Corroborate: If possible, use testimonies from multiple people showing the same thing.

Know Your Audience: Be aware of who you share data with and the goals of sharing your data:

- *Grievances and Litigation:* If the court is your audience, be sure to research relevant evidentiary rules around what sort of evidence will be permitted in a judicial proceeding.
- *Reaching out to Outside Advocates:* The way you tell your story to outside advocates should reflect who you are talking to and what your goals are.
- *Contacting politicians or the media:* Formulate a letter in accordance with the ideology or worldview of the person you are contacting. Explain why the issue you are writing about aligns with their beliefs.

Collaborate: Work with others to enhance the power of your data and advocacy.

ACTIVITY

Read the statements below and note if you strongly agree, agree, strongly disagree, or disagree. Explain your position.

Data can change the world for the better.

Data about me or my people is usually accurate and represents who I am.

Data has the power to change people's minds and transform reality.

Only government, universities and other big institutions can use data.

Data can support my work as a jailhouse lawyer.

Become part of the conversation. Write to JLI at:

Attn: Tyler Walton
Jailhouse Lawyers Initiative
Bernstein Institute for Human Rights at NYU Law
139 MacDougal Street, B23
New York, NY 10012

BEYOND BARS:

Writing and art by jailhouse lawyers

Book Review: *“Prisons Make Us Safer” and 20 Other Myths About Mass Incarceration* (Beacon Press, 2021) by Victoria Law

Christopher Santiago
Columbia, South Carolina

The United States imprisons more people than any other country. The problem has been worsened by well meaning reforms and so-called “tough-on-crime” policies that were based on myths and therefore failed to address the root causes of crime.

In her new book, *“Prisons Make Us Safer” and 20 Other Myths About Mass Incarceration*, journalist and author Victoria Law debunks 21 of the most widespread misconceptions about mass incarceration in America. Her important book uses stories, facts, and figures to educate readers about the carceral state while countering the false narratives that drive mass incarceration.

The book is divided into four parts.

Part one begins with a history of American prisons that exposes the racism and penal populism at the heart of mass incarceration. People of color are disproportionately imprisoned, and according to Law, “mass incarceration remains a method of racialized social control, sweeping those who have been marginalized by societal inequities behind bars and walls rather than addressing these issues.”

Law then deflates the myths that prisons make us safer, that they provide rehabilitation, and that they somehow cause offenders to take responsibility for their actions. She shows, instead, that prisons are used to warehouse people in unsafe conditions where they are prevented from making amends for the harms they’ve caused. Further, most prisoners are not released as rehabilitated citizens; they leave prison far worse off than when they arrived.

Part two challenges the myths that prisoners “jump the line” for medical care and that jails and prisons function as safety nets that provide effective mental health services and drug treatment. The truth is, medical care for many prisoners and detainees is either unavailable or falls so far below the standard of care that it is virtually nonexistent, leading to “jail attributable deaths.” And rather than treating mental illnesses, prison environments both cause and exacerbate them. In addition, most jails and prisons do not provide adequate drug treatment programs. Instead, they lock people suffering from addiction inside buildings with drugs.

Part three shines a

spotlight on people, such as women and transgender prisoners, who are often overlooked in discussions of mass incarceration. It explains how our society’s failure to address domestic violence has created an “abuse-to-prison pipeline” for survivors of abuse who are incarcerated for defending themselves. It also argues that immigration detention and mass incarceration are part of the same problem and should be addressed together.

Let’s face it: If incarceration were an effective solution to the problem of crime, then the United States, which locks up more people than any other nation, should have the lowest crime rate in the world. But that clearly isn’t the case.

So how do we end mass incarceration? The answer, Law writes in part four, is neither simply to make American prisons more like Norwegian prisons nor to release only nonviolent offenders. Rather, we must address the social, political, cultural, and economic problems that lead to crime while changing the way we deal with crime as a society.

She believes restorative and transformative justice should replace the solely punitive

Book Review: “Prisons Make Us Safer” and 20 Other Myths About Mass Incarceration (Beacon Press, 2021) by Victoria Law (continued)

warehousing and execution of offenders as our society’s response to crime. This means adopting programs that promote the healing and support of those affected by crime while working with offenders to address the harms they’ve caused. These approaches would hold the person who caused the harm accountable by helping them to repair any damage done and to

make the changes necessary to ensure they do not repeat their crimes in the future.

Law’s mythbusting abolitionist guide to mass incarceration should be required reading for anyone interested in America’s criminal punishment system. At 227 pages, it’s a quick read. And though its chapters are interrelated, each one addresses a particular facet

of mass incarceration and can be read as an essay on its own. If you have yet to pick up a book about mass incarceration, make this the one.

Highly recommended.

Christopher Santiago is a prisoner in the South Carolina Department of Corrections.

Hard at Work

Glenn Smith

Florida City, Florida

I am enslaved (pursuant to the Thirteenth Amendment to the Constitution of the United States) by commitment to the Florida Department of Corrections (FDC).

Prisoners in the FDC are required by state statute and FDC rule (not more than 60 hours per week) to work, but few are compensated for the myriad of jobs performed that keep the system functioning. Few work assignments are personally meaningful or provide experience or training transferable to any free world work.

I have been assigned (Shanghaied for) work in food service, the laundry, for inside grounds (mowing, etc.), and as a houseman (cleaning living areas) – all unpaid work and, to me, thoughtless, boring tasks.

Also unpaid, but the only work assigned that was relevant, meaningful, and challenging to me, law clerk, was one that I performed for many years (on and off), starting when I came to prison in 1992 and the FDC was striving to resolve the *Hooks v. Wainwright* (Secretary of

Corrections) federal class action pursuant to the U.S. Supreme Court decision in *Bounds v. Smith*, having decided to opt for law libraries instead of attorneys for prisoner court access (as the less expensive option), working to understand and litigate my own criminal case (as well as the cases of others) and civil litigation (especially prisoner state law and civil rights) issues.

As a law clerk and especially in regard to my own grievance activity and pro se litigation, I was repeatedly subjected to retaliatory acts by FDC officials, including work reassignments, institutional transfers, and spending almost six cumulative years in confinement and close management, after being issued numerous fabricated disciplinary reports. During the past ten years or so, I was never allowed to work as a law clerk by officials at various institutions.

Nevertheless, I continue to be a jailhouse lawyer. In the last few years, I have become so disgusted and discouraged by costs (including about \$20,000 in legal costs liens against my

inmate account), the courts’ repeated failures to recognize legitimate issues and do the right thing, as well as oppressive (and to my mind, unjustified or illegal) court sanctioned that I do as little legal work aside from some grievance activity and expressing my own opinions or giving directions where asked.

In 1995, when I was a law clerk at Florida State Prison, in response to questions I had been repeatedly asked, I wrote and registered a copyright for a legal treatise titled “Convicted in Florida, Now What?” (an introduction to state and federal post-conviction processes) which right to publish and use for fundraising I assigned to the then-published Florida Prison Legal Perspectives. I lacked the resources to update the treatise, so although at the time it was generally helpful and relevant, the law soon changed substantially (as law does) to make that publication outdated.

Many of my case opinions appear in Florida and federal reporters—both limited successes and disappointing failures.

To have your writing and art featured in a future issue of *Guild Notes*, mail us your work at:

National Lawyers Guild
PO Box 1266
New York, NY 10009-8941

Please ensure all *Guild Notes* submissions are labeled "Guild Notes Submission" somewhere on the first page



NATIONAL LAWYERS GUILD

Who is adding to the mail?

Tim Orta
Pampa, Texas

Prisoner mail is one of the few things inmates have that helps retain some sense of sanity. Under the First Amendment, we inmates are given a protected right to send and receive mail. Of course I understand that prison officials must screen incoming and outgoing mail to protect an "important or substantial" interest of the prison such as preventing criminal activity. But in recent years, a new and more prevalent issue concerning inmate mail has risen in the Lone Star State.

Texas Penal Code 38.11 PROHIBITED SUBSTANCES AND ITEMS IN CORRECTIONAL FACILITY, states in subsections (b) and (d), that a person

commits an offense if the person takes a controlled substance or dangerous drug into a correctional facility or possesses a controlled substance or dangerous drug while in a correctional facility. What has been happening here at the Jordan Unit is an inmate will be called out to the Line Building and informed that a letter arrived and during random inspection, the letter alerted the dog. The inmate is then given a charge of attempting to possess a prohibited substance and in some cases, the inmate is moved to restrictive housing-G4 status (medium security).

According to the GR-106 Disciplinary Rules and

Procedures Handbook, the Use or Possession of Narcotics, Marijuana, or a controlled substance or unauthorized substance is a Level 1 offense. To be charged with this type of offense, there are elements which must be established. Elements are to include a description of the drug; use of the drug must be established through tests such as U/S or lab report. Possession must be established if a drug is a controlled substance and a lab report or field test is needed. Note: Possession includes having an item on person, in his cell, or among his belongings.

In two recent incidents, one inmate who is an author,

had photos sent in for the sole purpose of approving the photos for use in his upcoming release. (TDCJ-Jordan Unit is fully aware of this inmate's endeavors in writing.) The photos were printed off a home HP (Hewlett-Packard) printer. The photos tested positive for K-2, according to mailroom staff and Jordan Unit officials. This inmate however had family and legal support from the outside. After having the legal department from Hewlett-Packard step in, TDCJ officials dropped all charges, removed the restriction of contact with the sender of the photos, and re-instated the inmate back to the Faith-Based Values Dorm.

In the other case, this inmate does not have family or legal support from the outside. The outcome for this inmate was very different. This inmate who regularly writes to a correspondence program, had a lesson returned to sender. In the course of travel, the letter came in contact with a substance that the mailroom stated had alerted the dogs. This inmate was quickly charged and removed to restrictive housing-G4 status. A letter this inmate sent off returned and tested positive for K-2? Really?

When we really get into looking at what is happening with inmate mail, we begin to see questions that need to be answered. According to the offense description, how did these inmates provide, possess, or take an alleged illegal substance into the facility? What kind of tests are being conducted? (e.g. PH/ Conductivity for surface tension,

etc...) Are these tests from a creditable manufacturer? Are there any reports of false positive or recalls? We would also like more transparency on questions of chain of custody issues. In one case, it appeared that the way one piece of evidence was being stored brought it in contact with another piece of evidence. How do we know evidence is being handled properly and not being inadvertently contaminated? (Most officers here cannot get a proper head count at count time until the second or third time!) In another case, a photo that had been flagged and was reportedly to have tested positive for K-2, the case continued forward despite the fact that the officer admitted to ruining the photo in its original form and thus preventing retesting. However, the prosecution was allowed to continue.

What I am seeing is a prosecution system set up to where an inmate cannot in any way or form contest the evidence against him. As I prepare this piece, I, like many other inmates, fear getting any kind of mail. I fear my next letter may "alert the dogs." But I am hopeful this piece may help others and myself. I am prayful this message gets out to people who will listen. I am also seeking to be someone who is involved and a part of something, and not just a sideline watcher.

*Timothy Orta, Jordan Unit
Resident Advisor, NLG Member
Pampa, Texas*

BEYOND BARS

in memoriam

Peter Haberfeld

Submitted by Stephen Bingham



Image courtesy of Stephen Bingham

Peter Haberfeld, a lawyer for the people and community organizer, died of a heart attack at his home in Oakland on December 1, 2021. He was 80 years old. After earning a law degree at the University of California, Berkeley, Peter embarked on a life of activism as a lawyer and labor and political organizer.

As a law student in 1966, Peter worked in Albany, GA for C.B. King, the pioneering civil rights attorney and only Black lawyer in Southwest Georgia. King deeply influenced Peter, firming up his determination to use the tool of the law to defend those who are marginalized, abandoned, and powerless.

Between 1968 and 1975, Peter was an attorney and organizer in the California Central Valley, providing legal aid to Latino youth and farmworkers. In 1975, he joined the United Farm Workers legal staff, part of the legendary battle for farm worker union recognition. He was influenced by iconic leaders Cesar Chavez; Dolores Huerta; and his mentor, renowned union organizer Fred Ross, Sr. Peter helped win the landmark case, *Murguia v. Municipal Court*, which successfully limited racially discriminatory prosecution of defendant UFW members.

Peter was the first staff person hired to run the new office of the San Francisco Bay Area Chapter of the National Lawyers Guild. He

worked at the Youth Law Center, California Rural Legal Assistance (CRLA), and the Bar Sinister Legal Collective in Los Angeles. His audacious combination of lawyering and organizing incurred the wrath of the conservative legal and political establishment everywhere he went. When Governor Ronald Reagan tried to defund CRLA, he specifically cited Peter's legal work, including his involvement with the Black Panther Party in Marysville.

Peter later organized and advocated for back-to-the-land folks in Shasta County. He was a lawyer for the California Department of Industrial Relations, the state Occupational Safety and Health Agency, and the Public Employment Relations Board. He later became a union organizer for teachers in Fremont, Oakland (Oakland Education Association), and Vallejo. He then worked for the Oakland Community Organization, organizing teachers and parents for school reform in Oakland. Peter fought his final court battles at the law firm of Siegel & Yee, including an epic case that ensured the survival of the National Union of Healthcare Workers.

Peter was proud of his record of four arrests:

- during the 1964 Berkeley Free Speech Movement;

- while serving as a poll watcher during the election campaign of the Mississippi Freedom Democratic Party to elect candidates to the state's legislature in 1967;

- at People's Park in 1969;

- and with his wife, Victoria Griffith, in San Francisco protesting the 2003 U.S. invasion of Iraq.

Throughout his life, Peter was always 'presente' to 'fight the good fight' against abuses of power—in occupational safety, school reform, civil rights and more. Peter worked well into retirement, volunteering on Barack Obama's and Bernie Sanders' presidential campaigns as well as helping friends and family with legal needs.

Peter, whose Swiss and Austrian parents escaped the rise of Nazism, was born in Portland, Oregon on October 23, 1941, eight minutes before his identical twin, and grew up on his family's farms in Oregon and rural Los Angeles. He attended Reed College and the University of California Berkeley School of Law. He was

admitted to the California Bar in 1968.

Peter was a lifelong learner — deeply engaged with the world and people around him. In recent years, he and his wife Tory traveled and lived in South America. He wrote until the very end of his life on political issue in Cuba, Venezuela, Ecuador, Bolivia, Argentina, Peru and most recently France where he and Tory spent a very special time together in Montpellier and on a small farm.

Peter, whose early years were spent on his family's farm, returned to farming in France - harvesting olives, caring for sheep and horses and milking cows while "Wwoofing" (World Wide Opportunities on Organic Farms). Peter and Tory lived off and on in France for the last four years of his life.

Peter summed up why he wrote this past year a detailed unpublished memoir of his lifelong engagement in 'good trouble.' With modesty, he wrote: "If [it] ...appears as though I consider myself a hero or a major player in any way, I do not. I have described my experiences merely to convey what was happening during the period and how I participated."

Peter is survived by his wife, Victoria (Tory) Griffith with whom he shared a passion for political organizing, his daughters Demetria (Demi) Rhine of Oakland and Selena Haberfeld Rhine of New York; two granddaughters, Marina and Alexa Escobar; the mother of his daughters, Barbara Rhine of Oakland; his ex-wife Dorothy Bender of Palo Alto; his brother Steven (Rena), living in Israel; his sister Mimi Haberfeld, living in Mexico; many nieces and his mother-in-law Marilyn Griffith of Redwood City.

Peter was dearly loved and will be terribly missed by legions of people who admired his gutsy and creative lawyering and organizing as well as the many who considered him central to their lives, for both personal and political reasons. A memorial will be planned for the spring. Donations may be made to The East Oakland Collective, an organization that Peter supported which addresses the needs of unhoused people in East Oakland.

Dennis Cunningham

By NLG-SFBA Friends of Dennis Cunningham

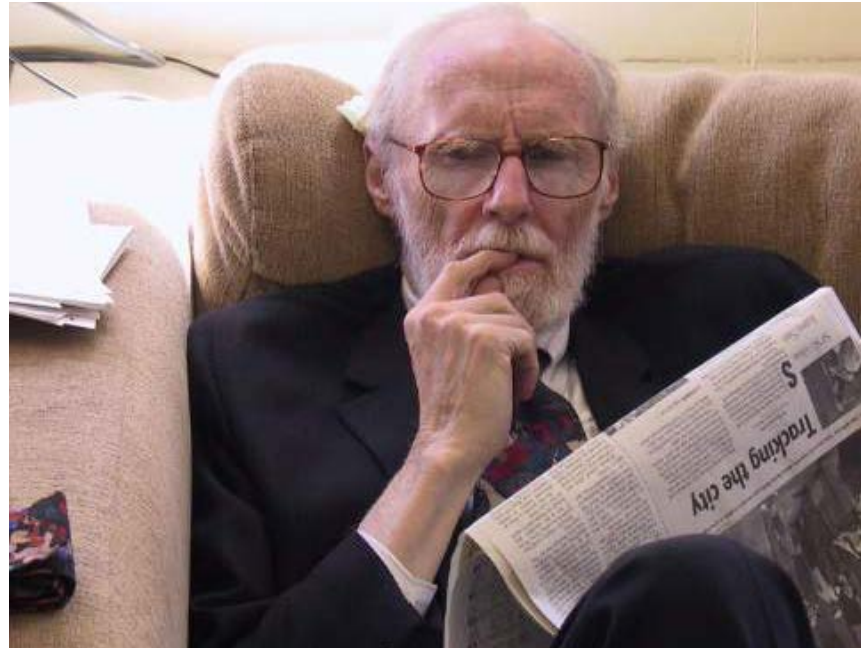


Image courtesy of NLG-SFBA, Friends of Dennis Cunningham

On March 6, beloved NLG civil rights lawyer Dennis Cunningham passed away peacefully at the age of 86, surrounded by family, after an exemplary career spanning over 50 years.

Dennis was born in Illinois in 1936 and graduated from the University of Chicago in 1955. But it was the 1963 March on Washington for Jobs & Freedom, led by the Reverend Martin Luther King, Jr., that inspired him to return to school for a law degree. Prior to that, he had bartended for the fledgling Second City improv group, then joined the local cast himself when the original cast went out on the road.

In 1968, fresh out of law school, Dennis and several NLG colleagues founded the People's Law Office in a converted sausage shop on the north side of Chicago, with the goal of working in, with, and for movements for social change. His first cases included defending people arrested in the uprisings that followed MLK's murder and at the 1968 Democratic Convention.

Dennis represented Fred Hampton, Chair of the Illinois Black Panther Party, in life and in death. In 1969, Hampton and Panther leader Mark Clark were murdered by Chicago police in a vicious pre-dawn raid. The Chicago Police crafted a cover story that they'd been attacked and had defended themselves. Dennis and his colleagues collected evidence and conducted deep forensic analysis to refute that lie and ultimately prove that the raid was set up by an FBI informant-provocateur as part of the FBI's secret COINTELPRO to infiltrate and destroy activist political organizing. After 13 years of civil litigation against FBI agents and Chicago police officers for what was in fact a racially and politically motivated conspiracy to plan and execute the raid, cover up the murders, and maliciously prosecute the survivors, Dennis

and his People's Law Office colleagues obtained what was then the largest civil rights settlement of its kind on behalf of Hampton's and Clark's families and surviving Panthers. Their case, *Hampton v. Hanrahan*, made the law of civil conspiracy against police officials.

Dennis later led the defense of dozens of prisoners falsely accused as "ringleaders" of the 1971 rebellion at Attica State Prison in New York. After the criminal charges were dropped, Dennis and fellow NLG lawyers sued state officials for the massacre of prisoners and employee hostages when the prison was retaken, and the mass torture of prisoners afterwards. The civil suit on behalf of the Attica Brothers Legal Defense Fund lasted more than a quarter-century before it finally settled in 2000 for \$12 million.

Dennis relocated to San Francisco in the early 1980s to be near his children, and settled into a cozy flat in Bernal Heights which he rented until his death, suffused by jazz music and the aroma of ganja, and filled with his own "found object art" sculptures, his well-nurtured house plants (which various Guild members cared for when he traveled) and a shelf full of revolutionary books signed by their authors, many of them about Dennis' clients and work.

Practicing out of one small office and then another in the Mission District, bustling with other activist lawyers, legal workers, and interns, Dennis represented protesters arrested at the 1984 Democratic Party convention in San Francisco, anti-nuclear actions, anti-apartheid demonstrations, the police sweep of Castro Street in 1987, Central American solidarity actions in the 80s, the Rodney King verdict protests in 1992, Food Not Bombs, ActUp, and Religious Witness with the Homeless actions, among countless others.

After an attempted assassin's pipe bomb exploded under the driver's seat of Earth First! environmental activist Judi Bari in 1990, nearly killing her and injuring fellow organizer and passenger Darryl Cherney, the FBI and Oakland Police sought to frame Bari and Cherney, falsely accusing them of transporting the bomb. Dennis led a team of lawyers, and legions of volunteers, in a years long federal civil rights action against the Oakland Police officers and FBI agents responsible. In 2002, in what was only the second time the FBI had faced jury trial in a civil rights case (the Fred Hampton case was the first), the jury awarded the late Bari (who survived the bombing but died tragically from breast cancer in 1997) and Cherney \$4.4 million for violating their First and Fourth Amendment rights. It was the then largest

jury award in history against the FBI.

Dennis' glowing obituary in the New York Times noted that he was not as famous as some of his colleagues, prompting his protégé and law partner of 25 years, Ben Rosenfeld, to observe: "The Times recognized Dennis for being less well known than some of his colleagues. I say 'recognized,' because Dennis was the paragon people's lawyer, fighting every bit as fervently for legions of everyday victims of racism and state oppression as he did for his famous clients. He never sought the limelight, but let the light shine through him. For this, he was 'unrichly unrecognized' – except by all those people whose rights and dignity he championed."

Dennis continued practicing law until nearly the end of his life, working most recently with local NLG Attorney Yolanda Huang, paralegal Carey Lamprecht, and others in a number of cases against the Alameda County Sheriff's Office, based on its systematic mistreatment of inmates, particularly women and prisoners who went on hunger strike to demand conditions improve. In a jury trial Dennis and Guild lawyer Jeff Wozniak won a few years ago on behalf of male inmates sexually abused by prison officials, Dennis poignantly stated in his closing argument: "Although we send people to prison as punishment, we do not send them to prison for punishment."

"Dennis had that rare ability among lawyers to connect with a jury on a deep human level because there was no artifice, only a genuine and renewing appeal to the better angels of our natures. Everyone including his most ardent adversaries recognized his decency and humanity," Rosenfeld said.

Dennis died after beating the odds for years against prostate cancer, consistent with one of his refrains which he used to rib Rosenfeld with when they stayed up late in production on filings in the Judi Bari case: "They're guidelines, not deadlines." Dennis always adhered to his compassionate guidelines, which should serve as a model to us all.

The San Francisco Board of Supervisors closed their March 8 meeting in Dennis' honor, with a tribute shared by Supervisor Hillary Ronen.

Dennis is survived by his four children — Delia, Joe, Miranda, and Bernadine Mellis; by his brother Rob; and by his partner Mary Ann Wolcott. They warmly invite anyone wishing to make memorial donations to donate instead to the Water Protectors Legal Collective by selecting the option to donate in memory of Dennis, at www.nlg.org/wplc

Lisa Brodyaga

By NIPNLG and Friends of Lisa Brodyaga



Image courtesy of
NIPNLG

Lisa Brodyaga, a celebrated leader in immigrant rights legal work and longtime member of the National Lawyers Guild (NLG) and the National Immigration Project (NIPNLG), passed away in late October. Her dedication to human rights has left a lasting impact in the lives of those she fought for and alongside.

Brodyaga's career representing asylum seekers, other immigrants, and U.S. citizens spans more than 40 years. In 1985, Lisa co-founded Refugio Del Rio Grande, a non-profit refugee camp and law office on a 45-acre wilderness near

Harlingen, Texas. Refugio Del Rio Grande was the first law office of its kind, dedicated to providing pro bono representation to refugees in U.S. immigration prisons.

"Her story is like no other," says Carlos Moctezuma García, Board Chair of the National Immigration Project. "Her legal acumen is at a level that we all try to attain, and her commitment to fighting court battles on behalf of and with immigrants is unmatched."

In her career, Brodyaga and comrades at Refugio Del Rio Grande and Proyecto Libertad represented thousands of refugees, immigrants, and asylum seekers as they navigated the hostile and dehumanizing U.S. immigration system. Her tireless advocacy sought—and often achieved—some semblance of justice amidst overwhelming violence.

A beloved NLG and NIPNLG member, Brodyaga's lifelong commitment to justice and liberation has left a profound and lasting impact on the progressive legal community. Her fundamental belief in the possibility of lasting, positive change should remind us all of the heart of the movements we fight for. To honor her legacy, the National Immigration Project (NIPNLG) has renamed its annual outstanding member award the Elizabeth S. "Lisa" Brodyaga Award.

Larry Hildes

By Dean Tuckerman and Scott Slaba

On Saturday morning, November 20th, at 3:30 AM, friend, Fellow, musician, social activist, and attorney for the downtrodden and oppressed, Larry Hildes passed away quietly, surrounded by the love of his family who were close by. Larry had been ailing with congestive heart failure for nearly four years which steadily progressed in severity and ultimately was the cause of his death. He was preceded in death by his beloved wife Karen Weill, who died in March 2020 as the result of complications related to the removal of a brain tumor. Larry lived in Bellingham, WA. He was a long-time member of the National Lawyers Guild.

Larry's work in taking on the legal struggles of those among us least able to defend ourselves in court was relentless and ongoing. Over the years Larry never wavered in his commitment to seeking justice for those who had been victimized by the system. For the last few years, Larry was

Leonard Peltier's attorney.

Larry maintained a hopeful and optimistic outlook despite the world's happenings. He also had a deep love of music, of travel, and of sports. To the very end of his life he religiously attended online folk music circles during Covid, and was a contributor of many beautiful and powerful songs.

Larry was also one of the wickedly best punsters this world has ever produced.

Larry will be deeply missed by those who loved him, and yet those who cared for Larry breathe a deep sigh of relief as well today, for the simple reason that Larry is for the first time in a very long time, not suffering the pains of a disease that came to limit his life to the hotel room that he and Karen, had come call home.

Larry, you may be gone, but you are still with us.

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