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# **Law for the People: Supporting Mass Protest, Political Resistance, and Movements for Social Change**

*By Kris Hermes\**

The National Lawyers Guild (NLG or Guild) and its members have been supporting radical left activists and progressive social movements since the organization was founded in 1937. NLG members take action against all forms of oppression and work in solidarity with those who struggle for justice. In support of countless political struggles—from anti-war and immigrant rights to Black liberation and prison abolition—the NLG provides direct support to activists and mass movements demanding social change.

The NLG embraces a holistic approach to legal support that goes far beyond what the organization is best known for—legal observing. The NLG understands the importance of supporting activists in the streets and helping them navigate a repressive legal system. But, its members also understand that the intersection of politics and the law represents a unique opportunity to advance social change. When carried out strategically and with collective purpose, legal support can have a transformative effect.

While the Guild’s legal support certainly includes monitoring police misconduct in the streets and defending activists in the courtroom, it encompasses so much more. From setting up legal offices during mass protests to staffing legal hotlines and from organizing jail and court support programs to holding police accountable in civil court, NLG members have consistently pushed the boundaries of the law to support activists and their causes. In some cases, NLG members have politicized trials, employed unorthodox legal tactics, and used the media to shape the public narrative. These innovative forms of legal support are carried out by local and national mass defense committees, a mass defense staff person in the Guild’s National Office, and thousands of Legal Observers (LOs) across the country. NLG members and local chapters also work collaboratively with activist-led legal collectives, anti-repression crews, defense committees that form around specific cases, and community-based groups engaged in defendant support.

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This article should give you a better sense of the Guild’s vision of legal support, why it is important, and how it has been implemented over the years.

### **Legal Observers®**

In 1968, the NLG formalized its direct support of political movements and mass protest by [establishing the role of the LO](#).<sup>1</sup> The Guild deployed LOs at least twice that year, once in April during the occupations and brutal mass arrests at Columbia University and again in August at the Democratic National Convention (DNC) protests in Chicago, widely characterized as a police riot.

LOs are typically trained, coordinated, and directed by NLG lawyers, law students, or legal workers. The primary role for LOs is to monitor and record police misconduct, under the supervision of an attorney, in the event that such information or “work product” can be used in a related criminal or civil case. LOs have produced evidence in consequential criminal cases that have resulted in dismissals and acquittals. LOs have also produced evidence for—and even acted as plaintiffs in—civil litigation that has had a significant impact on free expression and political protest over the years.

Another LO role during political demonstrations is to record the arrests of protesters, other LOs, journalists, medics, and bystanders, all of whom are commonly swept up when police carry out mass arrests. In this way, the NLG, legal workers, and activists can support arrestees through the often-dehumanizing jail process by ensuring their needs are met.

Although the NLG is not politically impartial and expressly supports progressive and radical left political movements, LOs are trained to be observers of police conduct and, while in their role, to not take part in demonstrations. LOs typically do not attend a demonstration unless they are requested by event organizers. LOs will often wear lime-green baseball caps at protests to distinguish themselves and to let police and those involved in the demonstration know they are present and observing police conduct. While the presence of LOs does not necessarily prevent police abuse, to the extent law enforcement has concerns over being held accountable for their actions, LOs can sometimes have a de-escalating effect and serve as a deterrent to police violence or unconstitutional behavior against protesters.

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<sup>1</sup> See National Lawyers Guild, *Mass Defense Program*, <https://www.nlg.org/legalobservers/>.

The LO program has been the entry point for thousands of lawyers, law students, legal workers and activists who have been trained as LOs since the program began in 1968. Law students make up a large proportion of LOs on the streets, drawing from the many law schools across the country, as do legal workers and activists.

Perhaps because the LO program is so decentralized and massive in scale, a concern about the need to maintain the program's integrity led to the pursuit of a trademark on the term "Legal Observer." In 2009, the Guild [applied to the US Patent Office](#) for a certification mark that would restrict use of the term "Legal Observer" to maintain consistency in the principles that underpin the practice of legal observing.<sup>2</sup> Rather than trying to establish itself as the only organization to train and dispatch LOs, the Guild continues to encourage the development of local and national LO programs by other organizations, especially groups of color, consistent with the Guild's legal observing principles and practices. The Guild's LO certification mark, with the program's familiar lime-green color that adorns countless baseball caps, was [registered by the US Patent Office in 2017](#).<sup>3</sup>

After receiving criticism in 2016 for a lack of diversity, cognitive bias, and exclusionary practices in the LO program, the Guild's Mass Defense Committee (MDC) leadership made a number of constructive changes, including a revised LO manual that strives to address many of these issues. These changes also included encouraging new outreach methods to make the LO program more accessible to people of color and to the varied political communities the Guild supports in the streets.

### **Mass Defense Committees**

For decades, the Guild has organized local committees to support activists and mass protests. But it was not until 2000, at its annual convention held that year in Boston, that the Guild formed the nationally coordinated MDC. The MDC consists of a network of hundreds of Guild lawyers, legal workers, and law students in dozens of local committees across the country. The name is a bit of a misnomer, as MDC members have not only defended activists on criminal charges but have also made extensive use of civil litigation over the last twenty years in an effort to push back against policeabuse at

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<sup>2</sup> See [http://tsdr.uspto.gov/#caseNumber=77813382&caseType=SERIAL\\_NO&searchType=statusSearch](http://tsdr.uspto.gov/#caseNumber=77813382&caseType=SERIAL_NO&searchType=statusSearch).

<sup>3</sup> United States Patent and Trademark Office, Certification Mark on Supplemental Register, US Serial Number 86778461 (See [http://tsdr.uspto.gov/#caseNumber=86778461&caseType=SERIAL\\_NO&searchType=statusSearch](http://tsdr.uspto.gov/#caseNumber=86778461&caseType=SERIAL_NO&searchType=statusSearch)).

mass demonstrations.

MDC members in local chapters across the country oversee a staggering array of projects and roles, including some or all of the following:

- Representing activists on criminal charges;
- Pursuing impact litigation;<sup>4</sup>
- Managing local LO programs;
- Providing “Know Your Rights” trainings and literature;
- Engaging with and advising activists on protest actions and potential legal consequences;
- Setting up legal support infrastructure-staffed offices, hotlines, jail support; and
- Developing and running bail support programs

One of the most important functions of the MDC is the daily exchange of relevant news, legal precedents, ideas, and theories, as well as summaries of work the chapters are doing to support political movements at the local level. The committee is also a repository of information and a valuable collective resource for how best to litigate criminal and civil protest cases.

Soon after the MDC was formed, the NLG began publishing reports about the state’s crackdown on dissent, based largely on the work of local and national mass defense committees:

- [The Assault on Free Speech, Public Assembly, and Dissent](#) (2004)<sup>5</sup>
- [Punishing Protest](#) (2007)<sup>6</sup>
- [The Policing of Political Speech](#) (2010)<sup>7</sup>
- [Operation Backfire](#) (2012)<sup>8</sup>
- [Developments in the Policing of National Special Security Events](#) (2013)<sup>9</sup>

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4 Impact litigation refers to the practice of bringing lawsuits intended to effect social change. Impact litigation includes class action lawsuits and individual claims with broad social significance.

5 Heidi Boghosian, *The Assault on Free Speech, Public Assembly, and Dissent*, National Lawyers Guild (2004), [https://www.nlg.org/wp-content/uploads/2020/03/assault\\_on\\_free\\_speech\\_public\\_assembly\\_and\\_dissent.pdf](https://www.nlg.org/wp-content/uploads/2020/03/assault_on_free_speech_public_assembly_and_dissent.pdf).

6 Heidi Boghosian, *Punishing Protest: Government Tactics that Suppress Free Speech*, National Lawyers Guild (2007), <https://www.nlg.org/punishing-protest/>.

7 Heidi Boghosian, *The Policing of Political Speech*, National Lawyers Guild (2010), <https://www.nlg.org/wp-content/uploads/2016/09/PolicingPolSpeechCoverAndBody.pdf>.

8 National Lawyers Guild, *Operation Backfire*, 2012, <https://www.nlg.org/operation-backfire/>. This report explores the state’s targeting of environmental and animal rights activists as domestic terrorists.

9 Traci Yoder and Nathan Tempey, *Developments in the Policing of National Special Security Events: An Analysis of the 2012 RNC and DNC*, National Lawyers Guild (2013),

With the emergence of the Occupy Wall Street movement (Occupy) in 2011, and mass protests erupting across the country, the Guild's National Office hired a mass defense coordinator to work with the MDC and its leadership to support the thousands of arrestees and to challenge the widespread attacks on civil liberties. Having a staff person in the National Office exclusively dedicated to supporting social movements meant the organization could develop and implement new legal support tools, and the MDC could strengthen its efforts in a decade of rising and coordinated unrest across the country.

The structure of the national MDC is fairly informal, with a chairperson who moderates online discussion, facilitates meetings of the MDC's Steering Committee, and represents the committee at national board meetings. In 2014, the MDC implemented the structure that established the Steering Committee and treasurer, adopted two-year terms for the chairperson position, and formalized an election process. The MDC chairperson and the Steering Committee work in tandem with the Guild's National Office and the mass defense staff person to coordinate support for protest activity across the country, especially in places where local committees lack capacity or do not exist.

### **Decades of NLG Support of Activists and Social Movements in Politicized Cases**

One of the most important roles the NLG has played over the years is defending dissidents from state. Indeed, the Guild has spent decades representing activists on criminal charges and has thousands of examples to draw from.

Former NLG president Ernie Goodman could be considered one of the country's first movement lawyers who honed his skill of advancing political movements by supporting the efforts of factory workers and industrial unionism, [defending Ford strikers in the 1930s](#).<sup>10</sup> In 1952, during the McCarthy era, Goodman defended the "Michigan 6," who were accused by the House Committee on Un-American Activities of sedition and advocating the violent overthrow of the US government. [Goodman represented three of the defendants](#) and argued that their membership in the Communist Party was

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[https://www.nlg.org/wp-content/uploads/2016/09/NLG-Report-Developments-in-the-Policing-of-NSSEs-at-2012-RNC-and-DNC\\_1.pdf](https://www.nlg.org/wp-content/uploads/2016/09/NLG-Report-Developments-in-the-Policing-of-NSSEs-at-2012-RNC-and-DNC_1.pdf).

<sup>10</sup> Obituary, "Ernest Goodman, 90, Civil Rights Lawyer," *New York Times* (Apr. 2, 1997), <https://www.nytimes.com/1997/04/02/us/ernest-goodman-90-civil-rights-lawyer.html>.

protected by the First Amendment, whereas the other three defendants represented themselves and used a politically motivated strategy to expose the advent of fascism in America and their denial of a fair trial.<sup>11</sup> All six defendants were convicted.

After the 1968 DNC, several protest organizers were federally charged with felony [conspiracy and crossing state lines to incite a riot](#).<sup>12</sup> In one of the most well-known political group trials in US history, the “Chicago 8” defendants and their NLG lawyers William Kunstler and Leonard Weinglass used the spectacle of a months-long trial as an opportunity to advance the movement against the Vietnam War and shine a light on the inanity of the legal system itself. During the trial, Judge Julius Hoffman denied legal representation to Black Panther Party (BPP) co-founder Bobby Seale, ordering him bound and gagged when he vociferously objected, and eventually severed Seale from the case altogether. Five defendants were convicted on the riot charges and Judge Hoffman, reacting at least in part to the spectacle of the trial, [charged all the defendants and both Guild lawyers with contempt of court](#).<sup>13</sup> Stiff sentences were imposed by the judge, but all charges were eventually overturned on appeal.

Thirty years later, when tens of thousands of people flooded the streets of Seattle to protest the WTO meetings in late 1999, they were met with extensive police violence. The Seattle chapter of the NLG prepared and delivered Know Your Rights workshops in the months leading up to the November 30 demonstration, trained and dispatched hundreds of LOs, and assisted in the selection of plaintiffs for successful class action litigation.<sup>14</sup> The Seattle NLG and other legal groups published *Waging War on Dissent*, a comprehensive report on the WTO demonstrations and violent police reaction, funded in part by a Haywood Burns grant from the NLG National Office.<sup>15</sup>

The WTO protests ushered in a wave of global justice actions, which were met with a method of policing coined by social scientists as “strategic

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11Angela D. Dillard, “Ernie Goodman’s Long Struggle,” *Solidarity*, March/April 2012, <https://solidarity-us.org/atc/157/p3540/>.

12 Jalyn Henderson, “50 Years Later: The Chicago 7 Trial,” *WLS-TV Chicago* (Sept. 25, 2019), <https://abc7chicago.com/5568363/>.

13 Tribune News Service, “Background: Chicago 7 Trial,” *Chicago Tribune* (Oct. 24, 2016), <https://www.chicagotribune.com/news/chicago-8-trial-chicago-7-trial-story.html>.

14 *Waging War on Dissent*, eds. Seattle National Lawyers Guild WTO Legal Group, November 2000, <https://ratical.org/co-globalize/NLG-REPORT.pdf>.

15 Ibid.

incapacitation.”<sup>16</sup> From heavy surveillance and infiltration to preemptive arrests and widespread use of less-lethal weapons, this renewed level of state repression has been used ever since. In the summer of 2000, the NLG provided legal support to activists protesting at the Republican National Convention (RNC) in Philadelphia and the DNC in Los Angeles. It was during these two mass demonstrations that the foundation of the contemporary playbook of violent police tactics became clear. The NLG worked to fight against preemptive actions by the state to shut down activist spaces and suppress dissent in Los Angeles. On the other side of the country, hundreds were arrested in Philadelphia, charged with felonies and high-level misdemeanors, and held in jail on bails as high as \$1 million.<sup>17</sup> The Philadelphia chapter of the NLG worked with the defendant-led R2K Legal Collective for more than three years to [politicize the criminal cases and engineer innovative solidarity tactics in the courtroom](#). This confrontational strategy included refusing plea bargains en masse and demanding jury trials, calling for the recusal of a blatantly biased judge, and engaging the mainstream media in a way that drew public attention to widespread overcharging and aggressive prosecutions, and was successful at clearing almost everyone’s charges.

The September 11, 2001 attacks in New York City led to a substantial erosion of civil liberties in the US, further emboldening police to refine their tactics used to suppress dissent. Two years later, in November 2003, during demonstrations against the Free Trade Area of the Americas (FTAA) in Miami, police responded with a staggering array of weaponry in one of the most violent episodes in the prior twenty years.<sup>18</sup> Thousands of protesters were shot at, gassed, tasered, pepper-sprayed, clubbed, and brutally beaten. These protestors also saw the emergence of synchronized militarism, urban tanks, and [long range acoustic devices \(commonly referred to as “LRAD”\)](#).<sup>19</sup> A Miami circuit court judge who observed some of the protests himself said he saw “[no less than 20 felonies committed by police officers](#).”<sup>20</sup> In addition to

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16 Patrick Gillham and John Noakes, “Aspects of the New Penology in the Police Response to Major Political Protests in the United States, 1999–2000,” in *The Policing of Transnational Protest after Seattle*, eds. Donatella della Porta et al. (Ashgate, 2006), 111–13.

17 Kris Hermes, *Crashing the Party: Legacies and Lessons from the RNC 2000* (PM Press, 2015).

18 Jeremy Scahill, “Mayhem in Miami,” *Democracy Now!* (Nov. 21, 2003), [https://www.democracynow.org/2003/11/21/mayhem\\_in\\_miami\\_amidst\\_tear\\_gas](https://www.democracynow.org/2003/11/21/mayhem_in_miami_amidst_tear_gas).

19 Boghosian, *supra* note 7 at 43.

20 Amy Driscoll, “Judge: I Saw Police Commit Felonies,” *Miami Herald* (Dec. 20, 2003), [https://www.citizenstrade.org/ctc/wp-content/uploads/2011/05/miamiherald\\_judge\\_12202003.pdf](https://www.citizenstrade.org/ctc/wp-content/uploads/2011/05/miamiherald_judge_12202003.pdf).

setting up a legal office and deploying scores of LOs, the NLG filed multiple lawsuits [challenging the sweeping and coordinated police repression](#).<sup>21</sup>

The following year, in the summer of 2004, New York City hosted the RNC. The local chapter of the NLG staffed a legal office to support the hundreds of thousands of demonstrators who took to the streets. More than 36,000 police officers were deployed in a concerted effort to stifle dissent.<sup>22</sup> Before the convention even began, police had harassed thousands of cyclists in a planned “Critical Mass” demonstration and [arrested more than 260 people](#).<sup>23</sup> The city refused to issue a permit to antiwar organizers for a protest on the Great Lawn in Central Park, which was successfully challenged by NLG lawyers from the Partnership for Civil Justice Fund (PCJF).<sup>24</sup> More than 1,800 people were arrested over several days of protests, with most of them [processed in an old bus depot](#) converted into a detention center.<sup>25</sup> To add insult to injury, [hundreds of arrestees were detained longer than legally allowed](#), compelling the NLG and Legal Aid Society to file writs of habeas corpus for their immediate release. The NLG accused the city of deliberately delaying the arrestees’ detention until President George W. Bush had left the convention.<sup>26</sup> During the ensuing criminal trials, the NLG worked with I-Witness Video, a collective that monitored police misconduct during the protests, and used their footage as evidence to refute police testimony and discredit their prejudicial narrative.<sup>27</sup>

In 2008, the RNC was hosted by the Twin Cities of Minneapolis and St. Paul, whose police responded with a level of violence and repression not seen since the 2003 FTAA protests in Miami. Use of surveillance and infiltration by informants and undercover police was widespread and, be-

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21 See *Killmon v. City of Miami*, 199 Fed. Appx. 796 (11th Cir. 2006), [https://www.nlg.org/wp-content/uploads/2017/02/Killmon\\_Eleventh\\_Circuit\\_Ruling.pdf](https://www.nlg.org/wp-content/uploads/2017/02/Killmon_Eleventh_Circuit_Ruling.pdf).

22 Hermes, *supra* note 17 at 247.

23 Amy Goodman, “Critical Mass: Over 260 Arrested in First Major Protest of RNC,” *Democracy Now!* (Aug. 30, 2004), [https://www.democracynow.org/2004/8/30/critical\\_mass\\_over\\_260\\_arrested\\_in](https://www.democracynow.org/2004/8/30/critical_mass_over_260_arrested_in).

24 Alan Feuer, “Settlement on Use of Central Park’s Great Lawn,” *New York Times* (Jan. 8, 2008), <https://www.nytimes.com/2008/01/08/nyregion/09cnd-lawn.html>.

25 Ed Pilkington, “New York agrees \$18m settlement with 2004 Republican convention protesters,” *The Guardian* (Jan. 15, 2014), <https://www.theguardian.com/world/2014/jan/15/new-york-agrees-settlement-2004-republican-convention>.

26 “City of New York to Pay \$230,000 to Settle Republican National Convention Contempt Proceeding,” press release, National Lawyers Guild, New York chapter, April 15, 2005.

27 Amy Goodman, “NY Law Enforcement Caught Doctoring Video of RNC Arrests,” *Democracy Now!* (Apr. 14, 2005), [https://www.democracynow.org/2005/4/14/ny\\_law\\_enforcement\\_caught\\_doctoring\\_video](https://www.democracynow.org/2005/4/14/ny_law_enforcement_caught_doctoring_video).

fore the protests began, police shut down the RNC Welcoming Committee convergence space, detaining dozens of people and seizing personal belongings, computers, and political propaganda.<sup>28</sup> Police also used assault rifles to raid the houses of multiple activists in both Minneapolis and St. Paul, charging some with conspiracy to riot. Police used tear gas, pepper spray, stun grenades, rubber bullets, and other projectile weaponry, ultimately arresting more than 800 people.<sup>29</sup> In addition to working with Coldsnap Legal Collective to set up a legal office and dispatching scores of LOs, the local NLG chapter also worked with an arrestee-led legal support group called Community RNC Arrestee Support Structure (CRASS) to defend the “RNC 8” against conspiracy and state terrorism charges and mitigate the legal harm that hundreds of others were facing.<sup>30</sup>

On the shoulders of the Arab Spring, the Occupy movement against social and economic inequity began on September 17, 2011, in Zuccotti Park, near New York City’s financial district. The Zuccotti Park encampment, which became a symbol of the movement, quickly inspired dozens of encampments in cities across the US and the world. The occupations were experiments in direct democracy—laboratories for non-hierarchical, anti-authoritarian, democratic organizing with roots in an [anarchist political tradition](#).<sup>31</sup> By early October 2011, there were Occupy protests in [over 900 cities across 82 countries](#).<sup>32</sup> There were [more than 600 occupations in the US alone](#).<sup>33</sup> Police began a coordinated crackdown in late October, culminating in [nearly 8,000 arrests](#) across the country.<sup>34</sup> NLG lawyers defended many of the arrestees in court and, using civil litigation, [successfully challenged police policy](#) in cities like Oakland, California.<sup>35</sup> In late 2012, NLG lawyers obtained [a trove](#)

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28 Boghosian, *supra* note 7 at 29.

29 Hermes, *supra* note 17 at 231.

30 “Untitled, or What to Do When Everyone Gets Arrested: A CRASS Course in Providing Arrestee Support,” zine, Community RNC Arrestee Support Structure, 2010, <https://archive.org/details/CRASSZinePrint/mode/2up>.

31 David Graeber, “Occupy Wall Street’s anarchist roots,” *Al Jazeera* (Nov. 29, 2011), <https://www.aljazeera.com/indepth/opinion/2011/11/2011112872835904508.html>.

32 Alan Taylor, “Occupy Wall Street Spreads Worldwide,” *The Atlantic* (Oct. 17, 2011), <https://www.theatlantic.com/photo/2011/10/occupy-wall-street-spreads-worldwide/100171/>.

33 Joanna Walters, “Occupy America: protests against Wall Street and inequality hit 70 cities,” *The Guardian* (Oct. 8, 2011), <https://www.theguardian.com/world/2011/oct/08/occupy-america-protests-financial-crisis>.

34 Caroline Fairchild, “Occupy Arrests Near 8,000 As Wall Street Eludes Prosecution,” *HuffPost* (May 23, 2013), [https://www.huffpost.com/entry/occupy-wall-street-arrests\\_n\\_3326640](https://www.huffpost.com/entry/occupy-wall-street-arrests_n_3326640).

35 Eoin Reynolds, “Occupy Oakland protesters awarded \$1m over police violence during

[of documents](#) through the Freedom of Information Act, which revealed that the Federal Bureau of Investigation (FBI), Department of Homeland Security (DHS), local police, counterterrorism fusion centers, and private security companies employed by major banks collected and shared information used to target and arrest Occupy protesters.<sup>36</sup>

NLG lawyers from Chicago were still in court defending hundreds of local Occupy protesters when, in May 2012, the city hosted meetings of the North Atlantic Treaty Organization (NATO), designated by DHS as a [National Special Security Event](#).<sup>37</sup> Just weeks earlier, the Chicago chapter of the NLG had [won a \\$6.2 million settlement](#) against the police for improperly arresting over 700 people at an antiwar demonstration in 2003.<sup>38</sup> Despite this clear message from the courts to respect free expression, the week of NATO demonstrations was [dominated by police harassment and violence](#), serious injuries, high-level charges, and exceptionally high bonds.<sup>39</sup> The NLG staffed a twenty-four-hour legal office, dispatched LOs, and represented protesters facing charges. It was also mostly NLG lawyers, including those from the People's Law Office, who defended the NATO 3, activists [indicted on terrorism charges from the Illinois version of the USA PATRIOT Act](#), in a highly politicized trial.<sup>40</sup>

A year later, in 2013, the Black Lives Matter (BLM) movement [began as a hashtag](#) and an online call to action after George Zimmerman was acquitted for the 2012 murder of Trayvon Martin.<sup>41</sup> In 2014, when police murdered Michael Brown in Ferguson, Missouri, and Eric Garner in New York City, BLM's online activism shifted to direct action in the streets. The

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arrests," *The Guardian* (July 3, 2013), <https://www.theguardian.com/world/2013/jul/03/occupy-oakland-protesters-1m-police>.

36 "FBI Documents Reveal Secret Nationwide Occupy Monitoring," Partnership for Civil Justice Fund, [http://www.justiceonline.org/fbi\\_files\\_ows](http://www.justiceonline.org/fbi_files_ows) (last visited Aug. 17, 2023).

37 Yoder and Tempey, *supra* note 9.

38 "NLG Reaches \$6.2 Million Settlement in Class Action Against Chicago Police," press release, National Lawyers Guild (Feb. 8, 2012), <https://www.nlg.org/nlg-reaches-6-2-million-settlement-in-class-action-against-chicago-police/>.

39 "NLG Provides Wrap-up of Police Reaction to NATO Demonstrations," press release, Chicago Chapter of the National Lawyers Guild (May 25, 2012), <https://nlgchicago.org/blog/nlg-provides-wrap-up-of-police-reaction-to-nato-demonstrations/>.

40 Yana Kunichoff, "NATO 3 Indictment Shows Increased Terrorism Charges," *Truthout* (June 21, 2012), <https://truthout.org/articles/nato-3-indictment-shows-increased-terrorism-charges/>.

41 Elizabeth Day, "#BlackLivesMatter: the birth of a new civil rights movement," *The Guardian* (July 19, 2015), <https://www.theguardian.com/world/2015/jul/19/blacklivesmatter-birth-civil-rights-movement>.

movement became known for its militant tactics of blockading freeways, occupying shopping malls, and demonstrating outside of police stations. Mass protests were not only local, where the police murders took place, but also coordinated among cities across the country. The police murders of Brown and Garner were followed by the murders of Laquan McDonald in Chicago, Tamir Rice in Cleveland, Freddie Gray in Baltimore, and so many others, each sparking outrage and mass street actions. Over several years, thousands of BLM activists were arrested, many of whom were bailed out by local NLG chapters and represented in court by NLG lawyers. The BLM movement has given rise to many important legal groups, including the [Chicago Community Bond Fund](#),<sup>42</sup> which was formed by impacted community members, activists, and NLG members, and [Law for Black Lives](#),<sup>43</sup> a Black femme-led national network of radical lawyers and legal workers—many from the NLG—who are building legal infrastructure for movement organizations and cultivating a community of legal advocates trained in [movement lawyering](#).<sup>44</sup>

In early 2016, members of the Standing Rock Sioux tribe established the [Sacred Stone Camp](#) as an Indigenous-led resistance to the Dakota Access Pipeline (DAPL), which was proposed to run from the Bakken oil fields in North Dakota to southern Illinois.<sup>45</sup> The pipeline’s path beneath the Missouri and Mississippi Rivers, as well as under part of Lake Oahe near the Standing Rock Indian Reservation, threatened the region’s water supply and sacred land.<sup>46</sup> By summer 2016, additional camps had formed and [thousands of people went to Standing Rock](#) in support of the #NoDAPL movement.<sup>47</sup> Police regularly used repressive tactics, violence, and less-lethal weapons against water protectors; on one occasion, a private security company [used dogs to attack water protectors](#), injuring several people.<sup>48</sup> [More than 800 people were arrested](#) over several months of resistance.<sup>49</sup> The NLG helped form the [Water](#)

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42 See <https://chicagobond.org>.

43 See <http://www.law4blacklives.org>.

44 See <http://www.law4blacklives.org/respond>.

45 Ladonna Brave Bull Allard, “Why the Founder of Standing Rock Sioux Camp Can’t Forget the Whitestone Massacre,” *Yes! Magazine* (Sept. 3, 2016), <https://www.yesmagazine.org/democracy/2016/09/03/why-the-founder-of-standing-rock-sioux-camp-cant-forget-the-whitestone-massacre/>.

46 See <https://www.nlg.org/wp-content/uploads/2016/11/TRO-Memo.pdf>.

47 David Archambault II, “Taking a Stand at Standing Rock,” *New York Times* (Aug. 24, 2016), <https://www.nytimes.com/2016/08/25/opinion/taking-a-stand-at-standing-rock.html>.

48 Amy Goodman, “Standing Rock Sioux Chairman Calls for Investigation of Dog Attacks on Native American Protesters,” *Democracy Now!* (Sept. 6, 2016), [https://www.democracynow.org/2016/9/6/standing\\_rock\\_sioux\\_chairman\\_calls\\_for](https://www.democracynow.org/2016/9/6/standing_rock_sioux_chairman_calls_for).

49 See <https://www.waterprotectorlegal.org/post/wplc-concludes-nodapl-criminal-defense-program-in-north-dakota>.

[Protector Legal Collective](#) (WPLC) to serve as an on-the-ground legal team.<sup>50</sup> At the request of tribal leadership, the WPLC set up its office in a tent in Oceti Sakowin Camp, representing many of the arrestees. Eventually WPLC filed a [class action lawsuit](#) over a militarized police attack that took place in November and left many people injured.<sup>51</sup> Although the Army Corps of Engineers had been conducting a formal environmental impact assessment, four days after President Donald Trump took office in 2017, he [signed an executive order](#) authorizing the pipeline's construction.<sup>52</sup>

On January 20, 2017 (J20), amid thousands of protesters who had converged on the nation's capital to protest the inauguration of President Trump, a few hundred militant anti-capitalists and anti-fascists took to the streets in black bloc<sup>53</sup> formation. During a march that snaked through downtown Washington, DC, some people destroyed property at targeted businesses such as Starbucks, McDonald's, and Bank of America. Police used chemical and projectile weapons to attack the crowd, and eventually "kettled" and arrested more than 230 protesters, journalists, medics, LOs, and bystanders.<sup>54</sup> Many individuals were indicted on several riot-related felonies and misdemeanors, and faced more than sixty years in prison. These "J20 defendants" joined with supporters and NLG legal workers to collectively fight their charges.<sup>55</sup> Most of the defendants unified around a refusal to accept plea bargains or to cooperate against their codefendants, but the collective effort also involved defendants and supporters sharing information with each other, developing and implementing legal strategies, and working with the mainstream and independent media to shape the political and legal narratives.<sup>56</sup>

The Trump administration spent millions of dollars and used renewed

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50 See <https://waterprotectorlegal.org>.

51 See <https://www.nlg.org/wp-content/uploads/2016/11/TRO-Memo.pdf>.

52 Robinson Meyer, "Trump's Dakota Access Pipeline Memo: What We Know Right Now," *The Atlantic* (Jan. 24, 2017), <https://www.theatlantic.com/science/archive/2017/01/trumps-dakota-access-pipeline-memo-what-we-know-right-now/514271/>.

53 A black bloc is a tactic used by protesters who wear black clothing, cover their faces, and tend to move in group formation. Black bloc participants are commonly associated with anarchism, anti-capitalism, and anti-fascism. The tactic was developed in the 1980s during the European autonomist movement.

54 "NLG Denounces Politically Motivated Superseding Indictment in DC Inauguration Felony Cases," press release, National Lawyers Guild (May 2, 2017), <https://www.nlg.org/nlg-denounces-politically-motivated-superseding-indictment-in-dc-inauguration-felony-cases/>.

55 See <https://www.defendj20resistance.org> (archived at: <https://web.archive.org/web/20181228230058/http://defendj20resistance.org/>).

56 From author's own involvement.

levels of repression—including widespread use of conspiracy and other serious felony charges against hundreds of anarchists and left radicals—in an effort to gain convictions against J20 defendants. Prosecutors hacked defendants’ seized phones and used benign communications as grounds for a criminal conspiracy. They also seized private Facebook and Apple Cloud data and communications and forced a large web hosting company to turn over the IP addresses of visitors to a protest-related website.<sup>57</sup> Members of the Guild’s mass defense leadership played an independent, yet integral, role in providing legal support to J20 defendants who successfully exposed the political motivations of the government’s case by publicizing its vulnerabilities and connections to far-right groups and bigoted police witnesses. After being sanctioned by the court for withholding key evidence, and unable to secure a single conviction in the first two trials, the US Attorney’s Office eventually [dismissed nearly all the cases](#).<sup>58</sup>

Many of the J20 defendants self-identified as “antifa,” a social movement whose increased ranks were coincident with the election of President Trump, the proliferation of his racist and xenophobic policies, and a sharp public rise in white supremacist and white nationalist groups in the US. As antifa continues to confront fascists in the streets of cities such as Berkeley, Charlottesville, Olympia, and Portland, NLG lawyers and legal workers have been providing a range of support to anti-fascist activists. Serious attention is being paid by the NLG to better understand how to support such activists, who are targeted by both fascists and police.<sup>59</sup> The police, many of whom are already working with fascist and far-right organizers,<sup>60</sup> are routinely arresting and assaulting anti-fascist activists.<sup>61</sup> To address this rise in violent demonstrations and attacks by the far right, the Guild invested resources into ensuring its online data are more secure and legal hotlines are less susceptible to ambush. The Guild also updated its LO manual in 2019, which includes

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57 Kris Hermes, “Remaining J20 Cases Dismissed: Takeaways for Anarchists and our Social Movements,” *Agency* (July 27, 2018), <https://www.anarchistagency.com/commentary/remaining-j20-cases-dismissed-takeaways-for-anarchists-and-our-social-movements/>.

58 Jude Ortiz, “J20 Case Ends in Dropped Charges After Prosecutor Caught Hiding Evidence,” *Guild Notes*, Summer/Fall 2018, <https://www.nlg.org/guild-notes/article/j20-case-ends-in-dropped-charges-after-prosecutor-caught-hiding-evidence/>.

59 Traci Yoder, “Legal Support for Anti-Fascist Action,” National Lawyers Guild (July 10, 2017), <https://www.nlg.org/legal-support-for-anti-fascist-action/>.

60 Erik Ortiz, “‘Disturbing’ texts between Oregon police and far-right group prompt investigation,” *NBC News* (Feb. 15, 2019), <https://www.nbcnews.com/news/us-news/disturbing-texts-between-oregon-police-far-right-group-prompts-investigation-n972161>.

61 Marc Steiner, “Hate Groups March in Portland, Oregon and Police Attack Counter-Protesters,” *The Real News Network* (Aug. 17, 2018), <https://therealnews.com/stories/hate-groups-march-in-portland-oregon-and-police-attack-counter-protesters>.

a section on best practices for observing police at demonstrations in which fascists are present.

On May 27, 2020, amidst the COVID-19 pandemic, George Floyd, a 46-year-old African-American man, was killed by Derek Chauvin, a white Minneapolis Police Department (MPS) officer, who knelt on his neck for nearly eight minutes. Floyd's killing, along with the March 2020 murder of Breonna Taylor by white police officers serving a "no-knock" warrant in Louisville, Kentucky, sparked widespread civil unrest under the banner of Black Lives Matter. Protests began in Minneapolis, but quickly spread across the country and around the world, with reports of uprisings in [more than 2,000 US cities](#)<sup>62</sup> and in [over 60 countries](#).<sup>63</sup> As many as 26 million people participated in what are considered to be the [largest protests in US history](#).<sup>64</sup> The police response was massive, violent, and repressive, with rampant use of less-lethal weapons. By early June, more than 200 US cities had imposed curfews, and at least 24 states and the District of Columbia [deployed nearly 62,000 National Guard soldiers](#).<sup>65</sup>

In the US, [over 17,000 people were arrested](#),<sup>66</sup> mainly for low-level offenses such as curfew violations or blocking roadways,<sup>67</sup> but more than 360 people were prosecuted for federal offenses such as property destruction, conspiracy to riot, and other riot-related charges.<sup>68</sup> Police [arrested, attacked, and tear gassed](#) numerous LOs while they were monitoring police miscon-

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62 Audra D. S. Burch, Weiyi Cai, Gabriel Gianordoli, Morrigan McCarthy and Jugal K. Patel, "How Black Lives Matter Reached Every Corner of America," *New York Times* (June 13, 2020), <https://www.nytimes.com/interactive/2020/06/13/us/george-floyd-protests-cities-photos.html>.

63 Wikipedia, "List of George Floyd protests outside the United States," [https://en.wikipedia.org/wiki/List\\_of\\_George\\_Floyd\\_protests\\_outside\\_the\\_United\\_States](https://en.wikipedia.org/wiki/List_of_George_Floyd_protests_outside_the_United_States) (last visited Aug. 17, 2023).

64 Larry Buchanan, Quoc Trung Bui, and Jugal K. Patel, "Black Lives Matter May Be the Largest Movement in U.S. History," *New York Times* (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

65 Alexandra Sternlicht, "Over 4,400 Arrests, 62,000 National Guard Troops Deployed: George Floyd Protests By The Numbers," *Forbes* (June 2, 2020), <https://www.forbes.com/sites/alexandrasternlicht/2020/06/02/over-4400-arrests-62000-national-guard-troops-deployed-george-floyd-protests-by-the-numbers/>.

66 Meryl Kornfield, Austin R. Ramsey, Jacob Wallace, Christopher Casey and Verónica Del Valle, "Swept Up By Police," *Washington Post* (Oct. 23, 2020), <https://www.washingtonpost.com/graphics/2020/investigations/george-floyd-protesters-arrests/>.

67 Meg Kelly and Elyse Samuels, "Who caused the violence at protests? It wasn't antifa," *Washington Post* (June 22, 2020), <https://www.washingtonpost.com/politics/2020/06/22/who-caused-violence-protests-its-not-antifa/>.

68 From data gathered by the Mass Defense Director of the NLG.

duct in at least a dozen cities.<sup>69</sup> NLG lawyers represented hundreds of people accused of state and federal offenses from every corner of the country. The uprisings, which continued into 2021, precipitated a racial reckoning in the US and elsewhere, leading to the removal of numerous statues and monuments, as well as the adoption of dozens of policy proposals intended to address systemic racism and police violence, including bans on chokeholds, reduced funding for police, and restricted use of less-lethal weapons. Soon after the uprisings began, the Minneapolis city council voted overwhelmingly to [dismantle the MPS](#).<sup>70</sup> But, perhaps as an indication of the struggle needed to challenge the institution of policing, the city council [only reduced its funding](#) by \$7.7 million.<sup>71</sup>

### Using Civil Litigation to Protect Social Movements and Free Expression

The Guild's involvement over the years supporting and defending activists against criminal charges is complemented by its use of civil litigation to protect free expression, to fight back against police abuse, and challenge unconstitutional patterns and practices by the state. This work has been carried out mainly by members of the Guild's MDC and National Police Accountability Project, and has garnered many milestone settlements that have helped curb some of the worst abuses against activists and social movements.

Amid the fallout of the FBI's counterintelligence program (COINTELPRO), NLG lawyers filed important civil lawsuits against local police agencies in Chicago and New York City. In 1971, NLG lawyer Barbara Handschu, along with Abbie Hoffman, members of the War Resisters League, Gay Liberation Front, Black Panther Party, and others, filed the lawsuit *Handschu v. Special Services Division*.<sup>72</sup> This lawsuit challenged the New York City Police Department's (NYPD) use of informants, infiltration, surveillance, and summary punishment against left activists engaging in First Amendment-protected activity. The case resulted in a 1986 consent decree that aimed to restrict such police practices without evidence of current or planned crimes

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69 "Police Targeting NLG Legal Observers at Black Lives Matter Protests," National Lawyers Guild (June 7, 2020), <https://www.nlg.org/police-targeting-nlg-legal-observers-at-black-lives-matter-protests/>.

70 Dionne Searcey and John Eligon, "Minneapolis Will Dismantle Its Police Force, Council Members Pledge," *New York Times* (June 7, 2020), <https://www.nytimes.com/2020/06/07/us/minneapolis-police-abolish.html>.

71 Liz Navratil, "Divided Minneapolis City Council votes to cut \$8 million from police budget," *Star Tribune* (Dec. 10, 2020), <https://www.startribune.com/divided-minneapolis-council-keeps-mayor-jacob-freys-target-for-a-larger-police-force/573343121/>.

72 See *Handschu v. Special Services Division*, 605 F. Supp. 1384 (S.D.N.Y. 1985).

and established an oversight body—the *Handschu* Authority—to hold the NYPD accountable for its actions.<sup>73</sup> The *Handschu* consent decree still exists today, but has been weakened due to years of eroding civil liberties and an inability to effectively hold the NYPD in check.

In *Alliance to End Repression v. City of Chicago*,<sup>74</sup> police were similarly taken to task by NLG lawyers for decades of political spying, disruption, and sabotage. The case helped establish the 1981 “Red Squad” consent decree, designed to curb the activities of the Chicago police division that was dedicated to spying on political dissidents.<sup>75</sup> But, by 2001, the “Red Squad” consent decree was all but eviscerated.

In 1996, an NLG attorney won a significant victory with *Collins v. Jordan*,<sup>76</sup> a lawsuit challenging First Amendment restrictions predicated on the basis that similar political activity resulted in instances of violence sometime in the past.<sup>77</sup> Nonetheless, police have repeatedly used the specter of “violent anarchists” and images of property destruction over the prior two decades to justify massive shows of force and extensive violence against activists.

The Guild has consistently worked with activists and organizers to oppose the state’s efforts to restrict the terms of political protest. In 2000, the Los Angeles NLG chapter sued and won an injunction in the lead-up to the DNC, [striking down a “secure zone” of more than eight million square feet](#) around the convention site, as well as striking down the city’s onerous park-permit regulations.<sup>78</sup> The Guild also used civil litigation to force the repeal of unconstitutional permit schemes and assembly laws used in advance of the 2003 FTAA protests.<sup>79</sup> Yet, despite these kinds of victories, cities continue to selectively refuse demonstration permits and, even when they are granted, march routes and rally locations are commonly dictated by local or federal officials.

NLG lawyers also used civil litigation in advance of the 2000 DNC to prevent city agencies, such as the Fire Department, from preemptively

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<sup>73</sup> Boghosian, *supra* note 6 at 59.

<sup>74</sup> See *Alliance to End Repression v. City of Chicago*, 561 F.Supp. 537 (N.D.Ill.1982).

<sup>75</sup> *Ibid* at 61.

<sup>76</sup> See *Collins v. Jordan*, 110 F.3d 1363, 1371 (9th Cir. 1996).

<sup>77</sup> Boghosian, *supra* note 5 at 9.

<sup>78</sup> Boghosian, *supra* note 7 at 13.

<sup>79</sup> Boghosian, *supra* note 5 at 89.

raiding activist convergence spaces.<sup>80</sup> Yet, despite this success, administrative searches have been used in other cities since then to disrupt or shut down political spaces.<sup>81</sup>

Activists protesting the International Monetary Fund (IMF) and World Bank in April 2000 in Washington, DC were violently attacked and entrapped by police, who arrested nearly 700 people. NLG lawyers at the PCJF sued the District of Columbia, the Metropolitan Police Department, and others for mass false arrest, excessive force, and other claims, eventually reaching a settlement agreement in 2009 with monetary awards of [more than \\$13 million](#) and policy reforms that included a prohibition on the use of police lines to trap and detain protesters.<sup>82</sup> The federal judge who oversaw the litigation called the class-action settlement “[historic](#)” and an achievement for future generations.<sup>83</sup>

Even though police violence routinely occurs at political protests, legal challenges against police misconduct can be difficult to win because of sweeping immunity protections afforded to law enforcement. Proving the exception, lawyers and legal workers from the NLG and American Civil Liberties Union (ACLU) of Northern California won a class-action lawsuit against police for their violent attack on an antiwar picket at the Port of Oakland in April 2003. Police fired wooden bullets, sting ball grenades, and shot filled bean bags at hundreds of protesters and dock workers, resulting in numerous injuries, including broken bones. In a landmark settlement reached in 2004, the Oakland Police Department agreed to reform their crowd-control policy, making Oakland the first city in the US to forbid “the indiscriminate use of wooden bullets, rubber bullets, tasers, bean bags, pepper spray and police motorcycles to control or disperse crowds or demonstrations.”<sup>84</sup>

Lawyers with the Los Angeles NLG chapter and the Mexican Ameri-

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80 Ibid, 26.

81 Similar tactics were used in advance of IMF/World Bank protests in April 2000, RNC 2000 protests, and RNC 2008 protests, among others.

82 Sarah Karush, “DC Agrees to Pay \$13M over Arrests of Protesters,” *Associated Press* (Nov. 23, 2009), [http://www.justiceonline.org/dc\\_agrees\\_to\\_pay\\_13m\\_over\\_arrests\\_of\\_protesters](http://www.justiceonline.org/dc_agrees_to_pay_13m_over_arrests_of_protesters).

83 Maria Glod, “D.C. agrees to \$13.7 million settlement in 2000 mass arrest,” *Washington Post* (July 1, 2010), <https://www.washingtonpost.com/wp-dyn/content/article/2010/06/30/AR2010063005200.html>.

84 “In Landmark Agreement, Oakland Prohibits Less Lethal Weapons for Crowd Control,” ACLU of Northern California (Nov. 9, 2004), <https://www.indybay.org/news-items/2004/11/10/17044661.php>.

can Legal Defense and Educational Fund won a landmark class-action settlement stemming from police violence at a 2007 May Day immigrant rights march. In what became known as the “May Day Melee,” three platoons of officers from the Los Angeles Police Department (LAPD) charged a crowd of more than 6,000 people demonstrating in Macarthur Park, [clubbing them and shooting them with less-lethal weapons](#).<sup>85</sup> The settlement included an award of nearly \$13 million, officer terminations and suspensions, and extensive reforms to LAPD crowd-control policies and training.

In 2014, NLG lawyers won the [largest payout for protesters in US history](#) when New York City settled multiple lawsuits stemming from the 2004 RNC for a total of \$18 million.<sup>86</sup> More than 1,800 people arrested in massive police sweeps before and during the convention were held in overcrowded, deplorable conditions. Some protesters were taken to the hospital to treat [rashes and asthma caused by oil-soaked floors and chemical fumes](#) they were exposed to during their detention in an old bus depot.<sup>87</sup> Members of the New York City NLG chapter won another landmark civil victory in 2023, with a \$13.7 million class-action settlement over rights violations by law enforcement against more than a thousand New Yorkers protesting the police murder of George Floyd in 2020.<sup>88</sup>

The following table illustrates some of the key monetary victories from contemporary civil litigation undertaken by NLG attorneys:

Mass Protest in US	Year	City	Civil Suit(s) Settlement Amounts
World Trade Organization	1999	Seattle, WA	<a href="#">\$1,800,000</a> <sup>89</sup>
Democratic National Convention	2000	Los Angeles, CA	<a href="#">\$4,100,000</a> <sup>90</sup>
International Monetary Fund/World Bank	2000	Washington, DC	<a href="#">\$13,700,000</a> <sup>91</sup>
Iraq War	2003	Chicago, IL	<a href="#">\$11,000,000</a> <sup>92</sup>
Republican National Convention	2004	New York, NY	<a href="#">\$18,000,000</a> <sup>93</sup>

<sup>85</sup> Boghosian, *supra* note 7 at 61.

<sup>86</sup> Sarah Lazare, “‘Largest in US History’: NYC to Pay \$18 Million for Mass Arrests at RNC,” *Common Dreams*, January 16, 2014, <https://www.commondreams.org/news/2014/01/16/largest-us-history-nyc-pay-18-million-mass-arrests-rnc>.

<sup>87</sup> Ed Pilkington, “New York agrees \$18m settlement with 2004 Republican convention protesters,” *The Guardian* (Jan. 15, 2014), <https://www.theguardian.com/world/2014/jan/15/new-york-agrees-settlement-2004-republican-convention>.

<sup>88</sup> Colin Moynihan, “New York to Pay \$13 Million Over Police Actions at George Floyd Protests,” *New York Times* (July 20, 2023), <https://www.nytimes.com/2023/07/20/nyregion/nypd-george-floyd-protesters-settlement.html>.

May Day	2007	Los Angeles, CA	<a href="#">\$12,800,000<sup>94</sup></a>
George Floyd Uprisings	2020	New York, NY	<a href="#">\$13,700,000<sup>95</sup></a>

### Upending the “Service Provider” Model of Legal Support

As part of an institution that reproduces systems of hierarchy and forms of oppression, the Guild has struggled with the tendency to think of legal support as a service provided to those in need, which in turn can keep its members at arm’s length from the social movements the Guild supports. The “service provider” model is a concept that is still fully entrenched in the legal profession and, for most lawyers, is rooted in the role of “expert” and the precedence of an individual client’s interests at the exclusion of any broader legal implications, any impacts on other activists, or any consequences for the larger social movement.

The Guild’s efforts to support and work in solidarity with social movements took a sharp turn when the “New Left” started shaping the politics of the 1960s. It did not take long for this wave of younger and more radical activists to shake up systems of hierarchy, sexism, and elitism in the legal profession, and the Guild was no exception.

In the late 1960s and early 1970s, a number of legal collectives were formed by NLG members in cities such as Los Angeles, San Francisco, Chicago, and New York, with a dedicated focus on defending activists and social movements. These collectives were immersed in radical political theory, and certain members fancied themselves as activists first and lawyers second.<sup>96</sup> In some cases, lawyers and legal workers alike were paid based on need rather than status or accreditation, and work was shared equitably.

89 Bob Young, “City to pay \$1 million to settle lawsuit over WTO arrests,” *Seattle Times* (Apr. 3, 2007), <https://www.seattletimes.com/seattle-news/city-to-pay-1-million-to-settle-lawsuit-over-wto-arrests/>.

90 Heidi Boghosian, *supra* note 5 at 63.

91 Maria Glod, “D.C. agrees to \$13.7 million settlement in 2000 mass arrest,” *Washington Post*, July 1, 2010.

92 “Case Profile,” *Vodak v. City of Chicago, Civil Rights Litigation Clearinghouse*, <https://www.clearinghouse.net/detail.php?id=11954> (last visited Aug. 17, 2023).

93 Lazare, *supra* note 86.

94 Boghosian, *supra* note 7 at 62.

95 Moynihan, *supra* note 88.

96 Camilo E. Lund-Montano, “Out of Order: Radical Lawyers and Social Movements in the Cold War,” PhD diss., (University of California, Berkeley, 2018), 87.

This shake-up also impacted the Guild as an organization. Building on the experiences of legal collectives across the country, New Left activists and members of the women’s movement within the Guild began restructuring the National Office by forming the National Office Collective in 1973.<sup>97</sup> Two years earlier, in 1971, the NLG voted to accept legal workers—those who do “legal work” or “legal support work” but do not hold a bar card and are not enrolled in law school—as full-fledged members of the organization.<sup>98</sup> Adding legal workers to its ranks, a hard-fought struggle led by the Women’s Caucus, was incredibly important to the direction of the organization, then and for decades to come.

Legal workers typically make up a large proportion of NLG members actively working at the local level to support social movements, and frequently come from or are still involved in political organizing. Legal workers tend to maintain strong bonds and build trust with the social movements they are supporting. Whereas lawyers can be restricted by legal ritual and a professional obligation to adhere to the rules of the legal system, legal workers are better positioned to bridge gaps between legal and political communities.

NLG members play a crucial role in helping to demystify the law for activists, sharing valuable skills and information, and framing the legal fight as a political fight too. Legal workers in particular have tried to avoid the “service provider” trap by engaging directly with activists throughout the protest organizing process. Integrated legal support can offer more unmediated relationships with social movements and can open up more possibilities for pushing back against the legal system. Whether operating independently, as a legal support affinity group, or as part of a legal collective, Guild members have been able to develop peer relationships with activists and organizers. By working together in the streets, in the jails, and in the courtrooms, those in the legal community and political organizers have collectively used the principles of mutual aid, decentralized decision-making, and nonhierarchical organizing to effectively exploit points of legal and political leverage, and build stronger movements for social change.

At the same time, the legal system’s traditional, hierarchical, and patriarchal roots run deep, making it difficult to completely disrupt the service

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97 Karen Jo Koonan, Oral History Interview, quoted in Camilo E. Lund-Montano, “Out of Order: Radical Lawyers and Social Movements in the Cold War,” PhD diss., 90.

98 “Programs and Resolutions Submitted by the Women’s Caucus,” 1972, BAN-AFG, Box 35 Folder 2, quoted in Camilo E. Lund-Montano, “Out of Order: Radical Lawyers and Social Movements in the Cold War,” PhD diss., 72.

provider model. This is true for lawyers and legal workers who intentionally or unintentionally reinforce the more oppressive tendencies of the legal system. But it is also true for defendants and other activists who relinquish a certain amount of autonomy and independent decision-making when they defer to lawyers and legal workers, thereby reproducing a societal understanding of the legal system and how they fit into it. Nonetheless, the NLG, and the Mass Defense Committee in particular, remains committed to upending the “service provider” model of legal support, which includes better understanding the role of the movement lawyer.

### **A Legal Collective Renaissance**

A new wave of legal collectives swept across North America in the early 2000s, starting with the 1999 protests against the WTO in Seattle and the resulting formation of the Midnight Special Law Collective.<sup>99</sup> Legal victories in Seattle and, shortly thereafter, in Washington, DC helped inspire a new generation of activists. And, the members of Midnight Special, many of whom were also active members of the NLG, brought with them a new vision for how activists could engage the legal system.

Although legal expertise can never replace a strong social movement, Midnight Special maintained that “by deepening our collective understanding of the legal system, spreading the tools to fight it and keeping decision-making power in the hands of the people affected by those decisions, activist-based law collectives are helping to strengthen the movement.”<sup>100</sup> Midnight Special also argued against the notion that formal education is necessary to understand the law, a myth the collective said is “perpetuated in order to keep power in the hands of the privileged.”<sup>101</sup>

Midnight Special maintained that the ability to monkey wrench the legal system is a valuable tool and, by understanding its vulnerabilities and points of intervention, we can effectively turn the machine on itself with stunning results. It was this desire to push the boundaries of the legal system while supporting political arrestees that sparked another renaissance of legal collectives. Shortly after the turn of the century, new collectives formed in Austin, Cincinnati, New York, Philadelphia, Washington, DC, and other loca-

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<sup>99</sup> Hermes, *supra* note 17 at 261.

<sup>100</sup> Phaedra Travis, Sarah Coffey, and Paul Marini, “Wrenching the Bench: People’s Law Collectives and the Movement,” *Earth First! Journal*, 2002 [archived at: <https://web.archive.org/web/20110727023933/http://www.earthfirstjournal.org/article.php?id=123>]

<sup>101</sup> Id.

tions around the country. As with Midnight Special, many members of these collectives were also legal worker members of the Guild.

Other commonalities besides membership in the NLG existed between this newer wave of legal collectives and their historical counterparts, including organizing principles based on mutual aid, consensus decision-making, and an egalitarian approach to work. That said, most contemporary legal collectives are activist led, often deliberately excluding lawyers, whereas most of the collectives from the 1960s and 1970s were lawyer-focused and represented defendants like traditional law firms. According to Midnight Special, activist-led legal collectives “can keep the case politically focused, create propaganda and work with the media in ways that most lawyers can’t.”<sup>102</sup>

The Guild benefitted profoundly from this renewed, vital energy in the legal worker community, which helped the organization deepen its connections and solidarity with movements for social change. While Midnight Special and other legal collectives from that era have since disbanded, newer legal collectives and support crews have taken their place. As an example, [anti-repression committees](#) grew out of the Occupy movement and formed in various cities across the country to support radical left activists caught up in the legal system. Some of these committees include or work with Guild members, and several still exist today.

### **Pushing Boundaries by Exploiting the Nexus of Politics and the Law**

There have been several examples over the decades to show how movement lawyers, legal collectives, and activists have worked “outside the box” to achieve remarkable results. Those historical milestones are rare, in part because of a tendency by activists to underestimate their collective strength against an intimidating legal system.

In 1969, the Chicago 8 defendants and their lawyers put the legal system on trial and made a memorable spectacle of their legal predicament. Shortly after, in 1971, with the culmination of efforts by the “Catholic Left” to resist the Vietnam War by raiding dozens of draft boards and destroying thousands of Selective Service documents, [twenty-eight Catholic clergy and antiwar activists were arrested and charged with felonies](#) for their part in burning draft files in Camden, New Jersey.<sup>103</sup> With the help of NLG lawyers,

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<sup>102</sup> Id.

<sup>103</sup> “The Story,” The Camden 28, *PBS POV* (Sept. 11, 2007), <http://www.camden28.org/master.html?http://www.camden28.org/thestory.htm>.

the “Camden 28” [took the protest into the courtroom](#) and put the Vietnam War on trial.<sup>104</sup> Despite fully acknowledging their actions, all the defendants were acquitted by [jury nullification](#).<sup>105</sup>

Nearly thirty years later, just after its formation in 2000, Midnight Special began working with activists to prepare for protests against the World Bank and IMF held that April in Washington, DC. During multiple days of protests, more than 1,200 activists were arrested, the vast majority of who engaged in a practice known as “jail solidarity,” a set of non-cooperation tactics, including the refusal to identify oneself to authorities, used collectively to protect vulnerable arrestees and mitigate legal harm.<sup>106</sup> The local NLG chapter worked with Midnight Special, which acted as a mediator and helped arrange negotiations between jailed arrestees and the political leadership in DC.<sup>107</sup> After five days in jail, an agreement was reached resulting in the release of nearly all IMF/World Bank protesters on minor infractions and a small fine that was paid for with funds raised by Midnight Special. These extraordinary negotiations stood out as one of the more innovative legal maneuvers stemming from mass political arrests over the prior twenty years.

Although the successful use of collective action to negotiate the terms of release from jail is rare, arrestees have additional opportunities to use their collective strength in the weeks and months after their release. Arrestees have used “court solidarity” strategies to politicize their cases, such as pleading “not guilty” en masse, refusing plea bargains, invoking speedy trial rights, and demanding to be tried as a group.

Less than four months after the IMF/World Bank protests, thousands of people flooded the street of Philadelphia and used mass direct action to protest the 2000 RNC. Jail solidarity tactics were used by hundreds of arrestees but were largely ineffective against an intransigent and brutal law enforcement apparatus. Soon after the last arrestees were released from jail

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104 Apoorva Tadepalli, “Meet Marty Stolar, a Lawyer Who Carries Protests into the Courtroom,” *The Independent* (Mar. 30, 2018), <https://independent.org/2018/03/meet-marty-stolar-a-lawyers-who-brings-the-protest-into-the-courtroom/>.

105 *Frequently Asked Questions*, Fully Informed Jury Association, <https://fija.org/library-and-resources/library/jury-nullification-faq/what-is-jury-nullification.html> (last visited Aug. 17, 2023).

106 Kris Hermes, “Collective Action Behind Bars,” *Upping the Anti* (June 28, 2016), <https://uppingtheanti.org/journal/article/18-collective-action-behind-bars>.

107 Hermes, *supra* note 17 at 263. This author was arrested, engaged in jail solidarity tactics, and took part in negotiations with DC leadership to achieve release from jail for nearly all protesters and with minimal legal consequences.

more than two weeks after the protests, with hundreds of people facing felonies and other serious charges, the R2K Legal Collective started organizing a “court solidarity” strategy.<sup>108</sup> Led by defendants, R2K Legal also included activists, legal workers, law students, and movement lawyers, many of whom were NLG members.

First, in a staged show of defiance, RNC defendants refused guilty plea offers en masse and steadfastly pursued trials. Then, in the months and years that followed, R2K Legal exposed widespread police surveillance and infiltration, used innovative political and legal tactics, and staged political trials. Understanding the broader political implications and need for public support, R2K Legal mounted campaigns to garner community support and put pressure on key officials to dismiss the charges. The proactive use of media to shift public opinion from contempt for protesters to near-unanimous support was also pivotal to R2K Legal’s success.

The media can be a powerful tool in leveraging the nexus of politics and the law for the purpose of advancing movements for social change. In addition to helping build public support, the media can be used to expose preemptive state tactics, highlight police brutality, keep activists out of jail, and mitigate the harm of the legal system. In 2012, during demonstrations against NATO in Chicago, the local NLG chapter worked with the media to draw attention to rampant police abuse and to strategically expose the identities of two undercover Chicago police officers who were part of a sting operation that resulted in the arrest of three people (later called the “NATO 3”) on state-level terrorism charges.<sup>109</sup> NLG lawyers and legal workers, including from the People’s Law Office in Chicago, helped defend the NATO 3 in what was a highly politicized trial.<sup>110</sup>

A few years later, in July 2016, amid a growing BLM movement, people took to the streets in the Twin Cities outraged by the police murder of Philando Castile. In one protest, thousands of people occupied a section of I-94 west of downtown St. Paul and shut down the freeway for several hours. Dozens of people were arrested on riot-related charges and other misdemeanors. Castile’s cousin, Louis Hunter, was targeted by police and was the only

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<sup>108</sup> Id. at 113.

<sup>109</sup> “Photograph of Suspected Informant,” Chicago Chapter of the National Lawyers Guild (May 21, 2012), <https://nlgchicago.org/mass-defense-committee/nato/media/photograph-of-suspected-informant/>.

<sup>110</sup> “People’s Law Office Supporting NATO Protesters,” People’s Law Office, <https://peopleslawoffice.com/lawyers-representing-nato-protests-nato3-police-brutality-against-protester/> (last visited Aug. 17, 2023).

person arrested to be charged with felonies. NLG lawyers were there to represent Hunter and other defendants but, most remarkably, a collective approach was taken by defendants and supporters to use legal and political strategies to push back. Right away, a majority of the defendants [deliberately refused plea offers](#) to use the threat of dozens of costly trials to demand the dismissal of charges against Hunter.<sup>111</sup> Supporters also mounted a [months-long campaign](#), including “call-in” days, rallies, and strategic use of the media, to apply political pressure and call on the prosecutor to drop the charges.<sup>112</sup> More than a year after his arrest and a week before the first I-94 trial was set to begin, the prosecutor [dismissed all charges](#) against Hunter.<sup>113</sup>

Today, with the climate crisis and the grassroots response ramping up, one of the more innovative legal tools used to help bring politics into the courtroom and advance the movement against fossil fuels is the “necessity defense.” Just in the last few years, [environmental and climate activists have invoked the necessity defense in more than thirty cases](#)—arguing that civil disobedience is necessary to prevent a much greater threat to civilization—with varying degrees of success.<sup>114</sup> For the most part, judges and prosecutors are reticent to allow evidence of the climate catastrophe into criminal cases and, as a result, very few defendants get to use the defense at trial. Judges often deny the defense outright and, on the rare occasions when the court allows it, most prosecutors would rather dismiss the charges than take part in a show trial. One recent exception was a case involving five Extinction Rebellion activists from Portland, Oregon who, in April 2019, were [arrested for blockading train tracks](#) used by Zenith Energy to transport tar sands oil.<sup>115</sup> After being granted use of the necessity defense, NLG lawyers from the Civil Liberties Defense Center and elsewhere [made convincing arguments](#)

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111 Sarah Horner, “Most Philando Castile protesters plead not guilty, rejecting deal,” *Pioneer Press* (Jan. 12, 2017), <https://www.twincities.com/2017/01/12/many-philando-castile-protesters-plead-not-guilty-rejecting-plea-deal/>.

112 Niko Georgiades, “Action to ‘Drop the Charges’ on Louis Hunter,” *Unicorn Riot* (July 28, 2017), <https://unicornriot.ninja/2017/action-drop-charges-louis-hunter/>.

113 Susan Du, “Prosecutor drops rioting charges against Castile’s cousin Louis Hunter,” *City Pages* (Aug. 2, 2017), [archived at: <https://web.archive.org/web/20170804235909/http://www.citypages.com/news/prosecutor-drops-rioting-charges-against-castiles-cousin-louis-hunter/438138193>]

114 “Climate Necessity Defense Case Guide,” Climate Defense Project (Dec. 29, 2020), <https://climatedefenseproject.org/wp-content/uploads/2021/05/CDP-Climate-Necessity-Defense-Case-Guide.pdf>.

115 Jake Johnson, “Landmark Win in ‘Fight for Habitable Future’ as Jury Refuses to Convict Climate Activists Who Presented Necessity Defense,” *Common Dreams* (Feb. 28, 2020), <https://www.commondreams.org/news/2020/02/28/landmark-win-fight-habitable-future-jury-refuses-convict-climate-activists-who>.

[and called expert witnesses](#) to testify, compelling five out of the six jurors to acquit the activists of trespass charges, which resulted in a hung jury.<sup>116</sup> The prosecutors declined to retry the case, giving climate activists an important victory in advancing the necessity defense and in using the courts to advance social movements.

### Where to From Here?

Ever since dissidents came under renewed attack at the turn of the century,<sup>117</sup> police have been finding new and increasingly opaque methods to spy on and disrupt social movements and mass protest in the US. Rapidly evolving technology has spurred innovations in surveillance and inadequate privacy protections have [left us even more vulnerable](#).<sup>118</sup> Local police have also become [more militarized](#),<sup>119</sup> from their use of camouflage and riot gear to tanks and [weapons made for war](#).<sup>120</sup>

For more than twenty years, the FBI, Secret Service, and other federal, state, and local law enforcement agencies have used the designation of National Special Security Event (NSSE) to engage in surveillance, infiltration, and disruption of protest organizing for political summits such as the WTO and NATO meetings, as well as the presidential inaugurations and quadrennial Democratic and Republican conventions.<sup>121</sup> Local police departments have also used federal funding from NSSEs to [buy up arsenals of less-lethal weaponry](#)<sup>122</sup> that are later used on members of marginalized communi-

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116“Extinction Rebellion Portland Activists’ Protest Charges Dismissed in Major Victory for Climate Necessity Defense,” Civil Liberties Defense Center (Feb. 27, 2020), <https://cldc.org/necessity-defense-victory-Portland-XR>.

117Patrick F. Gillham, “Securitizing America: Strategic Incapacitation and the Policing of Protest Since the 11 September 2001 Terrorist Attacks,” Western Washington University, 2011, [https://cedar.wvu.edu/sociology\\_facpubs/12/](https://cedar.wvu.edu/sociology_facpubs/12/).

118 Charlie Warzel and Stuart A. Thompson, “How Your Phone Betrays Democracy,” *New York Times* (Dec. 21, 2019), <https://www.nytimes.com/interactive/2019/12/21/opinion/location-data-democracy-protests.html>.

119 Glenn Greenwald, “The Militarization of U.S. Police: Finally Dragged Into the Light by the Horrors of Ferguson,” *The Intercept* (Aug. 14, 2014), <https://theintercept.com/2014/08/14/militarization-u-s-police-dragged-light-horrors-ferguson/>.

120 Terry Gross, “Militarization Of Police Means U.S. Protesters Face Weapons Designed For War,” *National Public Radio* (July 1, 2020), <https://www.npr.org/2020/07/01/885942130/militarization-of-police-means-u-s-protesters-face-weapons-designed-for-war>

121 Yoder and Tempey, *supra* note 9.

122 “DC Police Spent Over \$300,000 in Weapons, Ammunition to Use Against Inauguration Day Protesters,” DC Chapter of the National Lawyers Guild (Oct. 30, 2017), <https://www.commondreams.org/newswire/2017/10/30/dc-police-spent-over-300000-weapons->

ties who already deal with police violence on a daily basis.

We have also seen a precipitous rise in state-level anti-protest legislation aimed at curtailing free expression and mass protest. With help from the American Legislative Exchange Council (ALEC) and other conservative groups, [forty-five US states have introduced more than 260 anti-protest bills, and have enacted 42 of them since 2017](#).<sup>123</sup> Several of those bills were based on protection of so-called “critical infrastructure” in an effort to further [criminalize Indigenous and environmental movements](#) against the fossil fuel industry.<sup>124</sup> When legislation fails to suppress dissent, corporations are increasingly using [Strategic Lawsuits Against Public Participation](#) (SLAPPs) to silence their critics by drawing them into protracted and costly legal battles, seeking monetary damages for defamation or by imposing injunctions that prevent lawful protest.<sup>125</sup>

As evidenced by years of work and action, NLG lawyers, law students, and legal workers will be there to monitor police misconduct, support jailed activists, represent political defendants against criminal charges, and challenge police abuse in the civil courts, but we must up the ante to match the current climate. Quick to respond and build collective strength, NLG lawyers and legal workers joined with Defending Rights and Dissent and others in 2018 to form the “[Protect Dissent Network](#)” in an effort to fight anti-protest bills around the country.<sup>126</sup> The NLG also joined more than two dozen legal, environmental, and human rights organizations to form “[Protect the Protest](#),” a strong coalition confronting the widespread use of SLAPP lawsuits across political movements.<sup>127</sup>

This is the kind of power we must build to preserve free expression and to challenge state and corporate-led repression. We must be nimble in our response to a changing legal and political landscape. Our ability to protect and care for each other, especially with increasingly punitive legal consequences, will depend in part on our ability to employ ever-more innovative strategies and tactics to confront political repression and the broader systems of oppression.

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[ammunition-use-against-inauguration-day](#).

123 See <https://www.icnl.org/usprotestlawtracker/>.

124 Traci Yoder, “The Attack on Climate Justice Movements,” National Lawyers Guild (Mar. 14, 2019), <https://www.nlg.org/the-attack-on-climate-justice-movements/>.

125 See <https://protecttheprotest.org/history/>.

126 See <https://rightsanddissent.org/campaigns/defend-the-right-to-protest/>.

127 See <https://www.protecttheprotest.org/about/>.