



The Policing of Political Speech

Constraints on Mass Dissent in the U.S.

A NATIONAL LAWYERS GUILD REPORT

The Policing of Political Speech

Constraints on Mass Dissent in the U.S.

The Policing of Political Speech
Constraints on Mass Dissent in the U.S.

A National Lawyers Guild Report

Written by Heidi Boghosian
Edited by Jamie Munro
Additional editing by Paige Cram, Dan Gregor, Michael Leonard and Suzanne-Juliette Mobley
Interior layout by Paige Cram

© 2010 National Lawyers Guild. Non-profit educational media are hereby granted permission to reproduce or redistribute any part hereof, provided attribution to the National Lawyers Guild is included and a copy is furnished to the National Lawyers Guild free of charge within thirty days of publication. Advance permission is required for commercial use, including use as handouts or other materials at conferences or trainings for which a fee is charged. All other rights reserved.

David Gesspass, President ▪ Russell Bloom and Carol Sobel, Executive Vice Presidents ▪ Rachel Rosnick, Student Vice President ▪ Roxana Orrell, Treasurer ▪ Heidi Boghosian, Executive Director

ISBN: 978-0-615-39888-4

A copy of this report is available for download at www.nlg.org

Additional copies can be obtained from:

National Lawyers Guild
132 Nassau Street, #922
New York, NY 10038
(212) 679-5100, ext. 15

CONTENTS

Introduction	i
An Inventory of Practices that Chill Free Speech	1
Falsely Labeling Protest Rhetoric and Political Hyperbole	
Using Grand Juries for Information Gathering	
Stigmatizing Activists as “Terrorists”	
False Police Reporting as Captured by Independent Visual Documentation	
Video Tampering	
Preemptive Actions Against Protesters by Police to Disrupt Free Speech and Assembly	
Police-Initiated Violence and Abuse of Less-Lethal Munitions	
Negative Media Coverage as Cover for Police Violence	
National Special Security Events	25
The 2008 Republican National Convention	26
Law Enforcement Targets Protest Organizers	
Recruiting Law Enforcement from Around the Country	
Pre-Event Arrests and Raids of Independent Media	
Pre-Event Arrests and Raids of Organizers’ Space and Activists’ Residences	
The RNC 8	
Guilt by Association	
RNC 2008: The Event	
Civil Lawsuits	
The 2009 G-20 Summit	39
Local Media Hypes Fear of Violence	
Long Range Acoustic Devices as Weapons	
No Identification of Officers	
Canine Units	
OC Vapor	
Police Use Text Messaging	
Tweeting as Terrorism	
Selected Successes in the Courtroom	51
Conclusion	65
A History of the National Lawyers Guild	67
National Lawyers Guild Resources	71

INTRODUCTION

To know that the United States is undergoing a highly orchestrated curtailment of personal and political liberties, one need not look further than police treatment of protesters in the streets. Those who speak out against government policies increasingly face many of the same types of weaponry used by the U.S. government in its military operations.

Demonstrations at National Special Security Events¹ and other mass assemblies of the last decade have met with widespread police actions—many of them in violation of the law—aimed at stopping dissent in its tracks. Offensive, rather than defensive, measures such as use of less-lethal munitions on passive crowds, pre-event raids of homes and meeting spaces of organizers, confiscation of journalists’ cameras, video equipment and recorded images, unlawful containment of crowds and mass arrests without probable cause typify modern policing of protesters. Such aggressive actions violate fundamental free speech rights and undermine the concept of a democratic society.

Police preparation for mass assemblies routinely involves infiltration and spying on activist groups, sometimes years in advance, including the use of *agents provocateurs*. Time and time again, millions of dollars have been obtained by police departments for personnel and equipment at large events justified by confidential informant testimony that large numbers of “anarchists” are planning to attend and engage in violence. Closer examination of the facts often reveals the falsity of such allegations: numerous police informants, many with criminal backgrounds, admit when later questioned that activist groups they infiltrated never planned any violent activities. Indeed, millions more have been spent paying damages to the demonstrators victimized by these tactics.

New anti-terrorism legislation and prosecution practices have resulted in individuals being charged with conspiracy to riot merely by virtue of having helped organize a protest at which other individuals unknown to them were arrested. As evidence of conspiracy to riot, the government cites such First Amendment protected activities as attending meetings, writing about protests, organizing protests, and engaging in rhetorical or politically charged speech.

Faulty intelligence gathering and grossly attenuated criminal charges are accompanied by additional strategies to quell dissent. Asserting the need to defend against terrorism and protect national security, the government targets leaders of social and political movements, employs grand juries to search for evidence of political affiliation, stigmatizes groups of activists, and uses the mass media to denigrate demonstrators, reinforce negative stereotypes or publicize high-profile arrests on charges which are frequently later dropped for lack of evidence.

Law enforcement officials often refer to the 1999 World Trade Organization (WTO) Ministerial Conference in Seattle as the basis of their potential threat assessments for National Special Security Events, including the 2008 Republican National Convention and 2009 G-20 Summit. The Report of the Republican National Convention Public Safety Planning and Implementation Review Commission (RNC Review

Commission) wrote that: “For many in the law enforcement community, the WTO is considered a seminal event that illustrated how lack of preparation can leave a city vulnerable to those intent on committing violence under the guise of protest.”² The basis for many current police strategies seems predicated on stereotypes of protesters as well-organized “anarchists.” Activist jargon such as “shut down the RNC” is listed as the basis for gauging the level of threat assessments and used to justify an escalated police response. The RNC Review Commission continues:

The prediction of the Seattle police has come true. In numerous large scale political and economic events since the WTO, the tactics of the anarchists in Seattle, and their goals, have been copied, improved upon and expanded. In turn, law enforcement has stepped up its preparation for such events to avoid the failures of Seattle. For the most part, law enforcement’s efforts have been successful: despite many attempts, the anarchists have not been able to duplicate the riots of Seattle and have not shut down another convention. As officials within the St. Paul Police Department made clear to this Commission, no police department since 1999 wants to be responsible for another WTO.³

To the extent that law enforcement tactics are based on a foundation of avoiding “the failures of Seattle,” such tactics are inherently flawed and miss the point—the mass violations of law in Seattle were carried out by the police. Finding that police in Seattle acted inappropriately, the Report of the WTO Accountability Review Committee of the Seattle City Council emphasized that: “[T]his city became the laboratory for how American cities will address mass protests. In many ways, it became a vivid demonstration of what not to do.”⁴ The report goes on to say:

Members of the public, including demonstrators, were victims of ill-conceived and sometimes pointless police actions to “clear the streets....Our inquiry found troubling examples of seemingly gratuitous assaults on citizens, including use of less-lethal weapons like tear gas, pepper gas, rubber bullets, and ‘beanbag guns,’ by officers who seemed motivated more by anger or fear than professional law enforcement.”⁵

The National Lawyers Guild observed such gratuitous assaults by police and on December 6, 1999 wrote to Mayor Paul Schell that police misconduct was largely responsible for the lack of control in Seattle.⁶ The letter cited (1) indiscriminate use of excessive force against hundreds of peaceful protesters, including pain compliance holds, the use of pepper spray, tear gas and concussion grenades, the firing of rubber bullets, and (2) detention of protesters without access to counsel, in violation of the Sixth Amendment, and without prompt processing for bail. The letter stated that police treatment of protesters ignited the response from the few individuals who engaged in property destruction.

As long as law enforcement continues to perpetuate negative stereotypes of lawless “anarchists” bent on wreaking mass havoc at large demonstrations, absent credible intelligence and evidence, we can expect police to direct wholesale assaults at individuals engaging in First Amendment protected activities.

The National Lawyers Guild's Mass Defense Program

As it has for over 40 years, the National Lawyers Guild continues to work in defense of protesters, and to track patterns of police misconduct that infringe on the right to exercise free speech. Our unique mass defense program consists of a Legal Observer (LO) program, legal defense, a Greenscare Hotline⁷ for environmental and animal rights activists contacted by the FBI and other law enforcement agencies, and national education and advocacy on behalf of protesters' rights. Our "Legal Observer" program deploys trained observers to monitor law enforcement at public events to ensure, as much as possible, a safe atmosphere in which people can express their political views without unconstitutional disruption or interference by the government and to assist in efforts to provide redress through litigation if their rights are impinged upon. Legal Observers are law students, legal workers (non-lawyers whose professions or activities largely involve working with the legal system), and lawyers who may or may not be licensed in the jurisdiction in which the demonstration takes place.

In recent years we have faced growing challenges. The government has stepped up its activities to disrupt our free speech defense work through subpoenas and abusive discovery against Legal Observers. On another front, we have received numerous reports of other organizations and groups sending out individuals who may purport to be Legal Observers, but who are not properly trained, supervised, or accountable to the standards and requirements of the NLG LO program. This leads to the risk of information being shared with law enforcement that the Guild would never share and that could actually hinder subsequent litigation or be used against protesters. Having different kinds of Legal Observers also opens the door to police informants or officers illegally purporting to be Legal Observers. Because of the professionalism of the NLG LO program, protesters know that they can continue to trust and rely on NLG LOs. To ensure that we can maintain that trust and respect and the integrity of the Legal Observer program and its requirements, the Guild has trademarked the name.

As part of our education component, the Guild reports on policing tactics and larger government trends that affect protesters. In 2004 we published *The Assault on Free Speech, Public Assembly, and Dissent*. In 2007 we published *Punishing Protest*. We are proud to add *The Policing of Political Speech* to our series documenting first-hand observations in the field of protest and policing in the United States.

This report examines how these police strategies are implemented and how they are being challenged.



An officer at the Pittsburgh G-20 Summit stands ready with a face-shield, a less-lethal munitions launcher and flex-cuffs. Photo by Jenna Piasecki.

AN INVENTORY OF PRACTICES THAT CHILL FREE SPEECH

In this context, the term “chilling effect” refers to government actions that instill fear of engaging in free speech activities. Usually the fear is that police will repress demonstration activities or that the law will treat speech and assembly activities as criminal. As a result, the numbers of individuals who will participate in protected activities and the vigor with which those activities will be exercised are limited.

Constraints on speech are incompatible with a democracy. The Guild’s experiences and documentation at mass demonstrations clearly indicate that domestic anti-terrorism laws and policies and aggressive police practices have had a chilling effect on First Amendment protected speech. Would-be protesters or communities frequently targeted by the police, some of whom might be thinking about publicly exercising their First Amendment rights for the first time, may decide that it is not worth the risk of encountering police violence and possible arrest.

Policies and practices that interfere with, and have a chilling effect on, the exercise of free speech include the following:

Falsely labeling protest rhetoric and political hyperbole as “true threats” to justify aggressive policing and prosecution. “True threat” is a legal standard that provides police with the presumptive justification they need to conduct surveillance, execute search warrants on organizing spaces, and charge individuals with serious offenses such as conspiracy to riot.⁸ Police portray activists as either “peaceful” or “violent.” Those deemed violent are characterized as security threats that trigger aggressive police and prosecutorial response.

Using grand juries to harass political activists by imprisoning them, without specific criminal charges, for noncooperation with government investigations. This practice reached its height during the Nixon administration, and prosecutors continue to abuse the power of coercive detention to punish protesters. Twenty-two year-old Carrie Feldman sat in jail for four months, refusing to cooperate with a grand jury investigation seeking information about a break-in at an animal testing facility that occurred when she was 15 years old and that she has stated she was not involved in.

Prosecuting leaders and those providing support to activists, often before or during events. Over-prosecution of perceived leaders occurred at the 2000 Republican National Convention in Philadelphia where prosecutors set an unprecedented \$1 million bail for an organizer. At the 2009 G-20 Summit prosecutors charged a well-known activist with terrorism-related charges for “Tweeting” about police activities to other protesters.

Labeling, and stigmatizing, activists as “domestic terrorists.” The broad language of the USA PATRIOT Act⁹ and a rash of local and federal anti-terrorism legisla-

tion including the Animal Enterprise Terrorism Act¹⁰ use this term, and prosecutors have begun charging protesters under these laws. Several animal welfare advocates were sentenced to prison for running a website that posted information about protest activities around the country.

False statements by police, and laws prohibiting the photographing of police.

Independent media has documented incidents revealing how some police officers have falsely reported events to shift blame from police officers to activists. In New York, police actually altered a videotape that showed officers arresting an individual who was not participating in protests. Laws in 12 states forbid the photographing of police on duty, making it a crime to document police misconduct.

Preemptive actions by police in the absence of illegal activity, including the entrapment, arrest and detention of large groups of innocent people, often for days, until protests are over.

Repression based on “evidence” fabricated by the police. Since the 1999 WTO protests in Seattle, police in D.C. and St. Paul have told the media, with much fanfare, that they found Molotov cocktails and buckets of urine at organizing spaces—high-profile claims that have been disproved or retracted but that perpetuate demonization of protesters.

Police-initiated violence and abusive use of less-lethal munitions against civilians, often in violation, or absence, of departmental policies on use of such weapons. The misuse of less-lethal munitions and other forms of police-initiated violence have been verified and criticized by several after-event independent review boards.

Negative media coverage, fostered by the police, continues to portray activists as prone to violence and mayhem, reinforcing law enforcement’s distinction between “good” and “bad” protesters used to justify excessive security measures and unnecessary displays and use of force.

These trends and practices are informed in part by the Department of Justice’s enactment of domestic terrorism laws following the attacks of September 11, 2001, and the 2002 and subsequent repeated relaxations of the 1976 Attorney General’s guidelines on FBI surveillance, allowing spying on and infiltration of political groups and meetings. With passage of the USA PATRIOT Act in 2001, those who criticize the government or maintain ties with international political movements may find themselves under investigation for domestic terrorism. As has been widely documented, the term “terrorism” is defined so broadly in the Act that anyone who engages in traditional forms of nonviolent protest and civil disobedience may fall prey to its chilling embrace.¹¹

These practices are directly related to mischaracterizations of, and reliance on, what police call an “anarchist” threat level used to justify vast security expenditures and violent policing at National Special Security Events and other protests. Along

with increased security comes a higher “threat” awareness and sensitivity, and the subsequent improper training of line officers to meet free speech activities with excessive force and unlawful practices.

Falsely Labeling Protest Rhetoric and Political Hyperbole

Protesters’ calls to “crash the convention” or “shut down the convention” are political rhetoric and are not direct calls for the commission of crimes. Despite a body of Supreme Court decisions holding that hyperbolic political speech is protected by the First Amendment,¹² and law enforcement’s own awareness that there is no threat posed, police continue to justify vast intelligence initiatives based on such protected speech. The [2008] Report of the Republican National Convention Public Safety Planning and Implementation Review Commission explains that “The Welcoming Committee’s stated goal was to shut down the RNC using a variety of violent methods.”¹³ It cites a document titled “A Call to Action,” communicated to activists around the country and the slogan “Swarm, Seize, Stay” as evidence of intent to engage in violence.¹⁴ Commenting on the nature of such campaign slogans, Guild president and Alabama civil rights attorney David Gesspass said: “The fact that a public call is made seems a clear indication that violent activity is not being planned.”¹⁵

When activists widely issue such calls as part of their regular pre-event organizing, the FBI and others use these statements to justify their intelligence-gathering operations. Since 2002, when guidelines governing domestic spying were loosened, this has been easier to do.¹⁶

It is clear that the FBI’s goal is not only to gather intelligence, but also to send a message of intimidation—in the FBI’s own words, to instill “paranoia” among politically-active individuals that they may be the subject of surveillance. After the guidelines were loosened, an internal FBI newsletter encouraged agents to step up interviews with antiwar activists “for plenty of reasons, chief of which it will enhance the paranoia endemic in such circles and will further serve to get the point across that there is an FBI agent behind every mailbox.”¹⁷

Legislation Aimed at Outspoken Advocates

It is thus not surprising that the FBI would single out outspoken activists for especially harsh treatment, and that specific federal legislation targeting those activists would ensue. The media, sometimes in response to rhetorical speech and slogans, regularly portrays animal rights and environmental activists as dangerous. In 2004, several separate FBI investigations into the animal rights and environmental movements were combined into one large, coordinated investigation called Operation Backfire. The launch of Operation Backfire marked a renewed effort to curtail the activities of animal rights and environmental activists, and it was accompanied by a concerted public relations campaign to portray these activists as violent terrorists. Shortly after Operation Backfire began, the FBI claimed that “The No. 1 domestic terrorism threat is the eco-terrorism, animal-rights movement.”¹⁸

INDICTMENTS UNDER AEPA AND AETA

As of late 2010 there have been two indictments under AETA. In early 2009, four activists were arrested as terrorists as a result of their participation in protests against University of California animal research programs. In the second case, two activists were arrested in connection with the release of hundreds of mink from Utah fur farms. The alleged criminal activity in both situations was not violent and did not rise to generally accepted concepts of "terrorism." This suggests that AETA is being used to repress the animal rights movement, which has been successful in drawing public attention to the mistreatment of animals, thereby threatening corporations that profit from these activities.

The earlier law, AEPA, had been used twice: once against two activists who released animals from fur farms in Wisconsin and once against the "SHAC7" (Stop Huntingdon Animal

Cruelty). In the SHAC7 case, the charge was not that they committed acts in violation of AEPA, but that by running a website they worked in conjunction with others who did commit such acts.

Federal prosecutors who bring these cases have recently been arguing for "terrorism enhancements." Enacted in 1995, the terrorism enhancement allows judges to increase sentences by up to 20 years if a crime is (a) targeted at influencing the government and (b) found on a list 55 specific "terrorist" acts provided by Congress. The enhancement can be applied more broadly, however, because Federal Sentencing Guidelines used by judges allow it to be applied even for a planned act that was not carried out, so long as it "involved, or was intended to promote, a federal crime of terrorism."

As a result of this increased attention, members of these movements are now subject to heightened levels of law enforcement surveillance and harassment. Activists are contacted at their homes and jobs, and their friends and family members are reporting intimidation from both local police and FBI agents. Corporate sponsored laws such as the Animal Enterprise Protection Act (AEPA)¹⁹ and the Animal Enterprise Terrorism Act (AETA)²⁰ have created harsh punishments, some for traditionally protected First Amendment activities. If convicted, animal rights and environmental activists can face more severe punishments than other activists, including "terrorism enhancements" that extend prison sentences, and imprisonment in "Communication Management Units," which block most contact with the outside world.

Attaching Ominous Meanings to Ordinary Objects

An examination of evidence gathered by the FBI also makes clear that just as the bureau inflates the meaning of rhetorical activist language, it also attaches new and criminal meaning to ordinary objects. On November 23, 2003, news broke of a classified FBI memorandum dated October 15, 2003, sent to more than 15,000 local law-enforcement organizations days before antiwar demonstrations were held in Washington, D.C. and San Francisco, encouraging police to report potentially unlawful activities of protesters to the FBI Joint Terrorism Task Force.²¹ Examples of "criminal" activity cited were using tape recorders and video cameras, and wearing sunglasses or scarves as protection from pepper spray. The memo revealed that the FBI had collected detailed information on the lawful tactics, training, and organization of antiwar demonstrators.²² It also contained information on the legal activities

of political activists including how some demonstrators prepared for protests and used the Internet to raise funds for legal defense.

Using Grand Juries for Information Gathering

Guild members have documented how grand jury activities and investigations have, for decades, targeted political dissenters and so-called “anti-American” movements.²³

The case of 20 year-old Carrie Feldman provides an example of how the government seeks out political activists to conduct a wide-ranging investigation. Feldman and her former boyfriend, Scott DeMuth, 22, were subpoenaed before a federal grand jury in Davenport, Iowa on November 17, 2009 in an attempt to obtain information related to animal rights activism concerning a break-in at the University of Iowa Spence Laboratories. Feldman was only 15 years old at the time of the break-in and has stated that she had no knowledge of who participated in it. Members of the Animal Liberation Front released a video of themselves breaking into the lab, freeing hundreds of rats and mice, and damaging property valued at \$450,000. The government claims that she may have ties to domestic terrorism groups. NLG members Jordan Kushner and Michael Deutsch represent Feldman and DeMuth, respectively.

Both Feldman and DeMuth refused to testify before the grand jury despite offers of immunity and were found in civil contempt by District Judge John Jarvey, who had them taken into custody immediately. Feldman was held for four months for her refusal to testify. Shortly thereafter, the grand jury indicted DeMuth, who maintains his innocence, for conspiracy under the Animal Enterprise Terrorism Act. He was allowed to post bail and return to the Twin Cities while Feldman was jailed without being charged.

The Minnesota Chapter of the National Lawyers Guild supported Feldman and DeMuth’s refusal to assist in the government’s prosecution of alleged vandalism charged as terrorism. The indictment of Scott Demuth illustrates the continued use of the grand jury process to punish those who exercise their Fifth Amendment right against self-incrimination. The use of this procedure to subvert a constitutional right sends a message of intimidation to other activists.

The misuse of grand juries is not new, and reached its height during the Nixon administration. From 1970-1973, over 100 grand juries in 84 cities subpoenaed over 1,000 activists.²⁴ At that time, prosecutor Guy Lee Goodwin became a “traveling prosecutor” in a quest to prosecute “revolutionary terrorists” of the anti-Vietnam War movement.²⁵ He oversaw the convening of grand jury investigations and returned over 400 indictments from around the country.²⁶ A fellow federal attorney lodged a complaint against him for abusing the grand jury system; Vietnam Veterans Against the War filed a \$1.8 million lawsuit against him.²⁷

The National Lawyers Guild has long opposed the use of civil contempt as punishment in wide-ranging investigations. Civil contempt is used as a method of coercion—persons are held in jail until the end of the grand jury’s term, up to 18 months, or fined, in order to coerce their compliance. If a witness does not comply, the witness may argue that, since the incarceration is not succeeding in coercion, it

has become punitive and the witness should be released on due process grounds.²⁸ Criminal contempt, on the other hand, invokes a punitive sanction of incarceration with a definite sentence for disobeying a court order. Sentences of six months or more may be imposed after a jury trial.

In 1972 the National Lawyers Guild created a Grand Jury Defense Office to train attorneys on grand jury law.²⁹ When the Defense Office closed, the Grand Jury Project, Inc. was established in 1975 by the New York Women's Union and the Guild to continue its work.

Stigmatizing Activists as "Terrorists"

Labeling, stigmatizing and isolating groups of individuals based purely on their First Amendment protected political beliefs and associations has profound and negative consequences to both activists and free speech as a whole. The labeling of a group of individuals as "subversive," as was done in the 1950s to suspected Communists, or as "domestic terrorists," as was done by the George W. Bush and Obama administrations, is often a justification for such tactics as issuing subpoenas, conducting surreptitious surveillance, or intimidating activists and pressuring them into informing on others.

Labeling, especially when accompanied by mainstream media coverage to reinforce government demonization, unfairly vilifies social justice activists. If charges are filed against those who are labeled, especially those labeled as terrorists, the current sociopolitical climate may play upon common fears and preclude the possibility of a fair and just trial. The use of fear-based techniques against those who dare speak out against government policies runs counter to the central tenets of democracy. Most telling, however, these techniques reveal a government terribly afraid of upholding its own Constitution.

Once convicted, political activists should not expect standard prison treatment. Andrew Stepanian, a member of the SHAC7, spent several months of his prison sentence in a Communication Management Unit (CMU). CMUs were established during the Bush administration, endorsed by the Obama administration, and designate a self-contained group within a facility that severely restricts, manages and monitors all communication of inmates in the unit. Many of those placed in CMUs are Muslims whom the government has targeted in high profile political cases, yet who have no disciplinary records and were not convicted of any "terrorism" offense. Non-Muslim political activists are also being selectively punished and warehoused in CMUs. On June 4, 2007, environmental rights activist Daniel McGowan was sentenced to seven years in prison on charges of arson. After serving the first ten months of his sentence at a low security facility, he was transferred to a CMU at United States Penitentiary (USP) Marion, Illinois.

Asked what, if any, parallels he sees between historic tactics to punish activist leaders and placement of activists in the CMU, McGowan draws a connection between the age-old tactic of punishing activists and the recent placement of activists in CMUs:



Above: Long a staple of police efforts to control crowds, mounted units patrolled the streets at the 2009 Pittsburgh G-20 Summit. Photo by Paige Cram. **Below:** Police suited in full riot gear were an intimidating presence at the 2009 Pittsburgh G-20 protests. Photo by Mike Lee.



Many of the tactics of the COINTELPRO era—assassinations, planting of *agents provocateurs*, “bad-jacketing” of activists, harassment arrests and indictments, media disinformation campaigns—are harsher, but isolating activists in political units is certainly along the same continuum of punishment. By no means is the CMU a new idea; both the federal and state prison systems have had political prisons or units. These include: USP Marion’s control units of the 70s, the High Security Unit (HSU) that held female political prisoners in Lexington, Kentucky, the SMU or Special Management Unit that runs a “gang rehabilitation” program at Lewisburg USP and the 400+ person ADMAX (Supermax) prison in Florence, Colorado.

The CMU is different in the sense that: a) unlike the Supermax, SMU or control units, there do not exist any codified rules for CMUs. You can be sent to one at the whim of a Bureau of Prisons staff member. There are no hearings, no due process and no effective “step-down” program for leaving, b) most people are not in the CMU for an identifiable act, rules violation or incident. They were sent here based on the nature of their case and the potential that at one point, they may become a communication problem. It’s scary and sounds a little like the Hollywood film “Minority Report,” in which people are arrested before they commit a crime. The intent of the CMU—to monitor and restrict communications to an abnormal and severe degree, not based on any actual behavior—seems to be unprecedented.³⁰

The Bureau of Prisons’ (BOP) rationale that CMUs are designed for security purposes appears disingenuous, because most of the men there have low security scores. McGowan says that almost none of the inmates in the unit have any disciplinary violations, even after many years of incarceration. He notes that if they were security problems, they would receive incident reports, their scores would be raised, and they would be sent to higher security prisons. He says that, “A former staff member here once admitted to me that it wasn’t our behavior in prison that concerned them but the theory that we could influence events on the outside. If I had received incident reports or presented management issues, there would at least be an argument for keeping me in a CMU for some amount of time. However, like most men, my record is clear.”³¹

Asked if he thought the government was sending a message of intimidation to other activists by placing him in this new highly isolated unit, McGowan replied:

The Department of Justice, via its penal arm, the Bureau of Prisons, is sending a crystal-clear message to activists around the United States: if you come to prison for a political offense, you too, may end up at the CMU for an indeterminate amount of time, perhaps the entire sentence. The BOP has not been random in whom they have chosen to send to the CMU. The first was animal rights activist Andrew Stepanian, who spent the last six months of his sentence at the Marion CMU. Two years ago, I was sent here and recently a cooperating codefendant of mine has been at the other CMU—at FCI Terre Haute. By choosing Andrew and me, they made sure that news of the CMU’s existence would spread fast through the environmental and animal rights movements. Since both of us have active and hearty support from friends, family and community, that is precisely what

happened. It acts as a warning—any attempt to exercise your First Amendment rights and you will be sent to the CMU.³²

The government has failed to define criteria for sending people to a CMU, making evident that it is for political purposes; it cannot be for security purposes given that the BOP already has the capacity to monitor mail, telephone calls and visits in real time and still allow contact visits. That it chooses to do otherwise is a measure of the underlying punitive nature of these units.

False Police Reporting as Captured by Independent Visual Documentation

Instances of police lying about events have come to light over the past several years, often due to photographic or videotaped documentation taken by observers.

In New York, Police Officer Patrick Pogan was tried for lying about knocking Christopher Long off his bicycle during a Critical Mass ride—a political event usually held on the last Friday of every month in over 300 cities around the world—in Times Square on July 25, 2008.³³ The event was captured on videotape by a tourist and posted on YouTube, where it was viewed over two million times. Pogan, a 24-year-old rookie only 11 days out of the police academy, resigned from the force. He falsely reported that Long had steered into him and knocked him down even though the video showed him heading directly toward Long and pushing him off his bicycle. The officer was found not guilty of assault and harassment charges.

Pogan testified that he unintentionally confused the sequence of events when describing them to a supervisor and prosecutors. Long was charged with attempted assault and other offenses. The charges were later dropped, and the city settled with him for \$65,000 in a civil lawsuit. Jurors convicted Pogan of offering a false instrument for filing and another false-statement charge, both related to a court complaint he signed. He was acquitted of some similar charges stemming from a separate arrest report on the incident.

Had a tourist not videotaped this incident, Christopher Long would likely have been convicted of assaulting a police officer. Over the years, thousands of activists and non-activist individuals have not been as fortunate as to be videotaped when they have been subjected to unlawful police conduct. Yet in 12 states it is illegal to videotape police officers while on duty. The laws are tenuously based on wiretapping and surveillance statutes that require all parties to consent to a recording in order for it to be lawful. Given that police officers do not consent, the photographer is subject to arrest. Even though most of the states with such a law do include an exception for recording in public places, where there is no expectation of privacy, courts are generally not recognizing the exception.³⁴

The extent to which police misrepresent evidence became clear after the 2004 Republican National Convention in New York. The independent group I-Witness Video recorded over 150 videotapes of protests and collected and stored tapes made by others. They shared the tapes with the New York City Chapter of the National

Lawyers Guild whose members had provided scores of Legal Observers during the protests and subsequently defended protesters who had been arrested. I-Witness discovered a discrepancy between their coverage of several events and police testimony describing that same sequence of events. It noticed that the police narrative did not match the behavior of Dennis Kyne, the first of the 1,806 protesters arrested during the convention to have his case brought to trial.³⁵ The videotape proved that the officer had perjured himself and also exonerated Kyne. The District Attorney dropped the case the next day.³⁶

Video Tampering

In another finding, crucial scenes were excised from the police copy of a tape. The I-Witness tape showed an individual, Alexander Dunlop, who was arrested while riding his bicycle to pick up sushi from a restaurant, peacefully submitting to arrest. The police tape panned to a shot of a stop sign, flashing back to an image of Dunlop standing with other arrestees a few moments later. An image of the officer who detained Dunlop was also missing from the police tape, blurring the identity of those responsible for Dunlop's arrest. All charges against Dunlop were dismissed.

The discovery of the police-doctored videotape reflected poorly on the New York Police Department. It is perhaps not surprising that four years after the 2004 RNC, the City of New York served I-Witness Video and the National Lawyers Guild with subpoenas directing the groups to turn over videotapes and related information from the RNC protests. I-Witness responded with a motion calling the city's requests overbroad, and asked the judge to quash the subpoenas, accusing the City of planning to use the tapes for intelligence-gathering purposes. According to a *New York Times* article, Peter Farrell, senior counsel for the New York City Law Department, said that the city would not be asking for the videotapes if they were not being sued by over 600 plaintiffs.³⁷ According to Farrell, the city needed material to defend claims that the police engaged in the practice of sweeping demonstrators from the streets. As described in the "Courtroom Successes" section of this report, the Guild successfully quashed its subpoenas.

Preemptive Actions Against Protesters by Police to Disrupt Free Speech and Assembly

Preemptive punishment of those wishing to exercise their First Amendment rights at protests takes several forms, including:

- establishing screening checkpoints
- creating "free-speech zones"
- conducting mass false arrests and detentions
- employing "pop-up lines"
- using dangerous rush tactics with police on motorcycle, bicycle, and horseback
- using "less lethal" weapons

Other tactics include closing streets and public sidewalks to people who are not carrying event-approved identification, and stationing police with video cameras on rooftops and deploying officers to photograph and film people in the area, including people who are not attempting to enter restricted zones.

Preventive punishment is illegal: in *Collins v. Jordan*, a case brought by Guild attorney Rachel Lederman, the Ninth Circuit reaffirmed that First Amendment activity may not be banned merely because similar activity resulted in instances of violence in the past: “The courts have held that the proper response to potential and actual violence is for the government to ensure an adequate police presence and to arrest those who actually engage in such conduct rather than to suppress legitimate First Amendment conduct as a prophylactic measure.”³⁸

Guild National Vice President Dan Spalding noted that at the 2008 RNC, “We saw preemptive raids before the protests even started. And police officers taking out items used for organizing, taking out printed literature, banners, large puppets, in the name of national security, but nothing dangerous was found in these houses.”³⁹

Pretextual Searches and Raids of Organizing Spaces

Sometimes local police will show up at a building where activists are known to be staying or meeting with a building inspector to either:

- conduct a warrantless search of the premises under the guise of an administrative search; or
- find a housing violation as pretext to close down the premises.

The Supreme Court has held that administrative searches such as fire and building inspections may not be used a pretext for a criminal investigation.⁴⁰ Absent legitimate exigent circumstances, government agents may not enter a building without a judicial warrant. Supreme Court cases “make it very clear that an administrative search may not be converted into an instrument which serves the very different needs of law enforcement officials. If it could, then all of the protections traditionally afforded against intrusions by the police would evaporate, to be replaced by the much weaker barriers erected between citizens and other government agencies.”⁴¹

Content-Based Exercise of Discretion in Denying Permits for Marches and Mass Assemblies

Historians note that rulings denying the right to march hold symbolic weight.⁴² The act of marching has had psychological and emotional power over the past 200 years, power that does not exist with stationary forms of protest. “The simple act of moving forward in a group, made up of diverse contingents, has a visceral force that energizes not only participants but observers.”⁴³

Permit schemes must be content-neutral regulations authorizing reasonable “time, place and manner”⁴⁴ regulations (such as traffic-control considerations) to prevent licensing officials from discriminating against groups or speakers with whom



4,000 additional officers were hired from other jurisdictions, including Baltimore, Chicago and New York City, to police the Pittsburgh G-20 Summit. The cost to train and accommodate these extra officers was over \$12 million. Photo by Evan Hirsche.

officials disagree.⁴⁵ Written ordinances or regulations by which local police departments issue permits for street parades or large demonstrations should contain specific and narrowly defined standards, as well as a clearly explained process by which permits are granted, such as the expected size of the gathering that may require increased police security measures. Unwritten policies directing officials to deny permits based on applicants' dress, for example, constitute unconstitutional viewpoint discrimination.

Paying for Permits and Liability Insurance

The requirement that liability insurance be taken out by demonstrators before a permit is granted is another way that authorities make it costly or difficult to secure permits for constitutionally protected events. Often these liability-insurance provisions are unconstitutional because they allow government discretion to impose financial burdens based on the content of the speech. In many instances there is no way the sponsoring groups can afford the thousands of dollars for such insurance.

The City of Los Angeles has been barred from charging liability insurance or any department service charges for parades or other demonstrations. This was a result of litigation brought by the National Lawyers Guild before the Democratic National Convention in 2000.⁴⁶



This “secure” protest zone, established in Point State Park during the 2009 G-20 Summit, was located the length of a football field away from where the speakers took the stage. Photo by Paige Cram.

Free-Speech Zones

So-called “free speech” zones, also referred to as secure zones or protest zones, are areas established by law enforcement for protesters to stand in. They are often fenced off and at some distance from the event being protested. A lawsuit brought before the 2000 Democratic National Convention in Los Angeles resulted in an injunction striking down a secure zone of more than eight million square feet around the convention site, striking down the City’s parade-permit ordinance, and striking down the City’s park-permit regulations. Following the Court’s issuance of a preliminary injunction, the City stipulated to a permanent injunction. The Los Angeles chapter of the National Lawyers Guild was a plaintiff in *SEIU v. City of Los Angeles*,⁴⁷ with Guild lawyers as counsel. The court granted the injunction, finding that “the sidewalks and streets contained within the designated ‘secure zone’ . . . are traditional public fora for the exercise of First Amendment rights.”⁴⁸

Checkpoints

Police checkpoints, also called screening checkpoints, are a relatively unprecedented security measure at mass assemblies in which all bags are subject to search at a designated checkpoint. The government deployed checkpoints at the Inaugural Parade in Washington, D.C. beginning in 2001 at the George W. Bush inauguration and has used them at subsequent inaugurations. In litigation by the Partnership for Civil



A line of police with nightsticks confronts a group of peaceful protesters at the 2009 G-20 Summit in Pittsburgh, blocking their path. Photo by Jenna Piasecki.

Justice Fund the use of these checkpoints has been shown to block demonstrators' access to protest along the parade route based on their political beliefs; to create bottlenecks that slow down the process of getting to the protest site for hours or halt access altogether; and to create a mechanism for confiscation of signs on the spurious claim by law enforcement that they may be used as weapons, while police simultaneously let in camera tripods, folding chairs and umbrellas.

Pop-Up Lines

Pop-up lines are rapidly deployed lines of police officers that block the movement of protesters, misdirecting them and splitting up groups, and/or detaining and arresting the protesters. Police lines can alter the flow of a march or literally trap people and prevent them from moving along or leaving the march. When police surround a group of people in this fashion, mass arrests often follow.

Containment Pens, Trap and Detain/Trap and Arrest

Another way in which police repress mass demonstrations is by conducting mass false arrests so that segments of demonstrators are literally removed from the streets, sidewalks and parkland and put in detention.

Police may also erect containment "pens" out of wood or metal barriers at demonstrations as a means of coralling protesters within a narrowly confined area with

no freedom to move about. This tactic, which also provides the false visual impression that the assembly is somehow criminal or dangerous, is frequently seen in New York City.

Containment pens can be dangerous, as they tend to heighten anxiety in crowds when people are unable to move normally. Those with disabilities, medical needs and small children are especially at risk of harm. Furthermore, pens interfere with the right to free expression; they make it difficult for individuals to move freely and interact with whomever they want.

Rush Tactic, Flanking, and Using Vehicles as Weapons

The rush tactic involves police officers, usually on horseback, motorcycles, or bicycles, charging and assaulting a group of demonstrators. At the FTAA demonstrations in Miami on the morning of November 15, 2003, police used their bicycles to form a circle and entrap a group of about 50 people for approximately two hours.⁴⁹ When demonstrators asked whether they were being detained, the police said no. When demonstrators asked whether they were then free to leave, they were told they were not.⁵⁰ This entrapment prevented the group from joining a large, nonviolent march through downtown Miami. When the group finally received permission to move, the police walked their bikes in lines on all sides of the group in a tactic known as “flanking.” The police used their bicycles as weapons against pedestrian demonstrators to push them off the sidewalk and into the street. After an hour of herding the demonstrators in this fashion, the police formed a line in front of them with their bicycles and proceeded to shoot them with Tasers. About five people were arrested, and many more were Tasered. One demonstrator was arrested after being knocked to the ground when a police officer rammed his bicycle into the demonstrator’s back.⁵¹

On April 12, 2003 at the first major protest against the war in Iraq after the “fall of Baghdad,” the police in Washington, D.C. used motorcycles and bicycles to flank demonstrators and drove into pedestrians with the vehicles as the protesters peacefully marched along a permitted route. The police carried out multiple attacks against the 30,000 strong demonstration including using the “rush tactic” in which police charged assembled demonstrators, attacking them and disrupting the march. Litigation by the Partnership for Civil Justice Fund secured \$100,000 for each of two plaintiffs who sued the Metropolitan Police Department (MPD) for injuries and ended its use of the “rush tactic.”

On April 7, 2003, in Oakland antiwar demonstrations, the Oakland Police Department used vehicles as weapons. They ran into several people with their motorcycles as they herded the crowd down a series of egressless roads for over an hour, firing barrages at their backs. According to Guild member Dan Spalding, “[t]he police also used bean-bag rounds and wooden bullets to chase protesters into moving traffic. This is a case of the police using civilians’ vehicles as weapons against protesters.” The Guild and the ACLU filed a lawsuit against the City of Oakland on behalf of several demonstrators, dockworkers, and videographers who were literally run over by police rush tactics in this especially violent attack by police.

Unprecedented and Unconstitutional Bails

The Eighth Amendment to the U.S. Constitution provides that bail shall not be excessive. The purpose of bail is to allow an arrested individual to be free unless and until he or she has been convicted. Theoretically the amount of bail should not exceed what is reasonably necessary to ensure that the individual will appear in court. Standard bail schedules specify bail amounts for common offenses, but judges ultimately set bail. Judges frequently set extremely high bail in the case of certain offenses, such as rape, in order to ensure that the defendant remains in detention until the trial has concluded.

It is unconstitutional, however, to set bail high based on the fact that someone may be a “leader,” especially when that person has been charged with a nonviolent misdemeanor, lives in the jurisdiction, and is not a flight risk. It is unclear why someone would have bail set based not upon what he or she is charged with but upon other, uncharged activities.

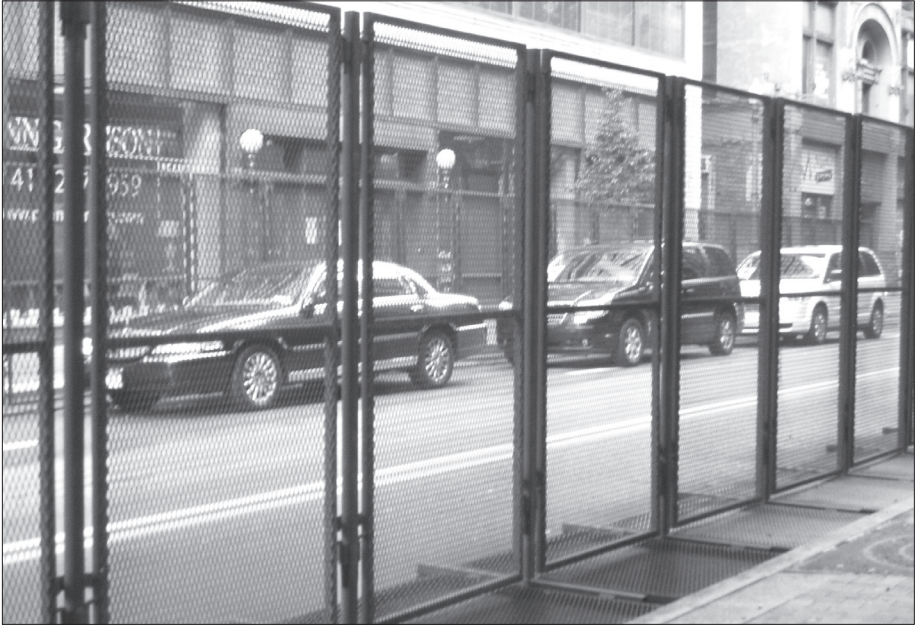
Over-prosecution of protesters, especially those whom the government labels “ringleaders,” was especially evident at the Republican National Convention (RNC) in Philadelphia on August 1, 2000. An unprecedented \$1 million bail was set for two demonstrators whom police identified as ringleaders. John Sellers, director of the California-based Ruckus Society, and Terrence McGuckin of the Philadelphia Direct Action Group were arrested on misdemeanor charges and received disproportionately high—in fact, record-setting—bails of \$1 million and \$500,000, respectively. Sellers was charged with aggravated assault on a police officer—a charge that was later dropped—and eight other charges, including obstruction of a highway, failure to disperse, obstruction of justice, and conspiracy to commit all of the above, for a total of 14 counts.

Punishment Based on Evidence Fabricated By Police

The Report of the Republican National Convention Public Safety Planning and Implementation Review Commission says that searches at the 2008 RNC found several items to support an aggressive police response, including Molotov cocktails, buckets of urine, knives, chains, piping and similar items.⁵²

However, as is detailed later in this report, former NLG president Bruce Nestor disputes police claims that they seized Molotov cocktails and urine from an organizing space: “The raids again claim to be looking for such items as Molotov cocktails and devices to block traffic. Many common household items were seized, items that you would find in anybody’s home to which police ascribed evil intent. Claims that they found urine were absolutely fabricated, as were claims of any sort of liquids being found to throw at police officers.”⁵³

Police in the Twin Cities obtained arrest warrants based on statements made by confidential informants who infiltrated and attended political meetings for a year prior to the RNC. Their statements were used to support probable cause by alleging that, among other things, members of the group sought to kidnap delegates to the



Metal barricades were erected in downtown Pittsburgh during the 2009 G-20 Summit. These barricades surrounded the convention center in which G-20 leaders convened and ensured a tightly-controlled cityscape in the central business district. Photo by Paige Cram.

RNC, assault police officers with firebombs and explosives, and sabotage airports in St. Paul. There has been no corroboration of these allegations other than the claims of the informants.

The Guild has documented police fabrication of finding Molotov cocktails and pepper spray in activists' spaces as far back as 2000. In April 2000, when police raided activists' convergence space at the World Bank and International Monetary Fund protests in Washington, D.C., Charles Ramsey, the police chief, and Terrance Gainer, the former executive assistant chief, told the media that activists were making homemade pepper spray and Molotov cocktails. On April 15, 2000, the Associated Press quoted Gainer as saying that police had seized what appeared to be a Molotov cocktail: a container with a rag and what appeared to be a wick in it. This was false information intended to disparage peaceful protesters and justify police repression.

The chief was later quoted on the television program *The News with Brian Williams*, speaking about the alleged homemade pepper spray on April 27, 2000. Litigation by the Partnership for Civil Justice revealed that there were no Molotov cocktails nor was there pepper spray at the Convergence center.⁵⁴ There were materials for making *papier mache* puppets and materials for making gazpacho soup in the kitchen area. Neither allegation was substantiated in the Fire/EMS records on the materials seized at the convergence center, or in the Washington, D.C. Metropolitan Police Department and Fire/EMS witness testimony.⁵⁵

Also in 2000, at the RNC in Philadelphia, police acted on a tip and raided a warehouse where individuals were making puppets, signs and banners. Police chief John Timoney announced that the occupants had C4 explosives and balloons filled with hydrochloric acid. Over 70 people were arrested; First Amendment protected materials were seized, and the warehouse was shut down.

Later, police admitted that neither C4 explosives nor acid were found on the premises. NLG members Paul Hetznecker and Lawrence Krasner filed a federal lawsuit one year later alleging that the demonstrators were subjected to preventive detention and malicious prosecution.

Activist Kris Hermes, who has written extensively on the 2000 RNC, explained that the RNC host committee purchased an insurance policy covering a range of civil rights violations, and its high-powered law firm went on the offensive in defending the city. “The firm was aggressive in seeking/subpoenaing information, such as hard drives, email correspondence, and organizational membership lists. The city also deposed a great number of activists and their relatives, including the attorneys on the legal team, accusing them of conspiring with the activists to shut down the city.”⁵⁶ The fact that an insurance policy was required is perhaps the strongest proof that the city fully anticipated violating demonstrators’ rights.

An unintentional leak was covered by the *Philadelphia Daily News*, which revealed the amount of the puppet warehouse lawsuit settlement to be \$72,000, much less than comparable First Amendment settlements. As part of the agreement, none of the award went to the plaintiffs. Instead, the plaintiffs chose two organizations (within certain parameters set by the city) to donate the money to: Spiral Q Puppet Theater and Books Through Bars.

News reports frequently rely on the police version of accounts and do not conduct independent research. After the World Trade Organization protests, the *New York Times* erroneously reported that Seattle protesters had thrown Molotov cocktails, excrement and rocks at police and delegates. The *Times* later ran a retraction saying that no objects had been thrown.⁵⁷

After the 2004 RNC the *New York Times* wrote incorrectly that “five years ago in Seattle...there was widespread arson.”⁵⁸ It ran a front-page summary contrasting the RNC with the Seattle protests when “window-smashing and marauding through the streets during a trade summit meeting gave rise to fears that any large political gathering would dissolve into lawlessness and anarchy.” Writer Rebecca Solnit sent several letters to the editor pointing out the errors in these accounts which finally resulted in a correction on October 30, 2004 noting that the paper had “referred incorrectly to the violent demonstrations of December 1999 at the World Trade Organization meeting in Seattle, which the New York authorities cited as a cautionary lesson. Although numerous small fires were set in dumpsters in Seattle, there were no reports of widespread arson.” As Solnit observed: “while retracting the single charge of widespread arson, the so-called correction perpetuates the myth of violence.”⁵⁹

Police-Initiated Violence and Abuse of Less-Lethal Munitions

Police violence against protesters is now routine in the United States. In addition to the inappropriateness of using weapons against persons engaged in free speech activities, the use of less-lethal weapons against civilians is inadvisable for several reasons. No standards exist, even within the Department of Justice, for how these weapons should be used.⁶⁰ Severe injuries and even fatalities have occurred by use against civilians in crowd situations.

This dynamic has been acknowledged by the District of Columbia Report on the Investigation of the Metropolitan Police Department's Policy and Practice in Handling Demonstrations in the District of Columbia,⁶¹ and by an independent review commission investigating police actions at the FTAA demonstrations in Miami.⁶²

The use of excessive force by police violates state and federal law and also international human rights law as established by treaties to which the U.S. is a party. Once ratified, treaties are the supreme law of the land and are binding on all levels of government. Excessive police force is prohibited by the International Covenant on Civil and Political Rights (ICCPR), ratified by the U.S. in 1992. Similar protections exist in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the U.S. ratified in 1994.

The presence of legions of police in body armor and engaging in paramilitary tactics obviously has an intimidating effect on the public. It suggests that protest



Police officers, nightsticks in hand and metal face-shields in place, await potential confrontation with protesters at the 2009 Pittsburgh G-20 Summit. Photo by Mike Lee.

activity is criminal and creates an atmosphere of police violence. Such tactics can frighten protesters and are also designed to limit the number of demonstrators, directly attacking the right of people to protest. Further, they encourage aggressive behavior among police officers. In the United States, collective punishment of protesters includes the deployment of so-called “less lethal” weapons into crowds or at specific individuals within a crowd. These include impact weapons, chemical agents, conducted energy devices, and sound weapons. The regularity and uniformity of these police responses, including the millions of dollars spent in legal damages, suggests that the government deems them a necessary cost of stifling opposition.

In addition, displaying less-lethal munitions at mass assemblies creates unnecessary tension between police and protesters. In testimony before the District of Columbia City Council’s Committee on the Judiciary, Robert Klotz (the deputy chief of police of the special operations and traffic division) noted that police departments’ duty to protect protesters’ rights has been supplanted by their efforts to manage civil disturbances. Klotz cautioned police against an excessive show of force at demonstrations, which results in police overreaction to protesters.⁶³ In its final report, the Committee on the Judiciary noted that Mr. Klotz’s observation was supported by the shift in titles of the manual defining the MPD’s policy on handling mass demonstrations. In 1978 the manual was titled the MPD Handbook for the Management of Mass Demonstrations. In 2003, it was renamed the MPD Standard Operating Procedures for Mass Demonstrations, Response to Civil Disturbances & Prisoner Processing.⁶⁴ The new title affirms the regularity and routine manner in which police engage in mass arrests and detentions during mass demonstrations.

Lack of planning and lack of police training about the lethal effects of “less-lethal” weapons is reason enough not to use them. The independent Stern Commission, appointed to investigate the killing of Victoria Snelgrove by the Boston Police Department in October 2004, found that confusion and disagreement existed within the police department about how and when the weapons should be deployed. It also found such that confusion existed on who was authorized to fire them, what would happen if someone was actually hit, and what policies governed their use.⁶⁵

On April 7, 2003, in what the U.N. Commission on Human Rights later condemned as unjustified use of force, Oakland police broke up a nonviolent antiwar picket at the Oakland docks using an arsenal of less lethal weapons, including large wooden bullets, “sting ball” grenades filled with rubber bullets and tear gas, and shot-filled bean-bag projectiles. The Oakland Police Department fired directly at people’s heads and upper bodies, despite the warning printed prominently on each wooden bullet shell casing: “Do not fire directly at persons as serious injury or death may result.” The police used lethal force when none was justified as demonstrators were merely attempting to follow police orders. Three people suffered broken bones, and one woman had such a severe crush injury to her leg that she had to receive a large skin graft.⁶⁶

POLICE ASCRIBE EVIL INTENT TO PROTECTED POLITICAL SPEECH

Although it is well documented that the violence in Seattle was the fault of the police, many police departments continue to justify the need for an escalated police response at mass demonstrations by citing the need to avoid another “Battle of Seattle.”

According to the final report of the Seattle City Council’s World Trade Organization Accountability Review Committee, what police described as massive violence by protesters was in fact an abdication of police and city leaders’ responsibility during the planning process. The Review Committee report concluded that Seattle police chief Norman Stamper’s “failure to provide leadership...placed the lives of police officers and citizens at risk and contributed to the violation of protesters’ constitutional rights.”⁶⁷

After the World Trade Organization protests, all host cities of political conventions have “developed intelligence into the anarchist groups” (i.e. infiltrated them) and crafted

security plans to prevent the activists’ goals of ‘shutting down the convention.’”⁶⁸ Before the 2008 Republican National Convention, the St. Paul Police Department justified the need for a massive police presence on intelligence reports that yielded information they claim posed a threat to the safety of St. Paul.

Such calls to “shut down the convention” are forms of protected political speech. Political speech includes rhetoric and hyperbole. The Supreme Court has recognized the importance of protecting political rhetoric in *Bonds v. Floyd*, 385 U.S. 116 (1966). Charged political rhetoric is “at the core of the First Amendment.” *NAACP v. Claiborne Hardware*, 458 U.S. 886 (1982). Even when rhetoric contains phrases that could be construed as a threat to the president, the Court has evaluated the language in the broader context of robust debate. *Watts v. United States*, 394 U.S. 705 (1969).

In Cincinnati in 2001, officers fired bean-bag rounds into a crowd protesting the police shooting of Timothy Thomas, even though department procedure did not authorize the use of such weapons in a crowd situation.⁶⁹ After the U.S. Justice Department brought litigation against the City of Cincinnati, the City agreed to prohibit the use of bean-bag shotguns and 430 millimeter foam rounds against crowds unless they could target a specific individual posing an immediate threat of imminent physical harm.⁷⁰

At the 2000 Democratic National Convention (DNC) in Los Angeles, NLG Legal Observer Dave Saldana was shot by a rubber bullet. He witnessed police trapping protesters under a freeway overpass with no escape route. He described the experience of being singled out:

I was caught flat-footed, stunned and unable to move. That is, until I saw a police officer level his weapon directly at me. He didn’t aim it at the ground in front of me, as LAPD Commander David Kalish told reporters they had. I stared straight down the barrel of a shotgun as it trained on me. In that instance, I turned to run, and was immediately hit in the back upper thigh. The impact was remarkably painful, like the force of a baseball bat condensed to an area the size of a dime. After the initial pain, my leg went numb, and I couldn’t walk.⁷¹

Saldana was not the only Legal Observer to be hit by a less-lethal projectile; Guild attorney Carol Sobel was hit below the eye with a rubber bullet. While Saldana and Sobel did not sustain permanent injuries, another person present at the 2000 DNC was not as fortunate. Melissa Schneider lost sight in one eye after

she was hit by a rubber bullet. The City of Los Angeles settled her case for over \$1 million.⁷²

Negative Media Coverage as Cover for Police Violence

Media coverage continues to cast protesters in a negative light, especially before certain large events where protests are expected. The media plays a key role in escalating perceptions of violence and demonizing demonstrators. More often than not, news reports portray protesters as disruptive, deviant, and violent instigators—without any evidence—while ignoring or minimizing police violence and instigation. Such coverage began in Pittsburgh months before the G-20 Summit. The Associated Press on June 24, 2009 reported that past G-20 Summits attracted “thousands of sometimes violent demonstrators.”⁷³ The July 15, 2009 *Post-Gazette* pictured officer drills and focused on fears of “unlawful” and “violent” protest.⁷⁴ Misleading news coverage has helped the public buy the official police line that protest poses a threat that necessitates a repressive or overwhelming police response.

A story in the *Pittsburgh City Paper* on June 25, 2009 featured a photo of police in riot gear from a 2006 anti-war march with the caption “More of the same is ex-

Queens ‘terror’ raid hits G-20 anarchist

By KATI CORNELL

FBI anti-terrorism agents raided the Queens home of a self-described anarchist charged with tweeting protesters with instructions on how to evade police at the G-20 summit.

A dozen gas masks, liquid mercury, backpacks containing hammers and anarchist literature were among the dozens of items seized Thursday at the Jackson Heights home where Elliot Madison, 41, lives with his wife Elena, 39.

Madison is free on bail after Pittsburgh cops arrested him on Sept. 24 and charged him with hindering prosecution, criminal use of a communication facility and possessing criminal instruments.

Police tracked Madison and another man to a motel room at the Carfree Inn in Pittsburgh, where they discovered a makeshift communications center, according to a criminal complaint.

The two men were seated in front of personal computers and telecommunications equipment, wearing headphones and microphones and surrounded by mass contact numbers and



OH, RALLY? Masked protesters, rallying in Pittsburgh last week, were allegedly guided via Twitter by Elliot Madison.

The details of Madison's recent arrest and Thursday's search emerged yesterday as defense lawyer Martin Stolar asked a federal judge to stop authori-

items raised alarm, including a pound of liquid mercury in the house, alongside “books about poisons” and a microscope. The feds also found

they didn't fall within the scope of the search warrants.

Stolar said Madison and his wife have a long history of working for the People's

federal Judge Dora Irizarry to order the return of the property.

The judge issued a temporary order of protection stopping the feds from

The *New York Post* published a story about Elliot Madison, the Queens resident who was arrested for sending Twitter messages about police movements during the 2009 Pittsburgh G-20 Summit.

pected at September's G-20 Summit."⁷⁵ The article quoted activist Gan Golan who studied 14 major protests from 1999 to 2005. Golan stated that inflated estimates of the number of protesters and efforts to demonize them by both police and media contribute to an increased public perception of a threat.⁷⁶

Palpable throughout parts of Pittsburgh during the Summit was local residents' disdain of protesters, especially on the part of local merchants who told members of the National Lawyers Guild that they resented having to board up their store windows and close business because of "violent" protesters coming to town. Guild members watched as store-owners covered storefronts with plywood. One hardware store reportedly sold 5,000 sheets of plywood along with 3,000 two by fours and 2,000 pounds of dry wall cement.⁷⁷

An independent review panel investigating the actions of the Miami-Dade Police Department and the Miami-Dade Corrections and Rehabilitation Department during the FTAA conference wrote that the media played a large role in shaping police treatment of protesters. The review panel wrote that "[m]edia coverage and police preparation emphasized 'anarchists, anarchists, anarchists' and this contributed to a police mindset to err, when in doubt, on the side of dramatic show of force to preempt violence rather than being subject to criticism for avoidable injury and destruction based on too reserved a presence of police force." The report found that police were trained to address massive civil disturbance because "intelligence indicated some groups might attempt to 'violently disrupt the FTAA conference and cause damage to both private and public property.'" The report of the review panel found, in fact, that "[t]here were no massive disturbances."⁷⁸

The Guild believes that the media relies too much on police information and fear tactics in its reporting and thus becomes complicit in the protester-vilification dynamic.



Police at the 2009 G-20 Summit protests in Pittsburgh fired rounds of bean-bag projectiles at protesters, often at close range. Above, police in Friendship Park hold bean-bag projectile weapons. Photo by Paige Cram.

NATIONAL SPECIAL SECURITY EVENTS

Events like the G-20 Summit and the Republican and Democratic National Conventions are designated National Special Security Events (NSSE) by law enforcement. Democratic President Bill Clinton established NSSE procedures (see Endnote 1) where he outlined the security roles for federal agencies at large events. In 2000, such special events were placed under the purview of the United States Secret Service in the Presidential Threat Protection Act of 2000.⁸¹

Factors contributing to the designation of an event as an NSSE include the attendance of foreign dignitaries and United States officials, the expected number of attendees, and its political or historic significance. When designated, The Secret Service becomes the lead agency in charge of event security, while the FBI is in charge of counterintelligence, counterterrorism, and criminal investigations. The Secret Service and the FBI use local law enforcement and military personnel to help develop plans for security. Heavy police presence and restrictions at the event can include canine units, sharpshooters, surveillance, road closures, rail and air travel restrictions and United States Coast Guard patrols.

The National Lawyers Guild has monitored police treatment of protesters at several NSSEs, and has witnessed a consistent pattern of police repression, unlawful mass arrests without probable cause, abuse of less-lethal weapons, and exorbitant expenditures of personnel and money.

As the following sections describing the 2008 Republican National Convention and the 2009 G-20 Summit indicate, police have construed protest rhetoric as a “true threat,” a threat that a reasonable person would interpret as a communication of intent to inflict harm. True threats are not protected speech.⁷⁹

While a body of Supreme Court case law support’s the public’s right to engage in hyperbolic speech,⁸⁰ the employment of such speech is being used to justify police infiltration of activist organizations and subsequent terrorism-related prosecutions based on fabricated or highly tenuous evidence. In many instances, police simply lie about the existence of evidence in order to obtain warrants to search meeting spaces and arrest activists.

THE 2008 REPUBLICAN NATIONAL CONVENTION

When St. Paul, Minnesota was named the site of the 2008 Republican National Convention in September 2006, Guild members knew they would be engaged in protracted pre-event negotiations for permits and assembly space while also litigating police misconduct for years following the convention. Previous experiences with the national political conventions in 2000 and 2004 in Los Angeles, Philadelphia, Boston and New York highlighted the need to be prepared for large-scale police overreaction, mass arrests without probable cause, and other unexpected actions by law enforcement.

The Minnesota Chapter of the National Lawyers Guild and the Minnesota Civil Liberties Union (MCLU) worked for months in advance to obtain permits for marches and adequate space for people to demonstrate outside the convention site, the Xcel Energy Center. These efforts were mostly unsuccessful: the city imposed the route march permits and public demonstration areas that it wanted. NLG lawyer Bruce Nestor and the MCLU filed a lawsuit in March 2008 on behalf of the Coalition to March on the RNC and Stop the War, seeking an injunction to order the city of St. Paul to grant a route for a demonstration on September 1, the first day of the RNC. The complaint alleged that guidelines offered police unbridled discretion in determining the parade route, and that police also reserved the right to revise guidelines and permits. On July 16, 2008 a federal judge ruled in favor of the City. State litigation regarding the fenced-in public demonstration area also resulted in rulings favorable to the City.

In addition to litigation, the Guild worked well in advance to prepare teams of over 225 Legal Observers to be on the streets throughout the convention and to organize attorneys to represent people who were arrested or to deal with other issues that might arise. Legal Observers' information gave rise to the RNC Evidence Project, which resulted in an extensive archive of video and documents regarding police actions.⁸²

Law Enforcement Targets Protest Organizers

A year before the RNC, on August 31, 2007, the Minneapolis Police Department (MPD) gave an indication of how police might be expected to behave during the Convention. Previously, Critical Mass bicycle riders had held rides in Minneapolis without much interference from the police. However, in August 2007, the usual Critical Mass ride was attended by a number of activists from the Pre-RNC Welcoming Committee, a group working on the logistics of bringing protesters together. The MPD arranged for the first time to have the Minnesota State Patrol monitor the ride by helicopter. In addition, the Minnesota Information Sharing and Analysis Center (ISAC) observed the demonstration along with officers from multiple jurisdictions.⁸³ ISAC's role is to promote "information sharing and analysis between businesses

in Minnesota” to protect “the critical infrastructure of the United States.” Already funded by city and federal money, it sought state funding for the first time in 2008. Based out of local FBI headquarters, ISAC also works closely with the Department of Homeland Security.

The result was a police riot, with officers driving their vehicles into the mass of bicycle riders, widespread use of chemical weapons, and 19 arrests for felony riot charges. After the 19 arrested individuals were detained for a weekend, however, the City Attorney determined that only five people could be formally charged with misdemeanor offenses. Each defendant was offered a plea agreement to a misdemeanor, without jail time, in return for agreeing to a condition of probation that they stay away from the City of Minneapolis for 12 months—conveniently until after the 2008 RNC. One case proceeded to trial on a charge of assault of a police officer in which a member of the Welcoming Committee was acquitted when video evidence showed that police had lied. After that acquittal, remaining charges were dismissed. In subsequent civil litigation, NLG attorney Jordan Kushner obtained a \$70,000 settlement for his client who was acquitted at trial.

Recruiting Law Enforcement from Around the Country

St. Paul requested additional help from law enforcement agencies around the country. After the event was granted National Special Security Event designation in March 2007, the City of St. Paul, as lead local agency, and the United States Secret Service, as lead federal agency, began to work with the FBI, FEMA, and the St. Paul Police and Fire Departments. They entered into over 100 joint powers agreements, contracts between cities, counties or districts that agreed to perform services or lend resources to a designated district.⁸⁴

As soon as planning began, law enforcement from the St. Paul Police Department (SPPD) and the Ramsey County Sheriff’s Office (RCSO) traveled to other locations to collect information from law enforcement agencies about activist groups that might attend the convention. They soon learned about the RNC Welcoming Committee (RNCWC) and focused intelligence activities on finding out “how serious a threat the Welcoming Committee presented to the RNC.”⁸⁵

The SPPD and the RCSO assigned three undercover agents to monitor the efforts to organize around the RNC: one investigator posing as an “anarchist” infiltrated organizations in order to report on their activities, and two confidential informants posed as members of the Welcoming Committee, and conducted surveillance of Welcoming Committee activities.⁸⁶ Additional RCSO investigators traveled around the country conducting surveillance of the RNCWC. They took thousands of pictures and organized pretextual traffic stops of individuals and groups including Code Pink, Sisters Camelot (a free food bus), the Campus Antiwar Network conference in Iowa City, IA, the Coalition to March and Stop the War, a “permaculture” bus parked at the site of a farmer’s market organized by the City of Minneapolis, Students for a Democratic Society, and others.⁸⁷

Pre-Event Arrests and Raids of Independent Media

More than 15,000 journalists, bloggers and members of the independent media attended the RNC.⁸⁸ According to the Report of the Republican National Convention Public Safety Planning and Implementation Review Commission (After Report), "...the lack of clarity as to how law enforcement would treat journalists at the RNC, and the lack of a clear policy toward the media, resulted in disparate expectations and treatment, confusion and some resentment by journalists toward the SPPD."⁸⁹

The RNC Welcoming Committee and independent media became specific targets of local and federal law enforcement during the 2008 RNC.

On the Wednesday before the RNC, August 27, New York journalists Vladimir Teichberg and Olivia Katz from the Glass Bead Collective were arrested at around 1:30am by Minneapolis police. They had just picked up another collective member and were walking home when they were stopped. The officers detained them for at least 30 minutes and held their possessions, including a laptop computer, cell phones and video cameras, for 14 hours. The property was released and a decision was made to not file formal charges only after the intervention of Guild attorneys and public press conferences condemning the police actions.

Bruce Nestor noted that: "The detaining of journalists ties into a pattern and a history here of the Minneapolis police harassing people who are documenting police misconduct. They were seizing video cameras, taking cell phone videos, destroying memory chips, and otherwise interfering with the right of citizens to document police misconduct."⁹⁰

On Saturday, August 30, police executed a search warrant at 951 and 949 Iglehart Avenue in Saint Paul where members of the independent media group I-Witness Video were staying.⁹¹ Police detained the St. Paul homeowner, Michael Whalen, and others present for two hours while they obtained a warrant to search for weapons, computers, hazardous materials, cell phones and firearms. No arrests were made and no items were seized. The search warrant was based on the claim of an undercover informant that 27 boxes of "weapons" had been delivered to the home. The boxes turned out to contain literature promoting veganism, for distribution during the RNC. Other allegations in the warrant application were Whalen's support for the Sarah Jane Olson legal defense fund, his association with a radical bookstore, and his support for national liberation movements during the 1980s. Further, only one address was named in the warrant application and police conducted a warrantless search on the other address. NLG attorneys and Legal Observers were active onsite during all of these raids. In February 2009, Whalen filed a civil lawsuit in U.S. District Court accusing police officers of abuse, illegal searches and seizure of property, and wrongful detainment. Guild member Ted Dooley, one of the attorneys representing Whalen, contends that the grounds for the search were fabricated.⁹²

On September 3, police with battering rams and batons entered another location housing the temporary I-Witness office, claiming that they had received reports of a hostage situation. I-Witness held an impromptu press conference outside the building. Because of the police action, I-Witness was forced to leave these offices.

Pre-Event Arrests and Raids of Organizers' Space and Activists' Residences

Official law enforcement actions were directed mainly toward the RNC Welcoming Committee. Ramsey County Sheriff Bob Fletcher, in coordination with the FBI, executed search warrants to raid offices of the RNCWC and homes in St. Paul and Minneapolis where activists were staying.

Convergence Center Raid

On Friday, August 29 teams of 25-30 riot-clad officers, brandishing weapons, burst into 627 Smith Avenue in St. Paul at 9:15pm, outside the judicially-authorized search hours of 7am to 8pm. They detained over 60 people and seized banners, political literature, computers, and other documents protected by the First Amendment. That same weekend, the Minnesota Civil Liberties Union and NLG attorneys filed a joint federal lawsuit, seeking return of the seized literature in time to be distributed during the RNC. The Ramsey County Sheriff agreed to return some literature, but claimed that returning the buttons would promote rioting and disorder because the buttons displayed slogans to which police objected. The search warrants were executed by the Ramsey County Sheriff's Department, in cooperation with the FBI, with security being provided by local police departments. Litigation is pending with respect to seeking an award of damages and attorney fees.

Raids of Activist Residences

On Saturday, August 30, searches were executed at the homes of three activists: 2301 23rd Avenue South, 3240 17th Avenue South and 3500 Harriet Avenue South in Minneapolis. Personal and common household items were seized. Bruce Nestor was present at the scene of two of the house raids in South Minneapolis. He described how the police started at approximately 8am, entered houses with battering rams, ordered the sleeping occupants up, instructed them to lie face down on the floor, handcuffed them, and then over the course of about an hour processed most people out after photographing and identifying them, as they had done at the Convergence center the night before. "These weren't just warrants to obtain evidence listed in the search warrants but they were also really intelligence gathering to try to identify people who were in town," Nestor observed.⁹³

Communication Center Raid

Dozens of police officers conducted a warrantless raid of the Welcoming Committee's communication center at 287 East 6th Street on Monday, September 1, forcing all individuals present to lie face down. Police detained everyone on site, seizing computers, journals, video equipment and political pamphlets. Nine people were arrested on charges of conspiracy to riot. None of those arrested was ever formally charged. Rather, they were released after expiration of a 36-hour "probable cause" hold.

Bruce Nestor commented on the preventative nature of the raids:

Seizing boxes of political literature shows that the motive of these raids was political. We condemn those raids, and the arrests in particular, as preemptive arrests designed to be preventative detention. The raids claim to be looking for such items as Molotov cocktails and devices to block traffic. Many common household items were seized, items that you would find in anybody's home to which the police ascribed evil intent. Claims that they found urine were absolutely fabricated as were claims of liquids being found to throw at police officers. Those arrests were preventive arrests, designed to get the leadership of certain political organizations off the streets during the convention.⁹⁴

The RNC 8

Arrested during the Saturday raid were Monica Bicking, Garrett Fitzgerald, Erik Oseland, Nathanael Secor, and Eryn Trimmer. Later that day Luce Guillen-Givins was arrested leaving a public meeting at a park. Rob Czernik and Max Spektor were arrested on Monday, September 1. These arrests were preemptive, targeting known organizers in an attempt to frustrate protests in the Twin Cities before the convention even began. The RNC 8, as these individuals are known, were originally charged with conspiracy to riot in the 2nd degree in furtherance of terrorism, a felony which was the first ever use of Minnesota's local version of the USA PATRIOT Act.

Subsequently, Ramsey County Attorney Susan Gaertner amended the charges to drop the terrorism enhancement and add charges of felony conspiracy to commit criminal damage to property. Trial of the RNC 8 was set for October 2010 with the eight activists potentially facing years in prison.

The Ramsey County Attorney is charging the RNC 8 personally for each act of property damage or violence that occurred while they were incarcerated following their preemptive arrest on August 30, 2008.⁹⁵

Search Warrant Affidavits Based On Confidential Informants' Allegations

Affidavits filed in support of the search warrants were based largely on statements made by confidential informants who infiltrated and attended political meetings for a year prior to the RNC.⁹⁶ Their uncorroborated statements were used to obtain arrest warrants by alleging that, among other things, activists sought to kidnap delegates to the RNC, assault police officers with firebombs and explosives, and sabotage airports in St. Paul. "No physical evidence or other evidence existed to corroborate the claims of the confidential informants that people were talking about engaging in violent acts," said Bruce Nestor.⁹⁷

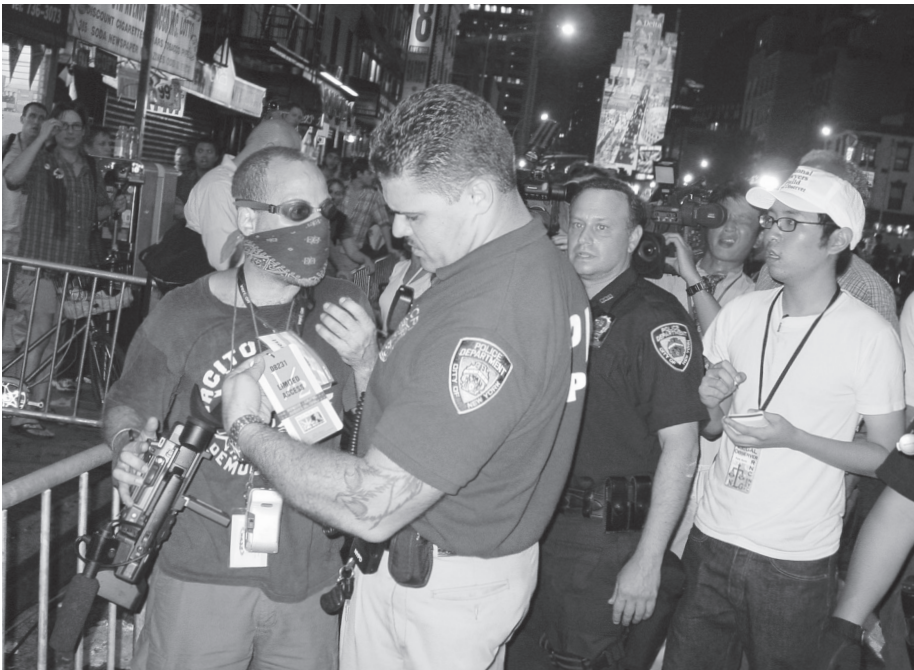
Based on past abuses of such informants by law enforcement, the National Lawyers Guild is concerned that such police informants have incentives to lie and exaggerate threats of violence and to also act as *provocateurs* and urging support for acts of violence.

"Undoubtedly, the public statements of the RNC Welcoming Committee were that they were trying to block traffic, to try to blockade and disrupt the convention.



Above: NLG Legal Observer Joel Kupferman stands watching a line of officers at the 2009 Pittsburgh G-20 Summit. Blocks away, police had used an LRAD to disperse protesters. Photo by Paige Cram.

Below: NYPD officers inspect the press credentials of a man videotaping the protest as an NLG Legal Observer looks on. Photo from Guild archives.



But there were no plans to engage in violence against people, no plans to engage in attacks against the police and the allegations in the search warrant ratcheted up the public fear and drove the police response in these raids in their attempts to justify these early-morning raids in houses,” Nestor continued.⁹⁸

The Confidential Informants

Perhaps even more threatening to the principle of freedom of association and political thought protected by the First Amendment is the role of government informants in the investigation. For instance, the only three individuals convicted of any acts related to making the “Molotov cocktails,” to which the prosecution in the RNC 8 constantly refers, were all deeply involved with FBI informants Andrew Darst and Brandon Darby.

Darby, paid over \$21,000 by the FBI for his services, had for years claimed to be a progressive political activist. After the RNC, he wrote an internet blog claiming that the U.S. Justice Department has been “hijacked by the extreme left,” and that the left represents a “culture of hating America [that] has metastasized (sic) like a cancer running through the body politic.”⁹⁹

Meanwhile, the main informant in the RNC 8 investigation, Minnesota resident Andrew Darst, was paid almost \$50,000 over the course of the investigation and continued to be paid \$1,500 a month by the FBI, 18 months after his infiltration of the RNC Welcoming Committee came to an end. On January 11, 2009, Darst was charged with felony burglary and assault in Hennepin County, Minnesota. After the Hennepin County prosecutor failed to show up for his sentencing, during which Darst’s FBI handler was present, Darst avoided jail time and walked away with a misdemeanor assault conviction. A trespass charge against Darst was also dismissed by the City of Roseville four months after the RNC 8 were arrested.¹⁰⁰ In contrast, none of the RNC 8 has ever been convicted of a crime involving either violence or damage to property.

Working for Ramsey County, not the FBI, Chris Dugger was a part-time informant in drug and gang cases when he began infiltrating the RNC Welcoming Committee. He attended Welcoming Committee meetings for over a year during which he talked publicly about “kicking cops’ asses” and how he “hated the police.”¹⁰¹ He testified, however, that language like this was not used by any of the RNC 8. Dugger was paid almost \$18,000 to inform on the RNC Welcoming Committee before being hired full-time by the Ramsey County Sheriff. A domestic assault charge against Dugger was dismissed in Dakota County, Minnesota in 2007, when he was a police informant. He was in fact recommended for the infiltration of the RNCWC by the Dakota County Drug Task Force and was later deputized as a Ramsey County Sheriff’s deputy.

Other evidence shows that an undercover operation run by the Bloomington Police Department created a group called Indy-TACT which promoted itself as “red zone activists” acting with “red hot malevolence, determination and endurance.” The group’s manifesto begins: “Attention all Capitalists, Imperialists, Racists, Sexists, Homophobes and most of all—Republicans! The status quo has just been replaced

by a new order of autonomy, mutual aid, and direct democracy! Indy-TACT, a group of Fort Wayne, Indiana anti-capitalists, anti-authoritarians, and anti-war activists are hoisting our Freedom from Capitalism flag in the fertile soil of St. Paul as we stand in solidarity in our adoption of Sector 2 in St. Paul, Minnesota, the host of the RNC.”¹⁰²

Guilt by Association

Writing that probable cause exists to support prosecution of the RNC 8, the government asserts that they are responsible for a window broken at Macy’s because the individual who was convicted of that act was, along with dozens of others not convicted of any crime, an overnight house guest of three of the RNC 8 before the convention started. The government also holds the RNC 8 responsible for property damage caused by two activists from California who were among hundreds that attended RNCWC presentations in California urging people to protest in St. Paul.

In a more inflammatory vein, the government asserts that the RNC 8 is responsible for Molotov cocktails made, but not used, by David McKay and Bradley Crowder, who were both convicted in federal court of that offense. For Ramsey County, two facts support the claim that McKay and Crowder “conspired” with the RNC 8 to use dangerous weapons. First, McKay and Crowder attended an RNCWC meeting in Texas; again, with many others convicted of no crime. Second, at that meeting they watched a satirical video produced by the RNCWC, “We’re Getting Ready,” in which an empty bottle with a rag is lit on fire and tossed into a barbecue grill by a “black bloc anarchist.”¹⁰³

The government’s position amounts to guilt by association and sidesteps all of the evidence in the case. The criminal complaint against the RNC 8 states the conspiracy ended on September 1, 2008. The testimony in the cases involving McKay and Crowder was that the making of the Molotov cocktails was not planned ahead of time and only occurred after September 2, 2008, following police raids on the first day of the 2008 RNC that angered McKay. During a probable cause hearing on May 13, 2010, Sergeant Jay Maher of the Ramsey County Sheriff’s Office acknowledged that he was not aware of any evidence that either McKay or Crowder had any personal contact with the two members of the RNC 8 who attended the meeting in Texas, that they had ever discussed with any member of the RNC 8 any plans to commit property damage or violence at the convention, or that McKay and Crowder had any contact with the RNC 8 other than attending that single meeting in Texas seven months before the 2008 Republican National Convention.¹⁰⁴

Further, over almost two full days of testimony, Ramsey County deputies Chris Dugger and Marilyn Hedstrom both testified that during their year-long infiltration of the RNC 8—which included attending hundreds of meetings and close, personal relationships with some of the RNC Welcoming Committee—that they never once heard any of the RNC 8 plan violent acts or damage to property or endorse the use of dangerous weapons.

RNC 2008: The Event

Monday, September 1

Monday was the first day of the convention and the major protests against it. Two permitted marches were scheduled, one by Iraq Veterans Against the War in the morning, and the other by the Coalition to March and End the War in the afternoon. Activists estimated the attendance to be approximately 15-20,000 at the afternoon march, although police estimated the crowd at between 3,500 and 10,000.¹⁰⁵ Many people were prevented from joining that march because of the massive police presence in the streets. Police blocked off all of the streets crossing the march route and those who were not at the initial gathering point were unable to join. NLG Legal Observers noted that police were fairly “hands off” at the beginning; they allowed people to move about as long as they did not move near the Xcel Center. When marchers started to get near the convention center, however, the police moved in and forced them away from it.

Later in the afternoon after some confirmed incidents of property damage, the police response escalated significantly. The more aggressive police response prompted some protesters to assert their right to publicly protest outside the designated area, which was surrounded by high metal fences and rings of riot gear clad officers. There were several large confrontations in which the police surrounded the marchers, sometimes allowing them to disperse, but twice making large scale mass arrests. At approximately 4:30pm, police surrounded a group of about 90 people and arrested everybody, including two journalists from Democracy Now!, a journalist from the Associated Press and eventually, co-host of Democracy Now! Amy Goodman, who was inquiring about the Democracy Now! journalists who had been arrested.

A Militarized Downtown

Over the next several days many individuals present described the downtown area as a militarized zone. The Xcel Center was surrounded by eight-foot-high metal fencing. March routes were channeled between fences on each side. There was a large police presence in full riot gear; uniformed officers throughout the city shot tear gas weapons, used concussion grenades, and deployed mace and pepper spray. Many local residents were upset at the militarized appearance of downtown.

Geoff Brady, an independent producer with Pacifica Radio who served in the U.S. Army, observed that police officers from many different states, including Tucson, Arizona were present. He noted that ranks of riot police followed an oral military drill “preparatory command,” (explaining what the movement will be) followed by the “command of execution,” (explaining when the movement will be carried out) to form a wall blocking protesters and to send volleys of tear gas into the crowds. “You know they’re getting ready to do something because the commands are given at a high pitch and louder volume than normal commands of execution. You brace



Police officers in patrol cars, on bicycles and on foot were deployed throughout downtown Minneapolis during the 2008 RNC. Photo by Geoff Brady.

yourself for the next military style attack, but you don't know what form that will be. This is another reminder of how military tactics are used domestically to intimidate protesters and bystanders."¹⁰⁶

NLG member Dan Spalding, working with the Minnesota based Coldsnap Legal Collective, said, "Hundreds of marchers were arrested, some were beaten, and tear gas and pepper spray was employed liberally even toward those who were attempting to clear an area and not resisting arrest. Parts of the city were closed off at times. In addition to activists, many legal observers, journalists and street medics were detained or arrested."¹⁰⁷

Spalding continued:

I saw firsthand the police using flash-bang grenades, using tear gas cannisters, using pepper spray, and using paint grenades on protesters. They were using them with no verbal orders to disperse and using them while people were actively fleeing the area. There were people in camouflage uniforms with no other identification, who could have been National Guardsmen, throwing paint grenades and flash-bangs at people as they were leaving. One officer used less-than-lethal weapons on people who were already bound in by the railing by the river. They literally had no place to go. Protesters were blocked off on one end by police using a tremendous amount of less-than-lethal weaponry and as they were leaving they were bounded by the river on one side and by an embankment on the other. By the time they got to a place where they could disperse there was another line of police in riot gear and on bicycles and on horseback blocking them on that side. We were the only Legal Observers to escape. We heard police

taking bicycles and using them as a shield to hold protesters in. I saw cops using their own bikes to hem in protesters and not allowing them to disperse if they wanted to.¹⁰⁸

Over the course of the week, members of the Coldsnap Legal Collective fielded calls from jail to hotline phones in a support center housed in a Guild member's office. NLG attorneys visited individuals held at the Ramsey County Jail. Meanwhile, over 225 Guild legal observers were sent out from a local muster site. They began their work on September 1 monitoring the Coalition to March on the RNC and Stop the War demonstration, which drew some 20,000 people, and worked around the clock until September 5, after observing many planned and spontaneous marches.

Speaking of the unlawful mass arrests, Bruce Nestor said:

These charges are an effort to equate publicly stated plans to blockade traffic and disrupt the RNC as being the same as acts of terrorism. This both trivializes real violence and attempts to place the stated political views of the defendants on trial. The charges represent an abuse of the criminal justice system and seek to intimidate any person organizing large scale public demonstrations potentially involving civil disobedience.¹⁰⁹

GREEN PAINT GRENADES

Just blocks from the Xcel Center, a local activist and independent journalist named Nick described the launching of paint and flash-bang grenades, the arrests of journalists, and the unwarranted use of pepper spray by police.

They would shoot people with paint, balls of paint, like paint bullets. I kept tasting paint. It was green paint. And they would hit people. I saw people splattered, covered with it. They would ignite some smoke bombs and then spray mace on just a couple of people, and it would carry down all Kellogg Boulevard. And you could see it.

I felt it from about 150 yards away. It hit me in my eyes and my mouth. It was like getting burned.

I had some press passes for inside. I kept trying to get up to get photos because I'm doing a blog about it, and I would come up and the police would scream "Get back!" and I turned around and I had a big gun pointed in my face. I would hold up my press credentials

and yell "Press corps, press corps!" Like don't hurt me, don't hurt me! The officer would say: "Get back!" In my face. It's overwhelming how scary these guys really are.

The green paint grenade looked like a one-barrel shotgun. It reminded me of the gun in *Terminator II*; that's what it looked like. I saw them shooting. I saw one of the bullets lying on the ground and I thought "Back up, get away, get away." I did not know what it was.

At first I kept tasting paint. And I felt the mace burning. Smelling paint. I had my mask on, my little "SARS" mask, and here comes a guy with splatters, like Jackson Pollock splatters all over his pants. He had his disposable camera in his pocket. The bullet hit the disposable camera, shattered the camera and saved his leg from injury. But he showed me the bruise, and it's a black smear, a bruise on his leg. From the paint guns!¹¹⁰

Civil Lawsuits

Several civil lawsuits were filed after the RNC.

- On August 31, 2010, NLG Legal Observer Daniel Dobson of St. Paul filed a lawsuit against the Ramsey County Sheriff’s Office, the City of St. Paul, the Hennepin County Sheriff’s Office, the City of Minneapolis and other law enforcement agencies alleging that he was “repeatedly assaulted by defendants and members of defendant agencies” and “repeatedly had his civil rights and liberties violated during the RNC by being forbidden to do legal work he was requested to do and not being permitted to observe illegal and excessive police activity.”¹¹¹ The complaint alleges that the labeling of individuals and groups planning to attend the RNC as “anarchists” and “terrorists” was used to justify the infringement of the constitutional rights of those who came to protest.
- In May 2010, Bruce Nestor, the Center for Constitutional Rights, and the law firm Weil, Gotshall & Manges filed a lawsuit challenging the actions of the Minneapolis and St. Paul police departments against Democracy Now! Journalists Amy Goodman, Nicole Salazar and Sharif Abdel Kouddous. Despite clearly identifying herself as a member of the press, Salazar was assaulted and arrested by police. Later that day Kouddous was arrested. Police arrested Goodman when she learned of her co-workers’ arrests and questioned officers about locating her colleagues.
- In September 2009, on the one-year anniversary of the RNC, 27 plaintiffs filed a lawsuit in U.S. District Court charging that the St. Paul Police Department violated their constitutional rights. The lawsuit alleges that police officers illegally detained more than 200 people and suppressed their free speech rights on September 1, 2008; some allege they were subjected to tear gas and flash-bang grenades for no apparent reason. The group maintains that police never issued orders to disperse prior to surrounding and arresting them in a park on Shepard Road along the Mississippi River.
 Guild members Bob Kolstad and David Shulman, along with Travis Snider, are representing the plaintiffs in this class action, and say that the City has admitted that the individuals were arrested preemptively and out of fear of what actions they might take in the future. None of the named plaintiffs was convicted of any crime.
- Two lawsuits claim the actions of police officers prevented them from working as journalists. Wendy Binion, an Oregon resident affiliated with Portland IndyMedia, was arrested on the second day of the convention near Mears Park. Her lawsuit alleged that she was “battered, assaulted, subjected to excessive, unreasonable force, unreasonably seized, falsely arrested and falsely imprisoned” by St. Paul police officers. She also claimed that officers confiscated her video camera, ATM card and other personal property and did not return it for two months.

- Mick Kelly sued St. Paul after he was arrested on June 5, 2008 outside Xcel Energy Center. The city settled by paying him \$5,000. In a subsequent lawsuit Kelly alleged that Minneapolis police officers attacked him on the last day of the convention while he was marching in a parade. Kelly carried a banner that read “Confront the Warmakers, U.S. out of Iraq now.” Officers on horseback surrounded him and ripped the banner off its pole. Officers discharged a non-lethal projectile at him at close range, severely bruising his torso. He was detained and ticketed, but the citation was later dropped. Kelly seeks more than \$1 million in damages. As of this writing, his case was still pending.

Charges Dismissed Against Demonstrators

A Ramsey County jury on March 19, 2009 acquitted two defendants on seven counts arising from the RNC protests. After a four-day trial, the jury of six people found Ilana M. Radovsky not guilty of two counts of Unlawful Assembly, one count of Giving Peace Officer False Name and one count of Fleeting a Police Officer on Foot.¹¹² Radovsky was represented by Guild attorney Ted Dooley. Another defendant, Gracia Logue-Sargeant was found not guilty of two counts of Unlawful Assembly and one count of Disorderly Conduct. Prior to the jury deliberating, Judge Michael Fetsch, with the consent of the prosecutor, dismissed one count against each defendant of parading without a permit in violation of a St. Paul city ordinance. Despite eyewitness testimony from Minneapolis Police Sergeant Jeff Jindra that Logue-Sargeant was part of a disorderly demonstration and personally pulled a newspaper box into the street, the jury refused to convict her. NLG attorney Bruce Nestor represented Logue-Sargeant, who was swept up in a mass arrest, and said the jury clearly believed the defendant’s testimony and rejected the fabricated police claims.

This verdict followed on the heels of the acquittal of seven defendants of unlawful assembly charges in a prior Ramsey County trial in which representation was provided by NLG attorney Jordan Kushner. In all, only one individual subjected to a mass arrest was convicted at trial, on a charge of Parading Without a Permit, and the conviction was then thrown out by the trial judge based on a motion for new trial filed by NLG attorneys.

THE 2009 G-20 SUMMIT

The 2009 G-20 Summit was held in Pittsburgh, Pennsylvania on September 24-25. Many were surprised at the White House's site selection, given the small size of Pittsburgh compared with such former Summit sites as London and Washington, D.C. Indeed, local officials faced several logistical challenges, from restricting access to bridges and roads, to shutting down businesses, to bringing in additional law enforcement. Mayor Luke Ravenstahl met with groups expected to protest at the event, and the Citizen's Police Review Board organized a City Council meeting in July.

Pre-Event City Council Meeting

A month before the G-20, on July 28, 2009, the City Council, with assistance from the Citizen's Police Review Board, held a "Post Agenda" meeting where advocates of free speech spoke on behalf of a restrained police presence at the Summit.¹¹³ The meeting had been called by the chairman of the Council's Public Safety Committee, Bruce Kraus, who urged dialogue between city officials and protesters. Councilmembers cautioned that officers must be prepared for the possibility of violence and stressed that if protesters engaged in violence they would be dealt with severely. One councilman voiced concern for the safety of city residents after seeing fliers posted in his district advocating opposition to capitalism and the G-20.¹¹⁴

A presentation by Sam Rosenfeld of the The Densus Group, a consulting firm specializing in crowd management, focused on limiting liability costs and injuries by avoiding mass arrests and instead targeting any protester engaged in unlawful actions. Heidi Boghosian of the National Lawyers Guild spoke about the history of G-20 events and other large-scale meetings and conventions. She cautioned the Council, based on the Guild's long experience, that the presence of police in full riot gear creates a tenor of conflict and increases the likelihood that unnecessary violence will occur.

The High Cost of Security

During the week of the G-20, many streets and parking garages were closed, and traffic patterns were adjusted. Several public schools and universities canceled classes and nearby businesses were closed for the duration of the conference. As of midnight Wednesday, automobiles were prevented from entering the downtown business district.

An additional 4,000 police officers were requested, as the city only had 900 police officers at the time of the event. The City Council allocated up to \$16 million on public safety expenses for the event, but spent only \$12.23 million. Costs included training, equipment and overtime for public safety workers, pay, food and lodging for outside officers who came to assist, computer systems and surveillance cameras, and insurance.¹¹⁵

The Pennsylvania State Police committed over 1,000 officers for the event, including SWAT, helicopter, mounted, undercover, bicycle, and motorcycle officers.

Seventy-five Allegheny County officers were trained and embedded with the Pittsburgh Police. Commitments to send officers from New York City, Baltimore and the Pittsburgh suburbs were secured.¹¹⁶

Military equipment included Black Hawk and Chinook helicopters, Humvees and ten 25-foot boats carrying machine guns from the Coast Guard. In addition, 2,500 National Guard troops were present.¹¹⁷

Wednesday, September 23

At approximately 10:15am, Greenpeace activists in climbing gear rappelled over the side of the West End Bridge and hung a banner warning of climate disaster over the Ohio River, slowing traffic before they were arrested. Another group of Greenpeace protesters tried to hang a banner on the Fort Pitt Bridge. All together, eight people were arrested and charged with defiant trespass, disorderly conduct, obstructing traffic and possessing an instrument of a crime, all misdemeanor offenses.

Thursday, September 24

The Pittsburgh G-20 Resistance Project held a march and a day of direct action at Arsenal Park in the Lawrenceville section of Pittsburgh. Approximately 1,000 people, including journalists, gathered in a park in the neighborhood of Bloomfield. Police in riot gear lined one side of the park, holding pump-action rifles.

After the march had started and was leaving the park, at approximately 3pm, police ordered everyone to disperse. The crowd moved out of the park and wound its way through the streets of the Lawrenceville neighborhood, heading toward a bridge leading to the downtown area. Police in riot gear marched and waited blocks ahead and threw canisters of Oleoresin Capsicum (OC) gas, or pepper spray, at a crowd of approximately 500 protesters, and also used Long Range Acoustic Devices (LRAD) against them. According to Guild Legal Observer Mike Lee, "Riot police banged batons against their shields like a coordinated drum line to march in unison as they pushed free speech from the streets of Pittsburgh."¹¹⁸

Guild Legal Observer Will Gardella was standing on the Butler Street sidewalk near protester Anthony Brino who was being arrested. Gardella had been photographing the police and attempting to find out the identity of Albert Petrarca, a demonstrator arrested after sitting down in front of the police LRAD vehicle at about 4:55pm. Gardella recounted: "I shouted to Anthony, 'What's your name?'" I never heard the answer, but kept walking away from the police line. One or two minutes later, I felt an officer grab me. I was pushed to the ground and bound with zip-cuffs, a process which seemed to take a couple of minutes."¹¹⁹

Democracy Now! producer Steve Martinez told NLG Legal Observer Joel Kupferman that he was also shoved to the ground by police while videotaping activities that afternoon.

In the late afternoon, near the Marriott Courtyard in Shadyside, police deployed smoke bombs in the absence of protest activity, forcing some bystanders to flee the area. A Starbucks located on the first floor of the hotel locked its door while the

smoke bombs were disbursing, so that patrons had to ask to be let out when they wanted to leave.

On the isolated intersection of Cypress Street and Millvale Avenue, Legal Observer Mike Lee was talking to a friend. A caravan of four cruisers, a school bus and two vans stopped on Millvale. As officers poured from the school bus, one ordered six protesters to leave the area. As he spoke, police surrounded the Avenue. Police separated Lee and his friend, both African American males, and searched a beach bucket which contained a camera. Lee was told to leave, and as he crossed Cypress an officer pointed a pellet shotgun at his back. The same caravan later followed this group and more protesters to Friendship Park.¹²⁰

At 10:00pm the group BASH BACK! organized a protest for LGBTQ liberation in the Oakland neighborhood. Hundreds of police circled the group and approximately 300 police in riot gear lined the sidewalk behind the William Pitt Union. At the same time police released tear gas on a spontaneous demonstration of activists in Schenley Plaza, outside Phipps Conservatory, where world leaders were meeting. Two hundred additional officers blocked Forbes Avenue, containing the protesters who were also on Forbes Avenue and Bigelow Boulevard near the Cathedral of Learning.¹²¹

University of Pittsburgh students reported feeling the effects of tear gas in their dormitory rooms. Some came out of their rooms after hearing police sirens. Police arrested 42 protesters near the university and 24 earlier on charges including failure to disperse and inciting riot. Police threw canisters of OC gas at the crowds and surrounded the Cathedral of Learning at around 11:30pm. The University of Pittsburgh sent this text message alert to students: “Conditions may be deteriorating in Oakland. Students are advised to remain near their residences.”¹²²

One University of Pittsburgh student wrote to the Guild:

On Thursday night, while walking home from a friend’s house, I was told not to walk down Bellefield or Fifth Ave by police, then forced into the quad by riot cops along with a group of other students. We were smoke-bombed and ordered to disperse. We tried to get out in the only direction they allowed us, towards 5th Ave, but apparently we were not moving fast enough out into the oncoming traffic. The sidewalk was so packed the only way out was to the street. The line of riot cops rushed us and I was hit in the back with a baton.¹²³

According to Mike Lee, “LRAD sirens, dispersal announcements, and riot police marching orders covered the Pitt campus. Usual campus hangout spots were suddenly transformed into unlawful gatherings.”¹²⁴

Guild attorney Joel Kupferman was at the University of Pittsburgh and witnessed police deploying gas. He noted that many journalists said their eyes were tearing. Some had been shoved to the ground. He saw the police march up the hill on to the campus as students were coming out of their dorms. Many seemed in a state of panic; they didn’t know if they should leave their buildings. Police were arresting those coming out and not having anything to do with the protests. Kupferman said, “This was the highest police-to-protester ratio I’ve ever seen, and all just at the University of Pittsburgh. They lined up arm to arm on the perimeter of the park. For

many students, this appeared to be an eye-opening experience—almost like a crash course in Police Administration 101.¹²⁵

Police made 190 arrests by the end of the day, and estimated attendance at approximately 4,500 protesters. In a protest on Baum Boulevard, two men—in what resembled military fatigues—pushed one male protester into the back of a tan Ford Crown Victoria. Extractions, or snatchings, as they are also called, are where a group of law enforcement officers, often in plainclothes, identify a particular person or persons for arrest, then isolate the person(s), surround them, and make an arrest, often whisking the person(s) from the scene immediately.¹²⁶ The Guild witnessed snatch squads at the FTAA demonstrations in 2003 when a Legal Observer was snatched off a quiet side street.¹²⁷ A YouTube video documenting the Pittsburgh extraction received over 1 million views.¹²⁸

Friday, September 25

The Summit began on the morning of September 25 at the David L. Lawrence Convention Center in downtown Pittsburgh. Speakers gathered in front of the City-County Building after which the Peoples' March began moving toward the East Allegheny section of town. Approximately 2,000 union workers, students, and other protesters marched into downtown Pittsburgh to demonstrate on behalf of health care, education, and an end to war.

That morning, scattered protests took place around the city at several locations in front of multinational corporations and financial institutions in response to calls for “Everywhere Protests” by the Pittsburgh G-20 Resistance Project. Some protesters wore black and twirled hula hoops at Forbes Avenue and Atwood Street in the Oakland neighborhood. A small gathering of protesters sprung up at a Starbucks Coffee on Centre Avenue in East Liberty that night.

Local Media Hypes Fear of Violence

Media coverage prior to the G-20 Summit frequently depicted protesters as violent. A July 15 article by United Press International titled “Pittsburgh Police Ready for G-20 Summit” focused exclusively on police preparations for the event. It mentioned that 900 police took part in a training by the Center for Domestic Preparedness (CDP) and that an “unspecified” number of officers received training from Combined Tactical Systems. A quotation from the CDP referred to preparation for “unlawful” protest.¹²⁹ This article did not, however, specifically disparage protesters.

A later article did conjure up images of protest-initiated violence. A September 23 article in the *Pittsburgh Business Times*, “Densus Group: March on the G-20, Day of Action Protests Has Highest Risk for Disorder During G-20 Summit,” predicted specific incidences of violence, without having interviewed activists, referred specifically to police preparations for violence, and warned area residents and businesses about the threat of violence.¹³⁰

During the week of protests and the Summit, National Lawyers Guild members watched local newscasts that played into these fears. They also spoke to local



Police atop a vehicle carrying a Long Range Acoustic Device (LRAD), a device used by the U.S. military in Iraq and in the streets outside the 2009 Pittsburgh G-20 Summit to disperse crowds. Photo by Mike Lee.

merchants, many of whom opted to board up their businesses in anticipation of violence. In an article in *The Nation* titled “Fortress Pittsburgh,” Robert Eshelman wrote, “Many Pittsburgh residents I’ve spoken to in the past few days have been pumped up by the local media with stories of violent protesters intent on destroying the city. Paranoia and fear run very deep. This has created an inverted narrative. The G-20 is viewed as a savior, offering an opportunity for this battered city, now rising from the ashes of industrial decay, to shine. Conversely, critics of the G-20—especially anyone taking to the streets in protest—are here to muddy the picture and steal Pittsburgh’s glory.”¹³¹

Long Range Acoustic Devices as Weapons

National Lawyers Guild members witnessed firsthand the use of LRADs by police in Pittsburgh residential neighborhoods, often far from any protest activity. The machine was mounted on a Pittsburgh Police Department truck and emitted a series of high frequency sounds. NLS staff member Paige Cram stood next to the LRAD device, as did Guild attorney Joel Kupferman. “The noise emitted from this sound cannon can cause serious and long-term hearing loss, especially to vulnerable children and the elderly who were present in or near their homes,” he said.¹³²

LRADs were developed by the American Technology Corporation of San Diego in 2003. While initially designed for naval communications and anti-piracy efforts, their potential for crowd control was clear early on. Police departments in New York

and Boston bought them that year, and they were used as loudspeakers at the 2004 New York RNC protests. On August 25, 2004, ABC News ran a story about LRADs in their technology feature, stating that they would be used for the RNC and focusing on their crowd control capacities, while also mentioning their potential use as weapons. They were reportedly used in Miami in 2003 at the Free Trade Ministerial.¹³³

LRADs USED TO DETER PIRATES

Their first acknowledged use as a deterrent weapon was not until 2005 when the captain and crew of the *Seaborn Spirit* used LRADs at a distance of 40 meters to deter pirates off the coast of Somalia.¹³⁴ They have since been used in Tbilisi, Georgia, Iraq, and Afghanistan as well as by the Honduran government against the Brazilian embassy and by Japanese whalers against the Sea Shepherd activists. They have also been used, from helicopters, to direct Haitian earthquake victims to food and water distribution centers. In a crisis situation, their advantage over traditional megaphones is undeniable. LRADs are an example of technology that can be helpful but all too easily abused as well.

Pittsburgh in 2009 was not the first time LRADs were used in the United States, but it does seem to be their first domestic use as a weapon, most notably and unjustifiably in residential neighborhoods.¹³⁵ The *Washington Times* confirms that American Technology Corporation's SEC filings of 2008 note that LRADs can cause damage to health and if misused can result in lawsuits.¹³⁶ The device is usually operated at a level of 120 decibels, but the LRAD's maximum is 146 decibels, a level at which it can cause serious hearing impairment.

American Technology Corporation changed its name to LRAD Corporation in January 2010. It now offers five models of the LRAD, including

a hand-held megaphone and a remote-operated version of its most powerful model. The manufacturers note that they simultaneously sold their product to the country of Azerbaijan and the local Sacramento Sheriff's department.

In Pittsburgh, pre-recorded messages were transmitted over a loudspeaker, likely to avoid subsequent claims that failure to disperse warnings were not given. One recording said: "You must leave the vicinity. If you remain in the vicinity police action will be taken." The message failed to indicate what type of police action would be taken—in this case, use of the LRADs and deployment of chemical dispersants.

No Identification of Officers

"No thinking person believes that police should do their work without a means to identify them. Unidentified officers may be emboldened by anonymity, and are not accountable to the public."

-Report of the WTO Accountability Review Panel¹³⁷

Failure to wear identification, covering up or obscuring identification badges, and failure to provide identification when asked by individuals to do so, are all too common at mass demonstrations. The WTO Accountability Review Panel report wrote that even though Seattle police policy requires the wearing of nametags, offi-



At the 2009 Pittsburgh G-20 Summit, many officers' identifying information was concealed. Photo by Evan Hirsche.

cers at the WTO covered their numbers by rain gear or ponchos.¹³⁸ The Review Panel also noted that when asked to identify themselves, many officers declined to do so. It emphasized that identification must be worn during actions and emergencies in which law enforcement may later be criticized for not doing so.

In Pittsburgh, many officers from dozens of law enforcement agencies lacked easily-identifiable badges, impeding citizens' ability to register complaints. Accountability and chain of command was virtually impossible to establish given the lack of visible individual identifying badges on officers. The small, paper armband badges that law enforcement officers were wearing were difficult to read, and many wore black chest coverings with no identifying information. Guild members saw many law enforcement personnel, including Pittsburgh Police Department officers, deliberately covering up the arm IDs by rolling their shirt sleeves up over them.

Many police officers failed to wear badges or agency patches a year earlier at the 2008 Republican National Convention. Officers without badges or typical identifying information there were largely part of the Mobile Field Force (MFF), the "primary force against violence" whose mission is to identify crowd control, containment, isolation and dispersal.¹³⁹ MFF officers wore a letter and numbers on the sides of their helmets, a method of identification likely used so that other officers, and not civilians, could recognize their originating department.

Canine Units

Although canine units are frequently present at National Special Security Events, their purpose seems to be largely one of sending a message of intimidation.



Canine units were prevalent throughout Pittsburgh and provided an especially intimidating element for protesters. Photo by Jenna Piasecki.

Throughout the G-20 protests, there were many canine units on site, some wearing leather muzzles, and many without.

The International Association of Chiefs of Police's Model Policy on Law Enforcement Canines recommends that canine teams may respond as backup but may not be deployed for crowd control at peaceful demonstrations.¹⁴⁰ The model policy further provides that canine teams may be used, with approval from the chief officer, to protect life or property in case of a "riot or other major unlawful assembly after an order to disperse has been made." It stipulates that the canines must be short-leashed and not initiate any offensive action unless it is to protect against imminent loss of life, serious bodily harm or substantial property damage.¹⁴¹

In an accompanying paper, the IACP writes that using canines for crowd control purposes is especially sensitive given the history of their use at civil rights demonstrations during the 1960s. The paper explains that canines should be used in crowd situations only when major "unauthorized gatherings" cannot be controlled by any other means and that they should generally serve as a deterrent. "Canines that are used in crowd control should be trained especially for that contingency and only the most controllable of animals should be used in this capacity."¹⁴²

OC Vapor

In addition to using LRADs, police in Pittsburgh deployed chemical irritants without forewarning. This included the use of CS (tear) gas in residential neighborhoods on narrow streets where families and small children were exposed. Scores of riot police formed barricades at many intersections throughout neighborhoods miles away from the downtown area and the David Lawrence Convention Center. Outside the Courtyard Marriott in Shadyside, police deployed smoke bombs in the absence of protest activity, forcing bystanders to flee the area.

Police used OC vapor, a form of pepper spray the effects of which last about 20 minutes, according to Secret Service spokesman Darrin Blackford.¹⁴⁴

Asked how she would rate the police use of force during the G-20, Beth Pittinger, Executive Director of the Pittsburgh Citizen Police Review Board said:

RETALIATORY REPLACEMENT OF POLICE REVIEW BOARD

On June 18, 2010, Pittsburgh Mayor Luke Ravenstahl replaced five members of the City's Citizen Police Review Board.

Critics say that the move appeared to be in retaliation for the board's investigation of police misconduct related to the City's handling of the G-20 protests. The announcement coincided with the review board's request that an Allegheny County judge hold Pittsburgh Police Chief Nate Harper in contempt for withholding documents related to police activities during the G-20 Summit.

The Review Board was created by a voter referendum in 1997 and investigates complaints about Pittsburgh police officers. The mayor selects its seven members, including four from City Council nominations.

Pennsylvania Court of Common Pleas Senior Judge R. Stanton Wettick Jr. agreed to hear arguments on the Review Board's petition to hold Chief Harper in contempt of the judge's March 18 order that he turn over arrest reports and other documents related to the G-20 Summit. Wettick scheduled the hearing for August 26. Attorneys for the city said the documents will be turned over during the hearing.¹⁴³

We have a lot of questions about the use of the LRAD, being the first time it was ever deployed for crowd control and public order purposes. There is no record here for us to compare to the use of the LRAD in other venues. As a society we have the opportunity to look and see how it was used and was it really an appropriate tool for use in American venues.

The OC vapor was another tool that was not previously used. Pepper spray vapor, as opposed to the usual streaming pepper spray that people are accustomed to, is a vaporized form. And what they did in Pittsburgh was they used intermittent rounds of smoke and OC vapor which you can't see but you certainly have a physical reaction to if you are exposed to it. It was an intermittent reinforcement to the protesters or whoever was on the street that the police were trying to control. They didn't know if they were going to be hit with smoke or with OC vapor or both. It was a way of managing public order that was unusual and worthy of some evaluation. Not necessarily for assigning blame or pointing a finger, but for the purpose of understanding what those tools of force do, what the response to those tools of force are and whether we as a people want to adopt them in the regular course of business for crowd control in America.¹⁴⁵

In addition to subjecting protesters to risk of serious injury, police in Pittsburgh subjected thousands of bystanders, including children, to sonic, chemical and projectile weapons in residential neighborhoods and on school campuses.

Police Use Text Messaging

Police at the G-20 used a new text-messaging technology to exchange information about protester activity, internally and with outside agencies. According to an article in the law enforcement magazine "Police," the Pittsburgh Police Department began using technology from Nixle called "organizationally secure text messaging" to assist in coordinating with approximately 30 agencies.¹⁴⁶ The article explains that Nixle's communication platform is preferable to two-way radios because it breaks through frequency barriers that preclude agencies from communicating with one another. Messages of up to 140 characters are sent on a secure web portal or through the Niets intranet, "the gateway to a variety of data on suspects that's widely used by law enforcement agencies."¹⁴⁷ The technology is preferable to social networking sites which are not secure.

Just as police employed new technology to communicate about protester activity, so also did many protesters and observers communicate by text messaging and Tweeting. Guild Legal Observers were in constant text communication; amidst the noisy atmosphere on the streets, telephone communication was virtually impossible. Given the extent to which both formats have become a part of many people's daily lives, it was initially surprising that one individual was arrested for using Twitter. However, a closer examination of the person's background, coupled with awareness of how police over-react and fabricate tenuous "evidence" on which to bring criminal charges against activists, gives some insight into why this arrest occurred.

Tweeting as Terrorism

The case of Elliot Madison illustrates a key government strategy of targeting activist leaders. Madison had played a central role in organizing protests at the 2004 Republican National Convention in New York.

A social worker and activist, he was arrested in Pittsburgh during the G-20 Summit and was charged with hindering apprehension or prosecution, criminal use of a communication facility and possession of instruments of crime.¹⁴⁸ The Pennsylvania State Police say he was found in a hotel room with police scanners and computers while using the online social networking service Twitter to communicate police movements to protesters.¹⁴⁹ Madison was one of hundreds engaged in a legal act, yet he was singled out for arrest and prosecution because of his history of organizing.

Members of the Pennsylvania State Police assigned to the G-20 Summit task force conducted physical surveillance on Madison beginning on September 23, 2009.¹⁵⁰ Surveillance personnel followed him through the next day when State Trooper Glenn Hopy and Corporal Gregg Kravitsky submitted an affidavit of probable cause in support of a search and seizure warrant.

Madison was held on \$30,000 bail even though he is married, owns some real property, and meets all the criteria for release on personal recognizance. A week later, agents of the FBI Joint Terrorism Task Force showed up at his home in Queens, New York, with a search warrant seeking evidence of violation of federal rioting laws.¹⁵¹

In an interview on WBAI's "Law and Disorder," one of Madison's attorneys, Guild member Martin Stolar, pointed out that with all the people posting information as part of a communications network during the G-20, Madison's arrest seems to signal a return to the tactics used in the 1960s of targeting individuals providing support to movements. Stolar compared the case to the Chicago 8 trial, in which the anti-riot law was used to go after the leaders in the case of eight (later seven) protesters during the 1968 Democratic National Convention. In Madison's case, Stolar described the 16-hour search of his home—from 6am until 10pm—in which agents grabbed everything in sight. The agents conceived of his house as one residence, unaware that he had roommates. Stolar filed a motion for return of property which was illegally seized. Stolar says, "My guess is that Elliot has been on their radar since the 2004 New York Republican National Convention."¹⁵²

The felony anti-rioting charges were summarily dismissed against Madison and the other individual arrested for Tweeting, Michael Wallschlaeger. Both were represented by Guild attorney Claudia Davidson in Pittsburgh. However, when the charges were dismissed, a spokesperson for the Allegheny County district attorney said that Madison and Wallschlaeger's actions "may have been related to more expansive activities,"¹⁵³ indicating that until additional investigative activities were completed by law enforcement agencies, it was "prudent" to withdraw the charges.

Stolar expressed concern that governmental targeting of people who are providing support services in protests has the side effect of chilling other activists around the country.¹⁵⁴

Conclusion

After the G-20, the Guild went on record on the legal website Jurist.com as opposing the level of police presence in Pittsburgh and called for an independent review of the excessive use of force there:

Such gratuitous assaults on protesters sends the message that the thousands of police and military personnel are not engaged in professional crowd control; rather, they are pre-emptive and aggressive techniques to punish protesters and bystanders for exercising their First Amendment rights. These practices violate legally-binding international human rights treaties which the United States has ratified and are inconsistent with standards set out under the UN Code of Conduct for Law Enforcement Officials which states that force should be used only where “strictly necessary” and in proportion to the threat posed.

A democracy should not tolerate such abuse of police authority, and the National Lawyers Guild expects that there will be an independent review and assessment of why law enforcement unleashed such excessive and inappropriate force in Pittsburgh. As has consistently occurred at other mass assemblies over the past decade, an evaluation of police conduct will likely be critical after the fact. If anything good comes out of this, it will be that the Pittsburgh experience acts as a reality check and that other cities do not follow suit in such escalation of violence against their residents and visitors.¹⁵⁵

SELECTED SUCCESSES IN THE COURTROOM

National Lawyers Guild members consistently challenge the unconstitutional police practices described in this report. Guild lawyers negotiate for parade routes and challenge discretionary permit schedules in court before large protests take place. During events, they monitor police actions and represent protesters who are swept off the streets and detained for days without having done anything wrong. They engage in post-event litigation, often taking years to resolve, when police department policies and practices have the effect of constraining the exercise of free speech. The following are a few examples of successes in these areas.

Settlement in “Zombie” Protest

The Minneapolis City Council on August 20, 2010 approved a settlement of \$165,000 in a lawsuit filed by Guild member Jordan Kushner on behalf of seven activists who were jailed for two days after a 2006 street theater protest in Minneapolis. The protesters wore thick white powder with fake blood on their faces, and dark makeup around their eyes. They walked in stiff, halting manner and carried bags of sound equipment that played music from an iPod.

They were protesting “mindless” consumerism, and were never charged with any crime. U.S. District Judge Joan Ericksen had dismissed the zombies’ lawsuit but in February a three-judge panel of the Eighth U.S. Circuit Court of Appeals concluded that the police lacked probable cause for the arrests, meaning that there would have been a federal trial in the fall had a settlement not been reached.

Record Settlement, Reform Legislation, “Historic” Class Action

In July 2010, U.S. Federal Judge Paul Friedman issued final approval in what he called an “historic” class action protester-related settlement and an achievement for “future generations.” The Judge was referring to a nearly decade-old lawsuit, *Becker et al. v. District of Columbia*,¹⁵⁶ filed by attorneys from the Partnership for Civil Justice Fund (PCJF) on behalf of nearly 700 demonstrators and passersby who were illegally mass arrested on April 15, 2000 in downtown Washington, D.C. The litigation resulted in major reform legislation adopted by the D.C. City Council in 2004 and additional changes in police practices and policies won by the PCJF.

As described earlier in this report, during the litigation, the PCJF successfully fought to end the D.C. police’s “trap and detain” arrest tactic in which police lines would suddenly surround and arrest entire groups of people in the vicinity of free speech activities. Considered to be the largest protest settlement in United States history, the terms of the nearly \$14 million settlement include up to \$18,000 for each eligible class member.

During the fairness hearing held in open court in the U.S. District Court for the District of Columbia, Judge Friedman discussed the First Amendment Rights and Police Standards Act of 2004. He noted that it was at the urging of the PCJF that the City Council passed historic legislation about how demonstrators will be treated in the future, and that there must be statutory limits to what police can do in a mass assembly context. The settlement agreement mandates particular training requirements and also requires the Metropolitan Police Department to brief outside agencies called to assist about the requirements of dealing with First Amendment events.

The case is named after Benjamin Becker who was 16 years old when he came to Washington to protest with his father, who helped organize the demonstration. After the arrests, Becker was taken to a juvenile facility. His father, Brian Becker, was held for hours in a stress position, with his right hand tied to his left foot. He refused to pay a fine and was the only demonstrator arrested that day whose case was brought to trial. He was acquitted of disorderly conduct and unlawful assembly.

Challenging Anti-Posting Ordinances

The Guild's Amicus Committee joined in a brief authored by the Partnership for Civil Justice in a case on appeal to the D.C. Court of Appeals, challenging the constitutionality of the District's postering regulations. The plaintiffs were a *pro se* married couple, one of whom was elected to the Advisory Neighborhood Commission. In the couple's D.C. neighborhood of Brookland they had rallied to criticize city policy. The city tore down their posters advertising a neighborhood rally within one day of their posting. The use of postering ordinances to restrict political speech has been an issue that arises with increased frequency for Guild attorneys across the country.

In June 2010, the Court ruled in this case without reaching the constitutional questions and reversing summary judgment, remanding for proper evaluation of the important First Amendment issues addressed in the brief.

Also in Washington, D.C., the government has issued fines totaling nearly \$80,000 against the ANSWER Coalition for postering. The D.C. government has maintained an illegal postering ordinance that privileges favored speech, specifically that of candidates for office who put up campaign posters over other political speech. The ANSWER Coalition, represented by Guild members Carl Messineo and Mara Verheyden-Hilliard of the Partnership for Civil Justice, has waged a legal challenge that has gone to the D.C. Circuit (successfully) and is now back in federal district court.

Critical Mass Bicyclists Exonerated

On March 30, 2007, during a Critical Mass bicycle ride, Sgt. Timothy Horohoe shoved 55-year-old Richard Vazquez from his bicycle, pushed him over a trash can and arrested him. The episode took place as the riders traveled through Times Square, where many people were on hand to witness the event. One individual cap-

tured the police action on camera and placed the video on Youtube, showing Vasquez being pushed by the police officer while riding his bike peacefully through the street. Horohoe was informally reprimanded.

In a similar event, described earlier in this report, on July 25, 2008, biker Christopher Long was pushed off his bicycle by Officer Patrick Pogan. The officer was charged with assault and later resigned. In July 2010, the City of New York agreed to pay \$97,751 in damages and lawyers fees to five Critical Mass bicyclists. The compensation ranges from \$500 to \$30,000 and the lawyers were paid a total of \$35,000. Guild members David Rankin and Mark Taylor represented Richard Vazquez and Christopher Long in these cases.

Necessity Defense at Trial

In late January 2010, Guild member Larry Hildes was successful in getting a judge in Pierce County District Court in Tacoma, Washington to allow the necessity defense involving a blockade of a military shipment on a freeway ramp (I-5) just outside Ft. Lewis. The judge agreed that it would be unfair to deny the jury the chance to hear the clients' motivations and the background for why they blocked the convoy. The case ended in a mistrial because a juror wavered at one of the testifying officers. As it turned out, the officer and juror were former co-workers.

At the trial in August 2010, Daniel Ellsberg testified along with Michael Honey, an expert on Martin Luther King and the Civil Rights Movement, and Seth Manzel from Iraq Veterans Against the War. Larry Mosqueda, a political science professor at Evergreen State College, spoke about the illegality of the Iraq and Afghanistan wars and the duty to resist them.

The fact that the judge allowed the "necessity defense" to be presented to a jury was in itself an enormous victory. Protesters may invoke this defense, not so much to avoid relatively minor charges, but largely to advance more important goals of drawing attention to greater societal injustices.

A packed courtroom in Pierce County District Court garnered worldwide media attention in response to Daniel Ellsberg's presence. The jury found the client guilty of trespassing and the judge sentenced her to 50 hours of community service. After the jury left, the judge acknowledged Mr. Ellsberg and told him that he was a personal hero of hers and that it was an honor to have him testify in her courtroom. She also talked about how much she had learned during the trial.

Final Free Trade of the Americas Area (FTAA) Victory

In March 2010, NLG attorneys Rob Ross and Mara Shlackman scored a victory in the 11th Circuit in *Keating v. City of Miami*,¹⁵⁷ the last of the 2003 FTAA-related lawsuits brought by Guild attorneys. The case alleged that the encircling and "herding" of protesters (while beating them, spraying them with pepper spray, and discharging bean bags, tear gas and other projectiles) out of the demonstration area was an unlawful seizure. The Circuit found that the protesters' First Amendment rights were violated because Miami Police Chief John Timoney, Deputy Chief Frank

Fernandez and Captain Thomas Cannon had the authority, and used that authority, to direct subordinate officers to engage in unlawful actions. The court found that their failure to stop the subordinate officers from acting unlawfully caused the First Amendment violations, and the Court will proceed to inquire whether their failure to stop violated clearly established law.

Judge Reaffirms Handschu NYPD Surveillance Rules

U.S. District Judge Charles S. Haight issued a ruling in January 2010 in the long-running civil rights class action *Handschu v. Special Services Division*,¹⁵⁸ putting the *Handschu* decree on firm ground for the coming decades. *Handschu* protects individuals and organizations engaging in lawful First Amendment political expression from unauthorized New York City Police Department (NYPD) surveillance, through court ordered guidelines. The original 1986 Guidelines were modified by the court in 2003 following the 9/11 attacks. In clear and strong language Judge Haight reaffirmed that his 2003 modification requires the NYPD to follow *Handschu* political surveillance guidelines; that the NYPD must respond to inquiries by class counsel about whether policies the NYPD adopts conflict with the guidelines; and that the court has the power to order injunctive relief requiring the NYPD to conform its political investigation policies to the guidelines.

Judge Haight also sanctioned the police and city attorneys for not telling him or class counsel that the NYPD had revoked a policy under which the NYPD claimed the power to engage in unlimited photo and video surveillance of demonstrations and public gatherings. The *Handschu* lawyers had brought a motion to enjoin the policy on the basis that it conflicted with the guidelines. The January decision also ordered that new changes in NYPD policy affecting the *Handschu* political surveillance rules be implemented only with notice to the plaintiff class counsel.

Martin Stolar, one of the *Handschu* attorneys, and past president of the New York City Guild Chapter, said that “the decision reaffirms the Class’s role in monitoring NYPD conduct impinging on the lawful political expression of millions of New Yorkers.” The 24-year-old consent decree gets its name from lead plaintiff Barbara Ellen Handschu, a Guild lawyer who was representing inmates who had rebelled at Attica at the time the case was filed in 1971. The *Handschu* lawyers are NYU law professor Paul Chevigny, Jethro Eisenstein, Martin Stolar and Franklin Siegel, all of whom are also former NLG New York City chapter presidents.

New York State Appeals Court Reverses Convictions in Critical Mass Cases

In early 2010 rulings in companion cases involving the criminal prosecutions of almost 20 people arrested on the nights of Critical Mass rides in Manhattan in January and February 2005, the Appellate Term, First Department upheld the 2006 decision of a New York City Criminal Court judge declaring the City’s parade permitting law unconstitutional on its face, reversing the convictions of people arrested for

violating the parade permit law.¹⁵⁹ The defendants were represented at trial by NLG attorneys Gideon Orion Oliver and David Rankin. The appellants were represented by Oliver and fellow Guild member Simone Levine.

Charges Dropped Against Prop 8 Demonstrators

On May 26, 2009, LGBT activists, clergy and others took to the streets when the California Supreme Court announced its ruling upholding Prop 8, passed by a 52% margin by voters in 2008, depriving the gay and lesbian community of the right to marry. The activists blocked an intersection in front of the San Francisco State Building, holding large banners. A total of 211 people were arrested, cited for disobeying the police and blocking traffic. Ultimately, none was charged.

The Bay Area NLG has been successful in discouraging the San Francisco district attorney from filing criminal charges against activists for nonviolent civil disobedience by demanding that the court appoint counsel for each eligible arrestee, and by consistently mounting vigorous defenses. This has forced the District Attorney to either discharge cases in which large numbers of people are arrested, or to charge them only as infractions, to which the rights to jury trial and appointed counsel do not apply in California. The infractions are processed through traffic court, apparently in the hope that the city will be able to collect fines from the demonstrators. However, in traffic court, Guild lawyers have succeeded in getting thousands of demonstrators' cases dismissed, usually without the arrestees even having to come to court.

Victory in Parade Permit Law

In November 2009, the Second Circuit Court of Appeals upheld a 2007 injunction issued by the United States District Court for the Southern District of New York restraining and enjoining the City of New York from flouting its own Parade Permit Law by allowing the Mayor and the NYPD to exercise unbridled discretion to call certain First Amendment assemblies and other events that would otherwise be prohibited as violating the City's ban on "new" assemblies on Fifth Avenue "occasions of extraordinary public interest" and thereby exempt them from the ban/permitting requirements.

The courts found that the NYPD had violated the ban and the parade permit law in several ways: by exempting an Olympic Torch Relay, a large event sponsored by United For Peace and Justice during the 2004 RNC; exempting a mass Shopping for Justice march organized by Rev. Al Sharpton to protest the killing of Sean Bell in late 2006; and by proposing unilaterally a Fifth Avenue route for the October 2004 Critical Mass ride.¹⁶⁰

The plaintiffs/appellants were represented by NLG attorneys Jeff Fogel and Gideon Orion Oliver, along with the New York Civil Liberties Union.

New School Occupation

On April 10, 2009, activists occupied a New School building in New York City as part of broad campaigns to protest New School policies, targeting President Bob Kerrey. After several hours, 19 people were arrested inside the building and three were arrested outside.¹⁶¹ All 22 faced serious criminal charges. New School students also faced academic disciplinary proceedings. A mass defense coordinated by Guild attorneys including Gideon Orion Oliver, Martin R. Stolar, Yetta G. Kurland, and Martin Leahy ultimately resulted in dismissal of almost all of the charges against the activists, and favorable resolutions of the academic disciplinary proceedings lodged against the New School students. The defense efforts were supported by a political pressure campaign joined in by New School students, faculty, alumnae, and allies. As a result of the broad political campaign in support of the activists, the New School's lawyers submitted a letter requesting that then-Manhattan District Attorney Robert Morgenthau drop the charges. About a month after the action, President Kerrey announced that he would be stepping down.

Clean Energy Encampments

In October 2009, a coalition of students and environmental activists contacted the Massachusetts Chapter of the NLG for legal advice and support for a series of pro-“clean energy” actions. The centerpiece of the campaign was a series of winter sleepouts to focus attention on the need for colleges to use clean energy. The activists planned a month-long sleepout on the Boston Common as part of an effort to get the Massachusetts legislature to pass a comprehensive bill mandating the use of clean energy.

Guild attorneys met with student organizers and provided training sessions on active resistance and civil disobedience. Guild lawyers trained a large number of law students to act as Legal Observers for the overnight actions where mass arrests for trespassing were expected. Following these trainings, numerous actions were held on dozens of college campuses around the state. Several hundred set up camp during the winter; as the Common closes from 11pm to 7am, they were prepared for arrest. However, police allowed the demonstrations to continue for the month of November and into early December. On five occasions during this time period the police entered the overnight camp and told campers they were trespassing, offering them the chance to leave. When the demonstrators refused, police took down names of over 200 and issued summonses to attend a hearing on whether criminal complaints for trespassing should be issued.

Settlement in New York City RNC Case

In February 2009, the City of New York settled the civil rights case of Dennis Kyne and seven others arrested during the RNC for \$160,000. The criminal charges

against Kyne—among the most serious lodged in connection with the RNC—were dismissed in 2004 at the prosecution’s request during a jury trial after the defense turned over videotape contradicting the false testimony of his alleged “arresting officer.” The plaintiffs in the ensuing civil case were represented by Gideon Orion Oliver and Lewis B. Oliver, Jr.

2008 Democratic National Convention

On the first night of the Democratic National Convention (DNC), August 25, 2008, the Denver Police Department arrested over 100 people, including photographers, members of the press, Legal Observers and bystanders. Each was uniformly charged with three municipal offenses: Obstruction of the Streets, Interference, and Failure to Obey a Lawful Order. Over the course of six months, Guild members and other criminal defense attorneys in Denver succeeded in having 40 of the 60 cases set for trial result in acquittals or dismissals. Defense counsel had two of the three charges dropped in every case. Despite the police’s insistence, attorneys showed through probable cause videos taken on the scene, that no lawful orders to disperse were given.

In 2009, the ACLU of Colorado filed a lawsuit against the City of Denver and police officials on behalf of eight plaintiffs, including a Guild Legal Observer, who claim they were arrested without probable cause and prosecuted for crimes they did not commit. In addition, a class action was filed on behalf of approximately 100 individuals who were prohibited from meeting with attorneys as they were held at the City’s special DNC detention center after the mass arrest. Guild member Taylor Pendergrass is one of the attorneys working on the cases. In August 2010, the class was granted certification.

The event at which they were arrested was a march on August 25, 2008. The marchers were stopped by a police line. Soon after, a second line of riot-clad police with less-lethal munitions surrounded and trapped them from behind, keeping hundreds locked in a one-block area. Also trapped were NLG Legal Observers, onlookers, and others. No orders to disperse were given by the police and the people had no way to leave. They were all charged with failing to obey a police order to disperse, even after Denver police acknowledged that there had been no dispersal order. Of 54 who didn’t take a plea bargain, at least 38 were exonerated after jury trials or after the prosecutors dropped the charges.

Interim Victories in RNC 2004 Civil Litigation

In the wake of the more than 1,800 arrests made during the 2004 Republican National Convention (RNC) in New York City, scores of attorneys, including many associated with the Guild’s New York City Chapter, filed lawsuits against the City of New York—and in some cases federal, state, and local government agencies. They challenged the law enforcement misconduct involved in planning for and policing the convention. NLG lawyers Jonathan Moore, Clare Norins, and Rachel Kleinman represent the putative class in *Dierdre MacNamara, et al. v. City of New York*¹⁶² on behalf of Beldock, Levine & Hoffman.

Though most of the RNC cases, including *MacNamara*, are still pending, there have been significant settlements in numerous cases handled by NLG-NYC attorneys, and interim victories in the past few years, including, but not limited to, favorable decisions allowing the plaintiffs to discover “intelligence documents” and other records about the NYPD’s, and other law enforcement agencies’, RNC-related planning and policing.

Des Moines Five

When individuals are arrested at political events around the country, Guild members frequently take the lead in representing them or in mounting legal challenges to unconstitutional policies. In a case that attracted national attention, Guild member Sally Frank represented three of five defendants charged with trespass for a sit-in at Senator Charles Grassley’s Des Moines, Iowa office in February 2007 as part of the Occupation Project, a campaign of civil disobedience to protest the war in Iraq.

On May 21, 2008 U.S. Magistrate Judge Celeste F. Bremer dismissed charges of obstructing a federal office that had also been filed against the activists in federal court, finding them not guilty despite their admission that they had, in fact, refused an order by a U.S. Department of Homeland Security officer to leave Senator Grassley’s office. The five argued that they had a First Amendment right to have their grievance heard by the Senator, and that the Senator and his staff had refused to hear it.

In July 2007, a six-person jury in Des Moines acquitted the five of trespass. The court case had attracted national attention, even before the not guilty verdict was returned. The not-guilty verdict, the first following several trespass convictions over recent years by members of the group, was considered a great victory.

Bangor Six

After a half-day of jury selection, a one-day trial and two hours of deliberations, on April 30, 2008 a 12-member jury in Bangor, Maine found six defendants not guilty of criminal trespass. In March 2007, six anti-war activists were arrested when they refused to leave Senator Susan Collins’s Bangor, Maine office, and six others were arrested at the same time in the lobby of the building. Six elected to go to trial. Guild members Lynne Williams and Phil Worden employed a state of mind defense, since in Maine criminal trespass is one of the remaining common law crimes and retains an intentional element: the defendant had to know he was not “licensed or privileged” to be where he was. They planned to present evidence about international law through the defendants’ testimony that international law persuaded them that they had a privilege to remain in Collins’s office after being asked to leave. The lawyers submitted a written juror questionnaire that included questions about attitudes toward authority, military service, and feelings about civil disobedience. The judge agreed to ask an oral question about military service.

The defendants’ testimony at trial about their understanding of international law, and how their own beliefs evolved, brought some jurors to tears. After the trial, one

of the jurors told the lawyers that before any discussion the vote to acquit was 10-2, with the two holdouts just wanting to clarify some issues.

Judge Quashes NYC Guild's Subpoena Seeking Clients' Emails

On February 25, 2008 a federal judge rejected the City of New York's bid to subpoena hundreds of emails to the New York City Chapter of the National Lawyers Guild from clients who were arrested during the 2004 Republican National Convention regarding their arrests and detentions. Magistrate Judge James C. Francis IV held that all of the 574 documents submitted to the Court for review were, without exception, "protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine." They reflect information provided to counsel in connection with the provision of legal advice or information collected by counsel in connection with anticipated or ongoing litigation."¹⁶³

The Chapter and its attorneys had established attorney-client relationships with individuals and organizations predating the RNC by more than six months during which NLG attorneys prepared to represent those seeking demonstration/parade permits and people who would be arrested. The Chapter was not a party to any of the civil cases brought by many of the 1,806 RNC arrestees. Nevertheless, it has been the target of three subpoenas from the City seeking RNC-related records. According to NLG-NYC then President Daniel L. Meyers: "The City has engaged in a pattern of harassment designed to make our clients pay for openly opposing, or daring to sue over, governmental misconduct, including targeting our organization by issuing grossly improper subpoenas such as the one the Chapter just quashed."

The NLG-NYC vigorously opposed producing communications from its clients on the basis of attorney-client privilege. At oral argument on September 27, 2007, Judge Francis warned the City against embarking on a "fool's errand" in trying to force the NLG-NYC to disclose clients' communication.

Capitol Protesters Win at Trial on First Amendment Defense

Eleven defendants who were among 200 arrested by Washington, D.C. Capitol police during the September 15, 2007 anti-war march on Washington were acquitted on January 3, 2008 at trial in D.C. Superior Court with assistance and representation from Guild attorneys. Judge Henry Greene dismissed all charges against the defendants, who were accused of crossing a police line. The government's case collapsed in the early stages of the trial during the testimony of a witness from the Capitol Police. The defense asserted that the government and the Capitol Police had illegally and unconstitutionally sought to prevent demonstrators from engaging in First Amendment protected speech and assembly in an area in front of the Capitol building routinely kept open to tourists and others. Guild lawyers argued that the attempt to exclude people engaging in free speech activities could not form the basis for a lawful arrest or conviction for "crossing a police line." Many of the defendants represented themselves and were given *pro bono* legal counsel and advice from

Guild attorneys Michael Madden and Mara Verheyden-Hilliard of the Partnership for Civil Justice.

Fort Lauderdale Public Assembly Ordinances

On May 18, 2008 the Guild settled a lawsuit challenging parade and public assembly laws in Fort Lauderdale, Florida. The U.S. District Court approved a settlement agreement which prohibits the City from enforcing several ordinances which allowed government officials to restrict political demonstrations on public sidewalks and streets in violation of the First Amendment. These laws included an exemption allowing “bona-fide religious sects or organizations,” but not political groups, to freely assemble, contained no time limit on processing permits for parades and assemblies, granted unlawful discretion to government officials to deny permits based on disagreement with the views expressed, and unreasonably regulated the items that could be used to convey a political message.

Under the settlement, the City must review and decide on all demonstration permits within two business days and can no longer make subjective decisions about which groups to grant, or deny, permits to. The City also cannot require permits for parades or assemblies on public sidewalks or roadways where participants obey all traffic regulations, nor can they unreasonably obstruct sidewalk passage or unlawfully restrict the manner in which demonstrators want to voice their views.

Guild members Carol Sobel, Robert Ross, Mara Shlackman and Andrea Costello worked with lawyers from Southern Legal Counsel and the ACLU of Florida.

Central Park Great Lawn Case

After three years of litigation, the New York City Parks Department agreed in January 2008 to rescind its regulation governing assembly on Central Park’s Great Lawn. Guild attorneys Mara Verheyden-Hilliard and Carl Messineo of the D.C.-based Partnership for Civil Justice (PCJ) sued the city on behalf of two political organizations which had been denied permits to hold a demonstration on the lawn before the 2004 Republican National Convention. The PCJ established that the government’s shifting rationales over “protecting the grass” were pretextual and political determinations were made to exclude disfavored speech from access to this central assembly location in New York City.

Anti-Bush Rally

The lawsuit, *Miami for Peace v. Miami-Dade County*,¹⁶⁴ was originally brought when Miami-Dade County refused to issue the organizations a parade permit for a demonstration when President Bush spoke at Miami-Dade College in April 2007. The lawsuit was brought by the Mass Defense Committee of the National Lawyers Guild through local attorneys Rob Ross and Mara Shlackman on behalf of local anti-war and social justice organizations, including Miami for Peace, South Florida Peace and Justice Network, and Haiti Solidarity.

U.S. District Court Judge Cecilia Altonaga issued a ruling declaring two Miami-Dade County ordinances unconstitutional, and granted a permanent injunction forbidding the County's future use of the ordinances. The first ordinance controlled the ability of organizations to obtain permits for parades and street processions, while the second ordinance forbade loitering on sidewalks, streets, and other public places.

National Lawyers Guild attorney Rob Ross declared, "this decision advances the goals of the First Amendment for political organizations throughout South Florida; the government should not have the ability to control who gets to speak in the public square in the United States." Co-counsel Mara Shlackman stated, "To keep our First Amendment freedoms, we must exercise them, and this decision hopefully will encourage more people to utilize the rights for which the American Revolution was fought." Linda Belgrave of Miami for Peace said, "We have to be willing to struggle for free speech to fulfill our mission of promoting peace and social justice. This decision was a huge victory in that struggle."

Free Speech Returns to Pennsylvania Avenue in D.C.

On March 20, 2008, Judge Paul Friedman granted a Motion for Summary Judgment and Motion for a Permanent Injunction in a lawsuit brought by Guild members Carl Messineo and Mara Verheyden-Hilliard of the Partnership for Civil Justice against the National Park Service in 2005. The United States District Court ruled against the government in this challenge to the privatization of Pennsylvania Avenue in Washington, D.C. for the presidential inauguration, and found that the government was illegally and unconstitutionally depriving those whose speech it disfavored from access to space abutting the inaugural parade route. For years, the government has tried to stage manage a false appearance of consent and approval by excluding dissent from nearly the entirety of the Inaugural parade route. It had allowed the Presidential Inaugural Committee to erect towering bleachers behind which protesters were to stand or else to be relegated to limited areas for dissent, and it had also allowed the Committee to use the area, known as "America's Main Street," as a private fundraising venture, limiting access only to political supporters of and donors to the incoming Administration.

Not a single prior case against the government's illegal restrictions at the inauguration had ever proceeded to trial because the government waits until the last minute to revoke protest permits, allowing for limited preliminary injunction litigation. Guild member Carol Sobel litigated this case along with Verheyden-Hilliard and Messineo. Verheyden-Hilliard and Sobel are co-chairs of the NLG Mass Defense Committee.

May Day Melee Settlements

On May 1, 2007, more than 6,000 people were gathered in MacArthur Park for a permitted rally when three platoons of officers with the Los Angeles Police Department's (LAPD) Metro Division suddenly charged the crowd, striking people with batons and shooting them with less-lethal weapons to chase them out of the park. A

dispersal order was given from a helicopter hovering several blocks away from the park, but it was inaudible. The announcement was largely drowned out by the noise of the helicopter and was given only in English, despite the facts that the MacArthur Park community is largely Spanish-speaking immigrants and that an immigration rally attracts many speakers of other languages.

The declaration of an unlawful assembly was not made before the police began shooting people with less lethal munitions and beating anyone in their path with batons. There was no warning nor an opportunity to leave before people were shot. Many individuals were shot in the back as they attempted to flee. Several individuals suffered injuries from head strikes with batons, a serious and lethal use of force according to the LAPD's own training. Hundreds of people were physically injured, and 17 police officers were eventually disciplined for their actions during what came to be known as the May Day Melee. To date, videos of the rally and police action have failed to substantiate the police claims of provocation for the massive and brutal police response.

On May 9, 2007, the lead case was filed in federal court by attorneys from the National Lawyers Guild and the Mexican American Legal Defense and Educational Fund, and it was certified as a class action by federal district court Judge Matz in early January 2008.

Just over a year later, on February 4, 2009, the Los Angeles City Council voted unanimously to approve a settlement in favor of the victims, including 200 plaintiffs in the lead case, as well as another 100 plaintiffs in eight related cases. The settlement provided for \$12,850,000 to be paid to settle all claims of injury resulting from the police actions that day. It also provided a pool of money for claims by unnamed class members.

The parties also agreed to submit an order for the court's signature, addressing policy revisions and training by the LAPD on crowd control issues, including how and when an unlawful assembly may be declared and the use of less-lethal munitions on demonstrators.

This lawsuit was significant in that the Los Angeles Police Department had entered into a "consent decree" in 2001 that mandated federal oversight of its practices. It had been proven that the LAPD permitted the use of excessive force, demonstrated ingrained racial bias, and tolerated behavior that went outside the law, as in the Rampart scandal. The settlement shows that there is still need for reform in Los Angeles.

On July 2, 2010 a jury in Los Angeles awarded \$1.7 million to KTTV-TV news camera operator Patricia Ballaz who was harmed by police during the protest. Patricia Nazario, a radio reporter from KPPC, was awarded \$39,000.

Charges Dropped for Wall Street Seven

On January 23, 2009 a Ramsey County Judge threw out all charges in the first RNC related case to proceed to trial. The "Wall Street Seven" consisted of seven individuals arrested on September 1, 2008, for blocking the intersection of 9th and Wacouta in downtown St. Paul. They were charged with Obstructing Legal Process, Disorderly Conduct, Unlawful Assembly, and Blocking Traffic. All charges were

thrown out after the City of St. Paul presented the prosecution's case and the judge concluded there was insufficient evidence to support a conviction.

"This was the City of St. Paul's showcase trial—the first RNC case to go to trial and one in which the City consolidated the trials of all seven defendants. Unfortunately for the City, however, it showcased how police had no basis for the vast majority of arrests made during the RNC," said defense counsel Jordan Kushner. "The judge in this case decided there wasn't even enough evidence to require the defendants to put on any evidence and allow the case to go to a jury," he said. Kushner and Ken Tilsen, another Guild attorney, represented the seven defendants.

Jury Acquits Seven Anti-War Protesters

On January 14, 2009 a jury found seven anti-war protesters not guilty of trespassing at a Minneapolis National Guard recruiting office in March 2008. The charges stemmed from an incident that was part of a series of demonstrations organized to mark the fifth anniversary of the war in Iraq. On March 27, hundreds rallied and marched against the war on the University of Minnesota campus. A group of protesters organized by the Anti-War Committee attempted to enter the National Guard recruiting center located on the second floor of 825 Washington Ave SE. After finding the doors locked and police waiting, they remained in the hallway and continued their demonstration. Police told them that "the building owner doesn't want you here," but they refused to leave. Sixteen people were arrested for trespassing.

Seven of those arrested opted to take their cases to trial. The defendants, who range in age from 27 to 78, each represented themselves with assistance from National Lawyers Guild lawyers, including Ted Dooley, Gena Berglund, Carla Magnuson, and Geneva Finn. The defendants admitted to remaining in the building after being told to leave, but used a "claim of right" defense to explain why doing so was legally justified.

The defendants pointed out that preemptive war is illegal under international law and that Article 6 of the U.S. Constitution compels the United States government to uphold international treaties as the "supreme law of the land." Those who demonstrated also cited the First Amendment which guarantees the "right to peaceably assemble and petition the government for a redress of grievances." During the trial, the defendants described the impact of the war on both Iraqi and American families, and shared personal stories that compelled them to risk arrest.

After a two and a half day trial, the jury declared all seven defendants not guilty of trespassing.

Defending Food Not Bombs

Around the country members of Food Not Bombs (FNB) have been subject to arrest and harassment because they display political signs while serving free vegan or ovo-lacto meals to the needy. In most cases, cities have cited local ordinances related to where the meal sharing occurs, such as public parks, sidewalks, or across the street from a restaurant. They have also enforced local ordinances barring the feeding of more than a certain number of people.

Guild members from the law firm Livingston, Adler, Pulda, Meiklejohn and Kelly, P.C. in Connecticut represented Middletown FNB when the municipality asserted that meal sharing is a health code violation and requires that food be prepared in registered kitchens with a registered food handler. Guild attorneys asserted that the voluntary sharing of food with other community members does not fall under the jurisdiction of the health department, and that even if it did, there is evidence of selective enforcement (e.g., no similar regulation of bake sales or church potlucks) based on the group's political activities.

As a result of the legal challenge, the Connecticut legislature passed an emergency amendment to the state statutes, recognizing that organizations that do not sell or distribute food for profit may distribute food for free without a license from a local health department.

CONCLUSION

Police treatment of protesters at National Special Security Events, including the 2008 Republican National Convention and the 2009 G-20 Summit, reveal a heightened level of disregard by law enforcement for the rule of law.

Historically, the activities of political discussion and organizing have been deemed of utmost social utility. As Guild member David Kairys has written: “Political speech is the most protected because it has the highest social value, furthering society’s interest in free and open debate as well as the individual’s interest in expression.”¹⁶⁴

Incidents that would ordinarily shock the conscience of a democracy are routinely dismissed as part of the cost of engaging in constitutionally-protected activities. On September 1, 2008, a woman who was standing still in front of advancing Mobile Field Force units in St. Paul was doused repeatedly with pepper spray, rather than being arrested or removed from the danger zone. In describing this incident, the Republican National Convention Public Safety Planning and Implementation Review Commission¹⁶⁵ wrote that “One police leader told the Commission that offensive use of pepper spray aimed at a specific individual would not normally be an acceptable use of force.” The report goes on to say, in language so equivocal that it rises to the absurd, that “the apparent excessive use of pepper spray as an offensive weapon against specific individuals may warrant further review.”¹⁶⁶

Offensive use of pepper spray or any other less-lethal weapon is never an acceptable use of force. The unwarranted, excessive use of any weapon, whether against a specific individual or group of individuals, is cause for alarm and clearly warrants further investigation and sanction to ensure that it never happens again.

In failing to condemn such practices in the strongest language possible, post-event review commissions and boards, as well as the mass media, are complicit partners in allowing outlaw police forces to trample on the United States Constitution. If political speech is to continue to advance free debate in this society, it deserves nothing less than the fullest possible protection of the law.

There still remains an enormous need to respond to increased intolerance for protest. The National Lawyers Guild has been at the forefront in challenging attacks on dissent, and over the years our members have secured important victories and remuneration for protesters whose rights have been violated. Yet the damage to the practice of free speech is intractable. Many have refrained from political activism out of fear of the threat of arrest and prosecution. It is likely that the demonstrations we have seen would have been much larger but for the fear instilled in those who oppose one or another government policy but are reluctant to engage in robust speech. Legal defense against false arrests and litigation to redress violations can hold the line but can never fully restore the ability of the people to exercise their rights. That requires organizing and political pressure that can come only from the will of the populace.

A HISTORY OF THE NATIONAL LAWYERS GUILD

In the 1930s, Guild lawyers helped organize the United Auto Workers (UAW) and the Congress of Industrial Organizations (CIO) and supported the New Deal in the face of determined American Bar Association opposition. In the 1940s, Guild lawyers fought against fascists in the Spanish Civil War and World War II and helped prosecute Nazis at Nuremberg. Guild lawyers fought racial discrimination in cases such as *Hansberry v. Lee*,¹⁶⁷ the case that struck down segregationist Jim Crow laws in Chicago. The Guild was one of the nongovernmental organizations selected by the U.S. government to officially represent the American people at the founding of the United Nations in 1945. Members helped draft the Universal Declaration of Human Rights and founded one of the first UN-accredited human rights NGOs in 1948, the International Association of Democratic Lawyers (IADL).

In the late 1940s and 1950s, Guild members founded the first national plaintiffs personal injury bar association, which became the American Trial Lawyers Association (ATLA), and pioneered storefront law offices for low-income clients, which became the model for the community-based offices of the Legal Services Corporation. During the McCarthy era, Guild members represented the Hollywood Ten, the Rosenbergs, and thousands of victims of anticommunist hysteria. Unlike all other national civil liberties groups and bar associations, the Guild refused to require “loyalty oaths” of its members; it was unjustly labeled “subversive” by the United States Justice Department, which later admitted the charges were baseless, after ten years of federal litigation. This period in the Guild’s history made the defense of democratic rights and the dangers of political profiling more than theoretical questions for Guild members and provided valuable experience in defending First Amendment freedoms that informs the work of the organization today.

In the 1960s, the Guild set up offices in the South and organized thousands of volunteer lawyers and law students to support the civil rights movement long before the federal government or other bar associations were involved. Guild members represented the families of murdered civil rights activists Schwerner, Chaney, and Goodman, who had heeded the Guild’s call to join the civil rights struggle and were assassinated by local law enforcement/Ku Klux Klan members. Lawsuits initiated by the National Lawyers Guild brought the Kennedy Justice Department directly into the civil rights struggle in Mississippi and challenged the seating of the all-white Mississippi delegation at the 1964 Democratic Convention. Guild lawyers defended thousands of civil rights activists who were arrested for exercising basic rights and established new federal constitutional protections in ground-breaking Supreme Court cases such as *Dombrowski v. Pfister*,¹⁶⁸ which enjoined thousands of racially motivated state court criminal prosecutions; *Goldberg v. Kelly*,¹⁶⁹ the case that established the concept of “entitlements” to social benefits that require Due Process protections; and *Monell v. Department of Social Services*,¹⁷⁰ which held municipalities liable for brutal police officers.

In the late 1960s and early 1970s, Guild members represented Vietnam War draft resisters, antiwar activists, and the Chicago 7 after the 1968 Chicago Democratic

Convention. Guild offices in Asia represented GIs who opposed the war. Guild members argued *U.S. v. U.S. District Court*,¹⁷¹ the Supreme Court case that established that Nixon could not ignore the Bill of Rights in the name of “national security” and led to the Watergate hearings and his eventual resignation. Guild members defended FBI-targeted members of the Black Panther Party, the American Indian Movement, and the Puerto Rican independence movement and helped expose illegal FBI and CIA surveillance, infiltration, and disruption tactics that the U.S. Senate Church Commission detailed in the 1975-76 COINTELPRO hearings and that led to enactment of the Freedom of Information Act and other specific limitations on federal investigative power. The NLG supported self-determination for Palestine, opposed apartheid in South Africa at a time when the U.S. Government still labeled Nelson Mandela a “terrorist,” and began the ongoing fight against the blockade of Cuba. During this period, members founded other important civil rights and human rights institutions, such as the Center Constitutional Rights, the National Conference of Black Lawyers, the Meiklejohn Civil Liberties Institute in Berkeley, San Francisco’s New College School of Law and the Peoples Law School in Los Angeles.

In the 1980s, the Guild pioneered the “necessity defense,” supported the anti-nuclear movement, and began challenging the use of nuclear weapons under international law. This eventually resulted in the World Court declaration that nuclear weapons violate international law in a case argued by Guild lawyers more than a decade later. Spurred by the need to represent Central American refugees and asylum activists fleeing U.S. sponsored “terror” in Nicaragua and El Salvador, the Guild’s National Immigration Project began working systematically on immigration issues. Legal theories for holding foreign human rights violators accountable in U.S. courts, based on early 19th century federal statutes, were pioneered by Guild lawyers. The Guild organized “People’s Tribunals” to expose the illegality of U.S. intervention in Central America that became even more widely known as the “Iran-Contra” scandal. The NLG Center for Social and Economic Justice was established in Detroit, and the Guild published the first major work on sexual orientation and the law, as well as the first legal practice manual on the HIV/AIDS crisis.

In 1989, the Guild prevailed in a lawsuit against the FBI for illegal political surveillance of legal activist organizations, including the Guild. The suit, which had been filed in 1977, revealed the extent to which the government had been spying on the NLG. Since 1941, the FBI used over 1,000 informants to report on NLG activities and disrupt Guild meetings and conferences. Informants sat on the policy-making bodies of chapters and the national organization. FBI agents broke into the National Office and into private law offices of key NLG members. The bureau released derogatory and misleading information about the Guild to judges, the press and the public. Under the 1989 settlement, the FBI turned over copies of roughly 400,000 pages of its files on the Guild, which are now available at the Tamiment Library at New York University.

In the 1990s, Guild members mobilized opposition to the Gulf War, defended the rights of Haitian refugees escaping from a U.S.-sponsored dictatorship, opposed the U.S. embargo of Cuba, and began to define a new civil rights agenda that includes the right to employment, education, housing, and health care. As a founding UN-

NGO, the Guild participated in the 50th anniversary of the UN and Guild members authored the first reports that detailed U.S. violations of international human rights standards regarding the death penalty, racism, police brutality, AIDS discrimination, and economic rights. The Guild initiated the National Coalition to Protect Political Freedom (NCPFF) to focus opposition to “secret evidence” deportations and attacks on First Amendment rights after passage of the 1996 Anti-Terrorism Act and established the NLG National Police Accountability Project to address the issue of widespread police violence. Guild lawyers won the first case in the World Court that declared the use of nuclear weapons a violation of international law.

The Guild began analyzing of the impact of globalization on human rights and the environment long before the Seattle demonstrations, and played an active role in opposing NAFTA and in facilitating and supporting the growing movement for globalization of justice. As the 20th century came to a close, the Guild was defending environmental and labor rights activists and critics of globalization from Seattle to D.C. to L.A. Guild members were playing an active role in encouraging cross-border labor organizing and in exposing the abuses in the *maquiladoras* on the U.S.-Mexico Border. The Project for Human, Economic and Environmental Defense (HEED) and the Committee on Corporations, the Constitution and Human Rights focus specifically on “globalization” issues.

Today and Tomorrow

At the dawn of the 21st century, the globalization of information and economic activity is a fact of life, but so is the globalization of extremes in wealth and poverty. The U.S. population faces trends that will require a vast restructuring of our entire society if we are to avoid the social chaos that is already overtaking life in our major cities, or the militarized imposition of social peace that we see in other unstable societies and that is embodied in post-9/11 laws and policies. Guild members have long recognized that neither democracy nor social justice is possible, internationally or domestically, in the face of vast disparities in individual and social wealth. In short, the organization has always seen questions of economic and social class as inextricably intertwined with most domestic and international justice issues.

Domestically, the betrayal of democracy and the Supreme Court’s integrity in *Bush v. Gore*¹⁷² has made it clear that the struggle for real democracy in the U.S. is far from over. The intertwining of governmental power with the influence of corporations, epitomized by *Citizens United v. Federal Election Commission*, has confirmed that the theme of the 1998 NLG Convention, “Fighting Corporate Power,” may well be the major challenge for American democracy in the new century. The seizure of increased executive power, the huge buildup of military might, and the attack on civil liberties after the 9/11 tragedy, the scapegoating of Muslim Americans and of Middle Eastern and Arab immigrants, and the creation of McCarthy-esque “antiterrorism” measures have demonstrated that the Guild must once again play the role for which history and experience has prepared its members.

Guild members lobbied Congress and worked with the House Judiciary Committee in an unsuccessful effort to turn back the worst aspects of the 2001 USA

PATRIOT Act. Guild members also filed the first challenges to the detention of prisoners from Afghanistan and the use of military tribunals. Across the nation Guild members are demanding that civil liberties be protected and that the U.S. Government respect the Constitution and international law at home and abroad. Guild members are defending activists, representing immigrants facing deportation, and testifying in federal and state legislatures against restrictions on civil liberties. They are using their experience and professional skills to help build the 21st-century grassroots movements that will be necessary to protect civil liberties and defend democracy in the future.

The purpose of the National Lawyers Guild is to serve the people, rather than public or private entities that do not put human needs first. By stating clearly that “human rights shall be held more sacred than property interests,” the NLG Preamble recognizes that economic and social needs should also be considered “rights” and that these rights often conflict with the interests of propertied elites in all nations. Adherence to these ideas resulted in charges of “subversion” during the anticommunist hysteria of the 1950s and 1960s. Today many of these same ideas are embodied in the United Nations International Declaration of Human Rights and many international agreements to which the U.S. is (or should be) a party, and are being incorporated into 21st century constitutional theory and practice.

These same principles have informed the Guild’s approach to domestic legal, political, and social justice issues for over 70 years. These ideas have made possible the Guild’s existence as a multi-issue organization. Rather than focusing on narrow areas of professional practice, the National Lawyers Guild sees that a wide range of social, political, and legal issues, such as racism, sexism, homophobia, environmental destruction, immigrant-bashing, labor issues, and voting rights, are intertwined with questions of economic justice and cannot be solved through focus on specific “legal practice” issues, or through the legal system alone. As a result, in addition to belonging to other professional organizations with a specific practice or professional focus, Guild lawyers, nonlawyers, students, academics, legislators, jurists, and activists from a wide range of law-related work find ways to make common cause, through the National Lawyers Guild.

NATIONAL LAWYERS GUILD RESOURCES

Green Scare Hotline

(888) NLG-ECOL

(888) 654-3265

Operation Backfire: A Survival Guide for Environmental and Animal Rights Activists

This pocket-sized booklet has proven extremely popular among activists. Over 100,000 people have downloaded the booklet since it was posted on our website in 2009. An internet search shows that the booklet is featured on a range of activist and animal welfare sites.

The booklet provides a brief overview of federal legislation under which the government has brought terrorism-related charges against animal rights and environmental activists (the Animal Enterprise Protection Act and the Animal Enterprise Terrorism Act). It also details legal rights relevant to encounters with the FBI and local police, from responding to subpoenas to dealing with requests for DNA samples.

Available by calling the National Lawyers Guild, National Office at 212-679-5100, ext. 15 or for download at www.nlg.org

A State-by-State Analysis of the Animal Enterprise Act Model Legislation

In December 2009, the National Lawyers Guild issued a policy paper showing the influence of model legislation drafted by the American Legislative Exchange Council (ALEC), a conservative group of state legislators, on state legislation around the country. Federal legislation passed in 2006, the Animal Enterprise Terrorism Act (AETA), was largely drafted by ALEC and has drawn a great deal of attention and criticism from animal rights and environmental activists.

The Act which purports to protect animal enterprises from so-called “eco-terrorists,” is a vague and unnecessarily broad law that has already been used to restrict First Amendment rights. The Guild’s policy paper, “Beyond AETA: How Corporate-Crafted Legislation Brands Activists as Terrorists,” explains that AETA is not unique in this respect. Similar bills have been introduced in several state legislatures over the last few years, and most of them stem from the model bill produced by ALEC. ALEC’s model legislation:

- Suggests adding the phrase “politically motivated” to the definition of an “animal or ecological terrorist organization,” which clearly shows that the bill is designed to suppress speech based on its content.
- Defines illegal activity so broadly that anyone using the Internet or email to plan (or even express support for) an act of “animal or ecological terrorism” can be charged.
- Creates a “terrorist registry” – an online database open to the public which contains names, addresses and photos of everyone convicted of “animal or ecological terrorism.”

Although many states considered and outright rejected the ALEC bill soon after its release, there are still signs that parts of the legislation are being incorporated in some

states' laws that equate animal rights activists with domestic terrorism. The Guild remains vigilant in tracking the development of such overly-broad legislation.

Available at www.nlg.org.

The Assault on Free Speech, Public Assembly and Dissent: A National Lawyers Guild Report on Government Violations of First Amendment Rights in the United States (2004)

A limited number available by calling the National Lawyers Guild, National Office at 212-679-5100, ext. 14 or for download at www.nlg.org.

Punishing Protest: Government Tactics that Suppress Free Speech (2007)

A limited number available by calling the National Lawyers Guild, National Office at 212-679-5100, ext. 14 or for download at www.nlg.org.

ENDNOTES

- 1 Events like the G-20 Summit and the national political conventions are designated National Special Security Events (NSSE) by law enforcement. President Bill Clinton established NSSE procedures in his 1998 Presidential Decision Directive 62, which outlined the security roles for federal agencies at large events. In 2000, such special events were placed under the purview of the United States Secret Service in the Presidential Threat Protection Act of 2000.
- 2 Report of the Republican National Convention Public Safety Planning and Implementation Review Commission, January 14, 2009 at 24.
- 3 *Id.* at 26.
- 4 Report of the WTO Accountability Review Committee, Seattle City Council, September 14, 2000, at 16.
- 5 *Id.*
- 6 Letter from National Lawyers Guild President Karen Jo Koonan to Paul Schell, December 6, 1999.
- 7 The Greenscare hotline is 888 NLG-ECOL.
- 8 See *Virginia v. Black*, 538 U.S. 343 (2003). The Supreme Court defined true threats as “those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” The Court clarified that the speaker “need not actually intend to carry out the threat. Rather, a prohibition on true threats protects individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur” (internal quotations omitted). It also defined intimidation, in the constitutionally proscribable sense, as “a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.”
- 9 USA PATRIOT Act, § 802, amending US Code, vol. 18, §2331(5) (2001). Section 802 makes “domestic terrorism” a federal crime that covers “acts dangerous to human life that are a violation of the criminal laws” if they “appear to be intended...to influence the policy of a government by intimidation or coercion.” Chang, Nancy. *Silencing Political Dissent: How Post-September 11 Anti-Terrorism Measures Threaten Our Civil Liberties* (New York: Seven Stories Press, 2001), 44-45. Protest activities are themselves acts that fit the definition of appearing “to be intended...to influence the policy of a government by intimidation or coercion.”
- 10 18 U.S.C. § 43.
- 11 USA PATRIOT Act, § 802, amending US Code, vol. 18, §2331(5) (2001). *Id.*
- 12 See e.g. *NAACP v. Claiborne Hardware*, 458 U.S. 886, 918-19 (1982); *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969); *Hess v. Indiana*, 414 U.S. 10 (1973); *Texas v. Johnson*, 491 U.S. 397 (1989); *Virginia v. Black*, 538 U.S. 343 (2003).
- 13 Report of the Republican National Convention Public Safety Planning and Implementation Review Commission, January 14, 2009 at 31-32.
- 14 *Id.*
- 15 David Gespass email to author, August 25, 2010.
- 16 US Department of Justice, The Attorney General’s Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations, May 30, 2002, <http://www.usdoj.gov/olp/generalcrimes2.pdf>, (July 31, 2004).
- 17 James Bovard, “Quarantining Dissent: How the Secret Service Protects Bush from Free Speech,” *San Francisco Chronicle*, January 4, 2004, sec. D, p. 1.
- 18 Henry Schuster, “Eco-terrorists are now above ultra-right extremists on the FBI charts,” CNN.com, August 24, 2005. Available at: <http://www.cnn.com/2005/US/08/24/schuster.column/index.html>
- 19 18 U.S.C. § 43.
- 20 *Id.*
- 21 Eric Lichtblau, “F.B.I. Scrutinizes Antiwar Rallies,” *New York Times*, November 23, 2003, sec. A, p. 1.
- 22 *Id.*
- 23 Guild members, in conjunction with the Grand Jury Project, Inc. of the National Lawyers Guild, wrote the legal treatise *Representation of Witnesses Before Federal Grand Juries*.
- 24 Michael E. Deutsch, “The Improper Use of the Federal Grand Jury: An Instrument for the Internment of Political Activists,” 75 *J. Crim. L. & Criminology* 1159 at 1170.
- 25 Obituary of Federal Prosecutor Guy Lee Goodwin, 79, *Washington Post*, January 6, 2008.

- 26 Id.
- 27 Id.
- 28 Representation of Witnesses Before Federal Grand Juries, Third Edition at § 14.2 at 14-3.
- 29 Representation of Witnesses Before Federal Grand Juries, Fourth Edition, at §vii.
- 30 Daniel McGowan, letter to author, August 26, 2010.
- 31 Id.
- 32 Id.
- 33 Jennifer Peltz, “NYC Ex-Officer Convicted of Lying in YouTube Clash,” Associated Press, April 30, 2010.
- 34 Wendy McElroy, “Are Cameras the New Guns,” June 2, 2010, Available at: <http://gizmodo.com/5553765/are-cameras-the-new-guns>
- 35 Police claimed that Kyne refused to walk down the steps of the New York Public Library and that several officers had to carry him down to Fifth Avenue. The arresting officer, Matthew Wohl, testified at Kyne’s trial that, consistent with the allegations he swore to in the criminal complaint on which the prosecution was based, he had observed Kyne engage in certain allegedly unlawful conduct, and then he arrested him. Defense attorneys turned over a videotape created by an independent filmmaker showing Kyne descending from the library on foot, with Officer Wohl nowhere in sight.
- 36 David Chanen, “Judge Reviews Claim of Evidence Tampering,” *Star Tribune*, August 16, 2003.
- 37 Colin Moynihan, “City Subpoenas for Access to Tapes of 2004 Protest,” *New York Times*, June 20, 2008.
- 38 110 F. 3d 1363, 1372 (9th Cir 1996).
- 39 Dan Spalding, Law and Disorder Radio WBAI (Pacifica) Interview with Heidi Boghosian, September 22, 2008.
- 40 See *New York v. Burger*, 482 US 691 (1987); *Scott v. US*, 436 US 128 (1978).
- 41 American Civil Liberties Union, ACLU Warns Los Angeles Police Department: Stop Harassing Protestors, 7 August 2000, <<http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=8061&c=86>> (1 August 2004) (citing *Alexander v. City and County of San Francisco*, 29 F.3d 1355, 1361 (9th Cir 1994)).
- 42 Janny Scott, “Protestors Are Denied Potent Tactic of the Past,” *New York Times*, February 13, 2003, sec. B, p. 1.
- 43 Id.
- 44 *Ward v. Rock Against Racism*, 491 US 781 (1989); *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984).
- 45 *Sammartano v. First Judicial District*, 303 F3d 959, 963 (9th Cir 2002).
- 46 *Service Employees International Union v. City of Los Angeles*, 114 F. Supp. 2d 966 (CD Cal 2000). 47 Id.
- 48 Id.
- 49 Communication from Guild member Steckley Lee, June 29, 2004.
- 50 Id.
- 51 Id.
- 52 Report of the Republican National Convention Public Safety Planning and Implementation Review Commission, Executive Summary, January 14, 2009 at 8-9.
- 53 Bruce Nestor, Interview by Heidi Boghosian, Law and Disorder Radio, September 22, 2008. Available at: <http://lawanddisorder.org/nlg-rnc-coverage/>
- 54 Abby Scher, “The Crackdown on Dissent,” *The Nation*, January 19, 2001.
- 55 D.C. City Council, Committee on the Judiciary, Report on Investigation of the Metropolitan Police Department’s Policy and Practice in Handling Demonstrations in the District of Columbia, March 11, 2004.
- 56 Kris Hermes, email message to author, August 23, 2010.
- 57 Solnit, David and Rebecca Solnit, eds., *The Battle of the Story of the Battle of Seattle 2009* (Oakland: AK Press, 2009).
- 58 Id.
- 59 Id.
- 60 U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division, “Review of the Department of Justice’s Use of Less-Lethal Weapons,” May 2009, Report Number I-2009-003 at viii.
- 61 D.C. City Council, Committee on the Judiciary, Report on Investigation of the Metropolitan Police Department’s Policy and Practice in Handling Demonstrations in the District of Columbia, March 22, 1004, <http://www.dwatch.com/police/040311.htm> (July 31, 2004).

- 62 The Independent Review Panel (Jorge E. Reynardus, Esq., Chairperson, Civilian Oversight of Miami-Dade Police and Corrections and Rehabilitation Departments), Final Draft Report on The Free Trade Area of the Americas (FTAA) Inquiry, June 2004, <<http://miami.staughton.indypgh.org/news/2004/06/107.php>> (August 1, 2004).
- 63 D.C. City Council, Committee on the Judiciary, Report on Investigation of the Metropolitan Police Department's Policy and Practice in Handling Demonstrations in the District of Columbia, March 11, 2004, <<http://www.dcwatch.com/police/040311.htm>> (July 31, 2004).
- 64 Id.
- 65 Christopher Stone, Brian Buchner and Scott Dash, "Crowd Control That Can Kill: Can American Police Get a Grip On Their New, 'Less-Lethal' Weapons Before They Kill Again," Policy Brief PB-2005-6, October 24, 2005. Rappaport Institute for Greater Boston, Kennedy School of Government, Harvard University, at 3.
- 66 <http://www.aclu.org/national-security/complaint-local-10-ilwu-v-city-oakland>
- 67 Seattle City Council Preparations and Planning Panel, Report to the Seattle City Council WTO Accountability Review Committee, August 24, 2000 at 5.
- 68 Report of the Republican National Convention Public Safety Planning and Implementation Review Commission, Executive Summary, January 14, 2009 at 24-25.
- 69 Christopher Stone, Brian Buchner and Scott Dash, "Crowd Control That Can Kill: Can American Police Get a Grip On Their New, 'Less-Lethal' Weapons Before They Kill Again," Policy Brief PB-2005-6, October 24, 2005. Rappaport Institute for Greater Boston, Kennedy School of Government, Harvard University, at 4.
- 70 Id.
- 71 Dave Saldana, "Democratic National Convention: Witness to LAPD Crimes," *Guild Notes*, Fall 2000, 14.
- 72 Christopher Stone et al., Id. at 4.
- 73 Ramit Plushnick-Masti, "Pittsburgh Braces for G-20 Summit Headaches," Associated Press, June 24, 2009.
- 74 Jerome L. Sherman, "Pittsburgh Police Begin Training for G-20 Protests," *Pittsburgh Post-Gazette*, July 15, 2009.
- 75 Marty Levine, "Miami Vice Grips," *Pittsburgh City Paper*, June 25, 2009.
- 76 Id.
- 77 "Officials Release New Details on G20 Security," KDKA Pittsburgh, August 24, 2010.
- 78 Jorge E. Reynardus et al., The Free Trade Area of the Americas (FTAA) Inquiry Report, Sept/ 20, 2004, http://www.miamidade.gov/irp/Library/FTAA_Report_09_20_04.pdf. Miami Dade County, Draft Executive Summary of the Independent Review Panel (IRP) Findings and Recommendations from the FTAA Demonstration Complaints Inquiry, 3, 19 May 2004, <http://www.miamidade.gov/irp/Library/5-19-04_FTAA_Exec_sum.pdf> (1 August 2004) (quoting Major Battle, the Metro Date Police Department incident commander for the FTAA event).
- 79 *Virginia v. Black et al.*, 538 U.S. 343 (2003). The Court in *Black* defined "true threats" as "those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The speaker need not actually intend to carry out the threat." Id. at 359-60.
- 80 The Supreme Court has recognized the importance of protecting political rhetoric. *Bonds v. Floyd*, 385 U.S. 116 (1966). *NAACP v. Claiborne Hardware*, 458 U.S. at 926-27. *Watts v. United States*, 394 U.S. 705 (1969), *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).
- 81 Pub. L. 106-544, signed into law on December 19, 2000, 18 U.S.C. § 3056.
- 82 Bruce Nestor, email to author, July 15, 2010.
- 83 Bruce Nestor, "Minneapolis: RNC 2008," *Guild Notes*, Winter 2007 at 13.
- 84 Report of the Republican National Convention Public Safety Planning and Implementation Review Commission, January 14, 2009, at 11.
- 85 Id. at 32.
- 86 Id.
- 87 Guilt by Association: How the Prosecution of the RNC 8 Threatens Dissent and all Political Organizers, Published by the Friends of the RNC8/RNC8 Defense Committee. Available at: <http://rnc8.org/wp-content/uploads/2009/01/guilt-by-association-rnc8-pamphlet.pdf>
- 88 Report of the Republican National Convention Public Safety Planning and Implementation Review Commission, January 14, 2009, at 18.

89 *Id.* at 20.

90 Bruce Nestor, interview by Heidi Boghosian, Law and Disorder Radio, WBAI (Pacifica), September 22, 2008, available at <http://lawanddisorder.org/nlg-rnc-coverage/>

91 I-Witness is a volunteer-based group of videographers from New York City who had been recording protests for years. Their work gained national attention in the aftermath of the 2004 Republican National Convention, when they discovered a discrepancy between one of their video tapes and a tape of the same event provided by the police department in the discovery phase of a civil litigation. The police had altered their video to remove evidence that would exculpate a protester they wrongly arrested.

92 Paul Demko, "Lawsuits Filed Alleging Police Misconduct Around the RNC," *The Minnesota Independent*, February 27, 2009.

93 Bruce Nestor, interview by Heidi Boghosian, Law and Disorder Radio, WBAI (Pacifica), September 22, 2008, available at <http://lawanddisorder.org/nlg-rnc-coverage/>

94 *Id.*

95 Guilt by Association: How the Prosecution of the RNC 8 Threatens Dissent and all Political Organizers, Published by the Friends of the RNC8/RNC8 Defense Committee. Available at: <http://rnc8.org/wp-content/uploads/2009/01/guilt-by-association-rnc8-pamphlet.pdf>

96 In Minnesota the police may hold an individual for up to 36 hours (excluding weekends) before establishing probable cause in front of a judge. During this time, a detained person is unable to challenge his or her detention. In each case arising from the RNC, judges found probable cause for the 36-hour holds, even in the hundreds of cases in which prosecutors later failed to file formal charges.

97 *Id.*

98 *Id.*

99 Guilt by Association: How the Prosecution of the RNC 8 Threatens Dissent and all Political Organizers, Published by the Friends of the RNC8/RNC8 Defense Committee. Available at: <http://rnc8.org/wp-content/uploads/2009/01/guilt-by-association-rnc8-pamphlet.pdf>

100 *Id.*

101 *Id.*

102 *Id.*

103 *Id.*

104 Maher was the lead investigator who traveled the country conducting surveillance of the RNC Welcoming Committee. He took thousands of pictures and organized investigative traffic stops of individuals and groups including Code Pink, Sisters Camelot (a free food bus), the Campus Antiwar Network conference in Iowa City, IA, the Coalition to March and Stop the War, a permaculture bus parked at the site of a farmer's market organized by the City of Minneapolis, Student for a Democratic Society, and others.

105 Report of the Republican National Convention Public Safety Planning and Implementation Review Commission, January 14, 2009 at 38.

106 Geoff Brady, email message to author, August 27, 2010.

107 Dan Spalding, Interview with Heidi Boghosian, "Law and Disorder" Radio, September 22, 2008, available at <http://lawanddisorder.org/nlg-rnc-coverage/>.

108 *Id.*

109 Bruce Nestor, Interview with Heidi Boghosian, "Law and Disorder" Radio, WBAI (Pacifica), September 22, 2008, available at <http://lawanddisorder.org/nlg-rnc-coverage/>

110 "Nick," Interview with Law and Disorder radio, WBAI (Pacifica), September 22, 2008, available at <http://lawanddisorder.org/nlg-rnc-coverage>

111 Pat Pheifer, "RNC Legal Observer Sues Law Enforcers," *Minneapolis Star Tribune*, September 1, 2010.

112 *Minn. Stat.* 609.487(6) is "Fleeing, other than vehicle"

113 Jerome L. Sherman, *Pittsburgh Post-Gazette*, July 29, 2009.

114 Observation of author at July 28, 2009 Pittsburgh City Council Post Agenda meeting.

115 Adam Brandolph, "Pittsburgh Officials: G-20 Summit Costs \$12.23 Million," *Pittsburgh Tribune-Review*, February 2, 2010.

116 Sherman, Jerome L.; Lord, Rich, "1,000 State Police on the Way for G-20 Summit," *Pittsburgh Post Gazette*, August 26, 2009.

117 "Military Presence at the Pittsburgh G20 Summit," *Public Intelligence*, September 24, 2009. Available at: <http://publicintelligence.net/military-presence-at-the-pittsburgh-g20-summit/>

118 Mike Lee, email message to author, August 18, 2010.

119 Will Gardella, email message to NLG National Office, September 27, 2009.

- 120 Mike Lee, email message to author, August 18, 2010.
- 121 Firsthand observations from NLG Legal Observers, unpublished data. On file with National Lawyers Guild, National Office.
- 122 Moriah Balingit and Vivian Nereim, "110 Arrested in Clash with Police in Oakland," *Pittsburgh Post-Gazette*, September 26, 2009.
- 123 Email message to National Lawyers Guild, National Office, September 26, 2009.
- 124 Mike Lee, email message to author, August 18, 2010.
- 125 Joel Kupferman, interview with Heidi Boghosian, Michael Smith and Michael Ratner, "Law and Disorder" Radio, WBAI (Pacifica), October 12, 2009.
- 126 Heidi Boghosian, *The Assault on Free Speech, Public Assembly, and Dissent* (North River Press 2004) at 52-54.
- 127 *Id.* at 53.
- 128 <http://www.youtube.com/watch?v=eRcOgPS5rWI>
- 129 [http://www.upi.com/Top_News/2009/07/15/Pittsburgh-police-readying-for-G-20-summit/UPI-42591247680582/ ?](http://www.upi.com/Top_News/2009/07/15/Pittsburgh-police-readying-for-G-20-summit/UPI-42591247680582/)
- 130 Tim Schooley, "Densus Group: March on the G-20, Day of Action Protests Has Highest Risk for Disorder During G-20 Summit," *Pittsburgh Business Times*, September 21, 2009. Available at: <http://pittsburgh.bizjournals.com/pittsburgh/stories/2009/09/21/daily42.html>
- 131 Robert S. Eshelman, "Fortress Pittsburgh," *The Nation*, September 25, 2009.
- 132 Joel Kupferman, Communication with author, September 30, 2009.
- 133 Amanda Onion, "RNC to Feature Unusual Forms of Sound," ABC News, August 25, 2004.
- 134 Adam Blenford, "Cruise Lines Turn to Sonic Weapon," BBC News, November 8, 2005.
- 135 Sam Gustin, "Louder Than Bombs: LRAD 'Sonic Cannon' Debuts in U.S. at G20 Protests," *Daily Finance*, September 25, 2009. See also Ian Urbina, "Protesters Are Met by Tear Gas at G-20 Conference," *New York Times*, September 24, 2009.
- 136 "DHS Helps Local Police Buy Military-Style Sonic Devices," *The Washington Times*, October 1, 2009.
- 137 Report of the WTO Accountability Review Committee, Seattle City Council, September 14, 2000 at 15.
- 138 *Id.*
- 139 Report of the Republican National Convention Public Safety Planning and Implementation Review Commission, January 14, 2009 at 15.
- 140 IACP National Law Enforcement Policy Center, Law Enforcement Canines, Model Policy.
- 141 IACP National Law Enforcement Policy Center, "Law Enforcement Canines," Concepts and Issues Paper. Originally published May 1992. Revised September 2001 at 11.
- 142 *Id.*
- 143 Adam Brandolph, "Ravenstahl Replaces Majority of Police Review Board," *Pittsburgh Tribune-Review*, June 19, 2010.
- 144 "Police Clash with Violent Marchers," *The Duquesne Duke*, September 17, 2009.
- 145 Beth Pittinger, Interview with Heidi Boghosian, "Law and Disorder" Radio, WBAI (Pacifica), June 28, 2010.
- 146 Paul Clinton, "Pittsburgh PD Uses Text Messaging during G-20 Protest," October 1, 2009, Police.
- 147 *Id.*
- 148 Steven Thrasher, "An Interview with the Tweeting Anarchist, Elliot Madison," *Village Voice*, November 10, 2009.
- 149 <http://www.spokesman.com/stories/2009/oct/09/tweeters-arrest-disturbing/>
- 150 Pamela Reed Ward, "Men Arrested for G-20 Twittering Say It's Free Speech," *Post-Gazette.com*, October 5, 2009.
- 151 Ryan Singel, "Twitter Anarchist Raided Under 'Riot Laws,'" *CNN.com*, October 24, 2009.
- 152 Martin Stolar, Interview with Heidi Boghosian, Michael Smith and Michael Ratner, WBAI (Pacifica), October 12, 2009.
- 153 Matthew Power, "How Your Twitter Account Could Land You in Jail," *Mother Jones*, March/April 2010.
- 154 Martin Stolar, Interview with Heidi Boghosian, Michael Smith and Michael Ratner, WBAI (Pacifica), October 12, 2009.
- 155 Heidi Boghosian, "Police Response to the G-20 Protests Included Excessive Force As Means of Crowd Control," *Jurist.com*, September 28, 2009.
- 156 Case No. 01-CV-0811.
- 157 598 F. Supp.2d 1315 (S.D.Fla.2009).

158 349 F. Supp.766 (S.D.N.Y. 1972).

159 The 2006 decision came in *People v. Jennifer Bezjak, et al.*, 11 Misc.3d 424, 812NYS2d 829 (N.Y. City Crim. Ct., 2006). The 2010 affirmance came in *Bezjak*, 26 Misc.3d 130 (A), 2010 WL143680 (N.Y.Sup.App.Term, 1st Dept., 2010), *leave to appeal denied*, 15 NY3d 747, *et seq.* (2010) and *People v. Beck, et al.*, 26 Misc.3d 42 (N.Y.Sup.App.Term, 1st Dept., 2010), *leave to appeal denied*, 15 NY3d 747, *et seq.*

160 See *International Action Center v. City of New York*, 522 F.Supp.2d 679 (SDNY, 2007); 587 F.3d 521 (2nd Cir., 2009).

161 See <http://cityroom.blogs.nytimes.com/2009/04/10/students-occupy-new-school-building-again/>.

162 National Lawyers Guild Press release, February 25, 2008 “US Judge Quashes NYC’s Subpoena Seeking Clients’ Emails to the National Lawyers Guild.”

163 Case No. 07-21088-CIV-ALTONAGA

164 David Kairys, *The Politics of Law*, Third Edition, Basic Books, 1998.

165 Report of the Republican National Convention Public Safety Planning and Implementation Review Commission, January 14, 2009 at 49.

166 *Id.*

167 311 US 32 (1940).

168 380 US 479 (1965).

169 397 US 254 (1970).

170 436 US 658 (1978).

171 407 US 297 (1972).

172 531 US 98 (2000).



Cover photo and design by Paige Cram.

\$15.00
ISBN 978-0-615-39888-4



9 780615 398884

