

# Guild Notes

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## New Paths to Justice: Guild Delegation to Chiapas

by Laura Raymond and Mel Campagna

Eleven years after the Zapatista army rose up in defense of indigenous rights in Southern Mexico, the world is still watching as their revolutionary model of society and government unfolds. The Zapatistas timed their uprising to coincide with the implementation of the North American Free Trade Agreement (NAFTA) and continue to act in resistance to the free trade policies that they say are a “death sentence” for indigenous communities of Chiapas and throughout the world. In keeping with the spirit of placing human rights before property rights, the National Lawyers Guild led a delegation of law students, attorneys and legal workers to Chiapas in mid-March to learn about and support the Zapatista’s continued struggle for autonomy and justice.

The delegation consisted of twelve Guild members from all over the country: five legal workers, three law students and four attorneys. Half of the delegation met in Mexico City and took a 14-hour bus ride through the mountains of southern Mexico to arrive in the colonial city of San Cristobol de las Casas. Upon our arrival, we met with two onsite coordinators who had scheduled a full week of meetings and intercambios with a variety of international human rights organizations, indigenous rights

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PHOTO: LARISSA MATZEK

Mural on a school in the Caracol of Oventic. It reads: “Zapatista Autonomous Rebel Primary School,” “Autonomous Education Constructs Different Worlds Where Many Truths and True Worlds Fit.”

## Gauntlet of Change

*From Tailhook to Iraq: Guild's Military Law Task Force Tackles Harassment of Women in the Armed Forces*

By Heidi Boghosian

Sexual harassment and abuse are endemic within the military, so grounded within its training and culture that only systemic changes can solve them. The Guild’s Military Law Task Force (MLTF) has worked on issues of sexual harassment in the military since the group’s inception in the 1970s. Its newly launched Women’s Military Rights Project will challenge the long-term problem of sexual harassment and abuse within the military system through a combined program of education, legal assistance and litigation, and support for political action. Guild Notes talks to MLTF co-chairs Kathleen Gilbert and Marti Hiken about this ambitious project.

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# Guild Notes

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# Why We Need to Worry About Bush's Judicial Nominees

With the future of the Senate filibuster weighing in the balance, the debate about President's Bush's federal judicial nominees heated up dramatically this spring. Up until now the conservative justices on the Supreme Court have chipped away at the edges of the commerce clause powers of Congress with "New Federalism" theories under the Tenth and Eleventh Amendments. These justices have also argued that the reach of the commerce clause's aggregation theory is limited to transactions that are economic in their nature, striking down as unconstitutional the Gun-Free School Zones Act of 1990 and the civil remedy of the Violence Against Women Act. These decisions have already begun to weaken the ability of the federal government to protect the vulnerable members of our society.

But the new nominees are much bolder than the conservatives on the Supreme Court. Janice Rogers Brown, a nominee to the D.C. Circuit, has argued that the cases in 1937 in which the Supreme Court ceased striking down social welfare legislation on the ground that it violated the substantive due process and freedom of contract rights of private parties, ushered in a "socialist revolution" in the United States. The Bush nominees seek a return to the pre-1937 "Lochner era" jurisprudence, an era driven by laissez-faire economic policy in which corporate interests would be assured of freedom from government regulation. If the federal courts are dominated by these nominees, labor

laws, discrimination laws, environmental regulations, consumer protection laws, civil rights laws, and others will be imperiled by a radical change in judicial philosophy that will wipe out the last seventy years of social welfare legislation.

These nominees are vulnerable on a variety of grounds. Brown, for example, has been openly criticized by her colleagues on the California Supreme Court for misrepresenting state and federal court holdings and twice has been found unqualified for the bench by committees of the bar. Priscilla Owen, nominated to the Fifth Circuit from the Texas Supreme Court, took campaign contributions from Enron and Halliburton before sitting on cases in which they appeared. She routinely rules in favor of corporate interests over the rights of injured individuals, even when it is necessary to distort the law to do so. William Pryor, renominated to the 11th Circuit, sought to vacate a federal consent decree that would have improved the lot of children in the state's foster care system while he was attorney general of Alabama. His judicial philosophy was captured by his statement in open court, "My job is to make sure the state of Alabama isn't run by a federal court. My job isn't to come here and help children."

The Guild needs to seize the opportunity to explain to people in our communities the political significance of these nominees. We are setting up a new national committee to coordinate this work. These nominees are a naked



PHOTO: COURTESY OF MICHAEL AVERY

Michael Avery

grab for power by corporate interests through the simple means of appointing enough judges with a specific judicial philosophy so that legislative efforts to regulate corporate power will be held unconstitutional. It is an effort to turn the clock back to the late nineteenth and early twentieth century when corporate interests were largely unfettered by legislative regulation.

This expansion of corporate power must be considered with other efforts by the Bush administration to centralize power in the executive branch, to weaken judicial review of law enforcement, and to weaken the role of the legislature over decision-making with respect to war and peace. Together, these efforts undermine a constitutional government marked by separation of powers and a system of checks and balances, and contribute to a centralization of power that leads inexorably to the development of a national security state. ■

*The Guild is a member of the Alliance for Justice, which is doing an excellent job of working in Washington to oppose these nominees. For more on the nominees, visit [www.independentjudiciary.com](http://www.independentjudiciary.com).*

## Correction: Credit to Boyle in Last Issue

*Guild Notes* regrets that in the last issue of *Guild Notes*, we did not give credit to New York City Chapter member Bob Boyle for his work related to quashing the subpoena served on the Guild. Two articles ran on the subject, and neither mentioned Bob, who wrote the motion to intervene, gave feedback on the motion to quash and served as local counsel along with Barry Scheck.

# Arrests, Lies and Videotape

## Videographer's Trained Eye Uncovers Exculpatory Tape

By Heidi Boghosian

From Northern Ireland to the asphalt of Manhattan, native New Yorker Eileen Clancy has literally held steady her sharp focus on police at political gatherings with a video camera. One of the founders of the volunteer-run I-Witness Video collective, Clancy was thrown into the public eye in April when she discovered that exculpatory segments had been removed from a videotape provided by the Manhattan District Attorney's office. In response to a flurry of news stories about the tape, an April 16 editorial in the *New York Times* cited the need to carefully examine complaints about unnecessary arrests, unusually long waits for hearings, "or at how things went awry during protests last summer."

Careful examination is just what I-Witness has expertise in. "What we're doing is using tools of digital technology to counter the power imbalance with the police," explains Clancy. "The police develop a narrative about events and then we are able to bring to our account a form of truth telling that is not based merely on personal recollections. It really is uniquely powerful—our ability to retrospectively analyze and even almost recreate how events occurred is invaluable to defense attorneys."

This ability to recreate how events really happened has paid off in court. A long time video archivist and political activist, for the past eight years Clancy has been video-monitoring the army and police in Northern Ireland. Based on tape that Clancy shot in 2002, a constable with police service in Northern Ireland was convicted of the crime of driving his armored landrover into a crowd of young people. He was tried a year ago December and retried in May when Eileen testified at his trial. Clancy notes that it is highly unusual for police to be brought to trial for any wrongdoing, even in what is probably the most notorious police force in Western Europe.

In 2000 Clancy and I-Witness Video brought their skills to large mass demonstrations in the United States, beginning with the Republican National Convention in Philadelphia.

Last spring, I-Witness Video approached the Guild with a proposal to partner and coordinate video evidence at the GOP convention in New York to assist in the criminal defense of individuals arrested. A core group of about six women (although I-Witness is not strictly a women's col-



PHOTO: IAN HEAD

Eileen Clancy of I-Witness Video has been monitoring police activity in the U.S. and Ireland since 1997.

lective) ran workshops and trained 200 people to record video in a way that would be useful to legal cases, having developed protocols for doing this. During the convention, collective members teamed up with Guild-trained legal observers to scour the streets, collecting evidence.

Since late August I-Witness members have been methodically reviewing hundreds of hours of tapes in an effort to identify defendants and to reveal the actual circumstances surrounding their arrests. What drives I-Witness volunteers? "Overall we are aware that there has been a compression of available space for free expression. We are interested in maintaining free open space for this, and that's largely what this is all about," explains Clancy.

The discovery of altered tapes that propelled Clancy into the limelight began when defendant Alexander Dunlop, who had been charged with resisting arrest at the August 27 Critical Mass bicycle ride, actually came to the Guild offices to view the videotapes showing the events happening during his arrest. He was unable to find himself on the tape. After spending time with Alex while reviewing the footage, Clancy kept an eye out for him while she later looked at additional tapes. In early April she received some police videotapes related to another criminal case, given over by the District Attorney to a defense attorney during discovery. As she looked through those tapes she saw Alex in several places. "I took a look to see when he was coming up for trial, and

it was about a day-and-a-half. So I invited his lawyer, Michael Conroy, to view the tapes. I asked him if he had any tapes that she could see. He had one, but thought it wasn't helpful." After Mr. Conroy came in to review the tapes, Eileen noticed that the two tapes were similar and thought that perhaps two different cameras had been used to capture similar events.

After screening hundreds of hours of footage, one afternoon Clancy recalled seeing a very similar tape from the District Attorney's office. It appeared that the tape had been edited twice to remove the scene showing bystander Dunlop approaching the protest (on his way to pick up sushi), and being passive after arrest. The ADA later stated that a technician accidentally edited the tape—twice.

All in all, video documentation was instrumental in having the charges dropped in at least three cases:

- Josh Banno was one of a small number of RNC arrestees facing felony charges, accused of setting fire to a large dragon float at the August 29 march. Banno spent a week in jail on \$200,000 bail. A friend of his poured through tapes and press photos and led him to a photographer from the *New York Daily News*, who provided a series of unpublished photos that showed Banno was at the rear of the float as the fire started at the front of the float.
- Dennis Kyne, who the arresting officer had said was arrested as he "squirmed and screamed," allegedly kicking as he refused to walk, was shown on tape walking calmly away after being arrested.
- Alex Dunlop, who was shown standing calming at the time of his arrest, in striking contrast to the officer's testimony that Dunlop assaulted police with his bicycle and arrested arrest.

Over the next several months Clancy plans to continue assisting with the criminal defense of arrestees. Attorneys and arrestees interested in viewing tapes or in consulting with the collective for expertise in analyzing tapes can contact Eileen by email at [iwitnessvideo@hotmail.com](mailto:iwitnessvideo@hotmail.com). Look for the I-Witness Video collective website in the near future. ■

*Heidi Boghosian is executive director of the National Lawyers Guild.*

## Recognizing Marilyn Waller

This year the San Francisco chapter honored Marilyn Waller, who has been with the Guild since the early 70's organizing students and lawyers for decades. She was a founding member of the Women's Prison Legal Education Project and worked after law school with Equal Rights Advocates and the San Francisco Law Collective, plus has traveled with legal delegations to Cuba, Mozambique, Israel and the West Bank.



Judy Kurtz hold up a banner from the old Bernal Heights Law Collective. From left to right, Back: Brian J. McCaffrey; Judy Kurtz. Front: Marilyn Waller (honoree); Catherine Powell.

*Marilyn was never self-important. Perhaps she does not realize how affecting her spontaneous vivacity was. I remember once the late Dullah Omar and I commenting in the slightly patronising way that successful struggle people tend to have, on how we rated the many friends we had made in many quarters in the USA (Columbia University, NAACP Legal Defence Fund, NBA, Rutgers, Harvard and many more). The National Lawyers Guild always got a 9.8, not only for its resolute support for the anti-apartheid cause, but because of the special energy and sense of delight its members displayed, certainly when we were with them. And Marilyn had a special place in this pantheon of South African memory. I am not a birthday person, but am prepared to waive my usual reservations and say: Happy Birthday, Marilyn, and thanks for all your love, comradeship and sense of fun. I wish I could be at the party.*

*Albie Sachs  
Johannesburg, 5 February 2005*

## Chiapas Delegation

*cover story continued*

groups, law students and professors. Our objective was to learn about the realities of the Mexican justice system and the Zapatistas process of creating autonomous territories within the state of Chiapas.

### Alternative Paths to Justice

After the uprising in 1994, the Zapatista movement became less focused on military action and began prioritizing the creation of a process where the indigenous communities who constituted the Zapatistas “bases of support,” governed not only the rebel army, but the leadership of the movement as well. This bottom-up model of governance is of one reason that the Zapatistas movement is so unique—for it is truly led by the people. Their structure is also one of their greatest strengths; because they are guided by the whole, simply eliminating their leaders can’t crush their movement.

The Zapatista communities are networked into municipalities and the municipalities are united under five different regional governing structures located in five *Caracoles* (the Spanish word for the spiral form of a snail shell). Upon entering a *Caracol* one is greeted with a sign that says “You are entering the area of Zapatistas in Rebellion. Here the People Lead and the Government Obey.” In the years since the uprising, the communities have demanded that the Zapatistas shift their focus from the movements of their guerilla army to building up autonomous and sustainable health, education, agriculture, justice, economic, and political systems. Throughout the last eleven years, the landscape of Chiapas has become dotted with autonomous schools, health clinics, cultural centers, a Zapatista-created water system and radio station, sustainable agriculture centers, and other direct



PHOTO: MEL CAMPAGNA

Translation: “For everyone, everything. For us, nothing. The Autonomous Rebel Zapatista Municipality, Good Government Assembly, the Central Heart of the Zapatistas Before the World.”

services projects that benefit the people. The communities determine which projects to take on, which are then managed through the governing bodies of the *Caracoles*.

We had the opportunity to visit two *Caracoles* and meet with the government assembly called *La Junta de Buen Gobierno* (the Good Government Assembly). Our group formulated questions for the government representatives regarding the Zapatista’s non-punitive judicial system and conflict resolution. Each *Junta* consisted of an equal number men and women from various communities within the territory. It was explained that the assembly members rotate, do not get paid for their work, and are elected because they are respected members of their communities with upstanding values.

It is the *Junta* that is in charge of resolving conflicts throughout the region. The parties in dispute will present their case before the *Junta* whose primary concerns when resolving an issue are reparations for the

victim and the greatest good of the entire community. The *Junta* representatives explained that they are still in the process of creating this alternative justice system but that the work that they have done so far has been so promising that government supporters in non-Zapatista communities are coming to them to resolve conflicts that the state government has failed to take action on. In some cases, the state government itself has referred people to the *Junta* to solve a problem.

The Zapatistas receive thousands of international visitors each year. The role of the international communities involvement in support of the struggle was elaborated upon by Marina Pages from Servicio Interamericano Para la Paz (SIPAZ). Marina explained the history of the Zapatista uprising and the vital yet tenuous role of the international community in supporting the movement within Chiapas. SIPAZ is just one of many NGO’s based out of San Cristobol working in collaboration with the Zapatistas. However, not every



PHOTO: MEL CAMPAGNA

Delegation meets with Marta Figueroa (top row center in white dress) in San Cristobal.

group working on Indigenous rights issues works directly with the Zapatista communities.

### Realities of Justice

Chiapas as a Mexican state is unique because of the three concurrent justice systems that exist: the Mexican system, the traditional indigenous system, and the Zapatista system that is being formed. At the *Fray Bartolome de las Casas* Human Rights Center in San Cristobal we learned that much of the conflict is owed to the fact that the Mexican government will not recognize the other systems in operation. The San Andreas Accords, which were negotiated as a peace agreement between the government and the Zapatistas, were an attempt at this. However, though all parties signed them, the government has refused to recognize them and the conflict continues.

A prisoner rights collective we met with spoke of the three fundamental problems of the Mexican justice system: impunity, arbitrary detention and lack of confidence in the system. For centuries

those in power have acted with impunity, using the judicial system to imprison the innocent while failing to punish the guilty. Prosecutors themselves can issue arrest warrants and people can be detained indefinitely without just cause. It takes on average three years to process a case through the system and most people spend that time languishing in prison. The combination of lack of accountability and ineffective processes has resulted in a widespread and pervasive sentiment of distrust. In fact, they told us that over 90% of the Mexican population does not believe that justice is possible within the current system.

Although the Mexican judicial system is markedly different from that in the U.S. one of the similarities is that the system is designed to disenfranchise and control specific populations (e.g. the poor, indigenous people, women and political dissenters). Many Indigenous people are targeted by police and once inside the prison system are often unable to receive adequate representation due to language barriers and lack of translators who speak native languages.

In Chiapas, the judicial system has been used to jail Zapatista leaders and supporters and discredit the movement.

Women, especially indigenous women, face undue burdens and hurdles when attempting to access justice. We met with human rights attorney Martha Figueroa, with COFEMO, a feminist collective that focuses on crimes against women. Most of the women who seek assistance from COFEMO have been victims of sexual and/or domestic violence and the majority of these women are from indigenous communities. Traditionally, women have been relegated to the home sphere and have felt less comfortable navigating public space than men. Therefore, it is harder for women to seek out legal assistance and advocate for themselves on a public level.

Indigenous women have been targets in the conflict with the government. Rape has been used as a strategy of repression and a way to terrorize the population. Marta told us about the case of three indigenous sisters who were raped by the Mexican military as their mother was forced to listen in the next room. Lawyers working on the case have commissioned an anthropological study about how this rape has not only affected the women but the entire community. They are using the study and the case to argue to the Interamerican commission on human rights that military bases should not be positioned next to indigenous communities.

During the Acteal massacre that took place in 1997 in which a government sponsored paramilitary group murdered 45 people (36 of whom were women), pregnant women were targeted by the paramilitary who eviscerated them while shouting "kill the seed." COFEMO currently has a case before the Interamerican commission charging the Mexican government with genocide

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for its role in the Acteal massacre. The government has also directly participated in genocidal programs by creating sterilization programs. Marta told us of the many indigenous women who have visited public clinics and were sterilized without their prior consent. Many women were not even informed that they had been sterilized and did not realize what had happened until they were unable to get pregnant again. The social stigma associated with being barren has only increased the psychological trauma these women have suffered.

### Steps Toward Autonomy

One of the main purposes of our visit to Chiapas was to engage in an exchange with La Red de Defensores Comunitarios (The Network of Community Defenders). La Red is a network of indigenous people from different communities within Chiapas. They come together once a month to share information and attend workshops on domestic and international law and human rights. La Red is another step that the movement in Chiapas has taken towards autonomy; the communities in rebellion are learning how to do their own legal work and apply human rights law to their autonomous government's own

laws and practices without depending on non-indigenous lawyers to do this work for them. In their offices there is a large mural they painted that reads "Taking on Our Own Defense: Through Defending the Rights of the People We Fortify Indigenous Autonomy."

Our delegation prepared a series of presentations on international law and La Red presented on their current work. One of the main issues facing the communities served by La Red is the displacement of indigenous communities from the Montes Azules Bioserve located in the Lacandon Jungle. A defender from this region gave our delegation an in-depth, historical analysis of the growing conflict in the region. He told us the government is trying to displace indigenous communities in the region, many of which are in active resistance against the government and its "development" programs, in order to move forward with Plan Puebla Panama (PPP). A handful of communities have already been forced out and the defender told us it might just be a matter of time before violence escalates in this conflict.

The impact of the PPP in Southern Mexico and Central America was elaborated on by Miguel Pickard of

CIEPAC. Pickard told us that the PPP calls for the building of hydroelectric facilities, roads, dry canals, an electrical grid, and other infrastructure from southern Mexico. While the Fox Administration claims the PPP will bring "development" to the poorest region of Mexico, the poor of the region contend that they were never consulted. In fact, this plan is actually intended to extract resources from Chiapas, one of the most biodiverse regions in the country, for the benefit of corporations and to provide the United States with water, electricity, oil, genetic material and other resources.

As one organizer in Chiapas told our delegation, "On the one hand we have to learn to defend ourselves and on the other we have to construct new forms of justice and ways of relating." This is exactly what the movement in Chiapas is doing; they are defending themselves against the Mexican military and against the persecution of Zapatista supporters but at the same time have taken on the extraordinary task of building an alternative. Their ongoing struggle and the concrete alternative they are creating stands as a true inspiration to the Guild and our mission of basic and progressive change in the structure of our political and economic system. ■

### Attention Graduating Law Students!

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You are the future of the Guild.

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# NLG Joins In Demand To Extradite Terrorist Posada

by Art Heitzer

October 6, 1976 began a new chapter in terrorism, as the first civilian airliner was blown up in midflight. The plane was Cuban, and all 73 people aboard were killed, including Cuba's junior girl's fencing team, and South American students about to begin free medical study in Cuba. Venezuela arrested and convicted two men who planted the bomb, and the bombers confessed that they were hired and directed by two Cuban exiles, Luis Posada Carriles and Orlando Bosch, who still preach that when it comes to Cuba, there are no innocent civilians, even simple tourists.

One such tourist was killed, Fabio Di Celmo from Italy, and others were wounded when a series of bombs went off in Cuban tourist hotels in 1997. Posada boasted to the *New York Times* in an 8,000 word interview published on July 12-13, 1998, that he was responsible for those bombings and many others, and that he felt that the CIA left him alone because of their long working relationship.

While Posada gave that interview from an "undisclosed location" in Central America, Bosch was living comfortably in Miami as a permanent U.S. resident, having been freed from custody by George Bush, Sr. in July 1990, despite U.S. Justice Department findings that "for 30 years Bosch has been resolute and unwavering in his advocacy of terrorist violence" and that he "demonstrated a willingness to cause indiscriminate injury and death." Citing at least 16 bombings, assassinations and attempted assassinations, the DOJ observed "The security of this

nation depends on the possibility of convincing other nations not to harbor terrorists. We cannot shelter Dr. Bosch and maintain our credibility." Now Posada is asking for the same "shelter" here which Bosch has enjoyed since 1990.

"If you harbor terrorists, you are a terrorist," President George W. Bush proclaimed 11 years later in justifying the U.S. invasion of Afghanistan and his global "war on terror." And so Posada's request for U.S. asylum "is truly a test of U.S. policy on the issue of international terrorism," according to Peter Kornbluh, of the authoritative National Security Archives. "You can't say that one man is allowed to blow up an airplane and kill 73 innocent people because he ideologically is in keeping with the President's position on undermining and overthrowing the Castro government in Cuba. A terrorist is a terrorist, and Luis Posada, frankly, has one of the longest careers in terrorism of any individual alive today."

The NLG on April 20, 2005 issued a statement noting Posada's suspicious arrival in the United States and opposing his asylum request. It added that Posada was convicted in Panama after being caught in 2000 with explosives for the planned assassination of Cuban President Fidel Castro, and asserted that Posada's premature release from jail in Panama was at the behest of the Bush Administration.

The Guild statement also noted that Posada had been a CIA agent since the 1960s, was trained in explosives and sabotage at the notorious School of the Americas, and was part of the CIA's Bay of Pigs invasion. While in Venezuela in the 1970s, Posada oversaw the killing of

Venezuelan leftists as head of the Intelligence and Prevention Services Division (DISIP) of the national police. In the 1980s Posada commanded the supply of munitions to the Nicaraguan contras from the CIA's Ilopango airbase in El Salvador.

Guild President Michael Avery stated, "Since the Cuban revolution, over 3,400 Cuban people have died by violent attacks perpetrated on the island by anti-Cuban paramilitary groups that operate freely in Miami. President Bush has said that in his view any government that harbors terrorists is complicit in murder and equally guilty of terrorist crimes. Allowing Posada into the U.S. and entertaining an asylum request from a confessed terrorist is an open acknowledgement of accomplice liability in the crimes against Cuba."

The Guild statement ended by demanding "that asylum be denied to Posada and that he be arrested and deported to Venezuela, which has demanded his return and which has an extradition treaty with the U.S., or that he be tried by a competent international tribunal, as Cuba has alternatively suggested." The NLG also encourages participation in the Campaign to Tell Bush and Congress "No Asylum for Posada" initiated by the ANSWER Coalition, in which 10,000 people have already joined, at [www.pephost.org/PosadaCarrilesasylum](http://www.pephost.org/PosadaCarrilesasylum).

Posada's arrival followed a U.S. tour co-sponsored by a number of NLG Chapters featuring Bernie Dwyer, co-producer of the Cuban/Irish documentary "Mission Against Terror." It shows the attempts by the "Cuban 5" to prevent similar acts of terror, such as by monitoring Bosch's actions in Miami. Three of the Five are serving life sentences; and all are in their seventh year in jail and still (as of April 28) awaiting word on their appeal. The DVD and other information is available from [www.freethefive.org](http://www.freethefive.org). ■

## Sixth Labor and Employment Delegation to Cuba Convenes in Havana

By Joan Hill

The Sixth International Exchange of Trade Unionists and Labor Lawyers met March 14-19 in Cuba. The research program included two days of orientation and overview of global challenges facing workers. The delegation, made up of labor lawyers, trade unionists and neutrals, heard presentations on the challenges facing Cuban workers, including the lack of housing and transportation, and the urgency to defeat the travel restrictions imposed by the U.S. and ending the 45-year long blockade. The Safety Director for the national union, *Central de Trabajadores de Cuba* (CTC), also described the responsibility of the 17 national trade unions in demanding safe working conditions. Work site visits and worker interviews, which made up the largest portion of the research itinerary, included visits to various labor centers, such as the Cuban trade union movement's national training center in Havana and a pharmaceutical enterprise. There, delegation members were able to understand the role of the labor unions in setting production goals, investigating and resolving complaints through Grass Roots Organs of Labor Justice, wage and incentive programs, and other conditions of work.

A regular part of the program included a presentation by Pedro Ross, General Secretary of the CTC. He reiterated that the most acute problem facing Cuban workers is the blockade, and its effects on the lives of Cuban workers, the economy and Cuba's relationship with other countries. He estimated that the U.S. has lost over \$73 Billion in trade as the result of the blockade.



PHOTO: JOAN HILL

Delegates at the International Exchange of Trade Unionists and Labor Lawyers in Cuba.

The housing issues, according to Ross, are being addressed by a new program announced by Fidel Castro, under which it is estimated that an additional 45,000 new houses will be built in 2005.

A special presentation was made by the daughter of delegate Berry Bingham (SEIU Organizer from Oakland) who is a fourth year medical student in Havana. Through Pastors for Peace, the Cuban government has provided Bingham with full scholarship to study medicine at its University of the Americas, which provides free medical education to talented students from poor and marginalized communities around the world, in exchange for their agreement to return to their home countries and practice in underserved areas.

Following the orientation program, the U.S. delegation, along with 11 Cuban lawyers and union officials and representatives from Quebec and the U.K., traveled to the western-most province of Pinar del Río. Delegates

interacted with workers in a steel fabrication plant, cigar factory, community hospital/clinic, and tobacco cooperative. The safety training received earlier in the program became quite useful as safety issues became apparent to the U.S. delegation while touring the steel plant. Traveling to the municipality of Viñales, the combined delegation enjoyed the opportunity to visit the prehistoric murals and interact with local workers in the tourist industry. Before returning to Havana, the participants visited Las Terrazas, where they learned about the environmental program which has resulted in the designation of Viñales as a biosphere by the United Nations. The area was clear cut by the Spanish colonists, and the region's people traditionally eked out a marginal existence by making charcoal. In 1968, Cuba initiated an intensive reforestation program, planting over six million trees. The area has become a self-sustaining community, with a focus on environmentally-sound economic development.

# International Work Forges Ahead

by Steven Goldberg

At the end of the week-long program, during the closing event, the participants had an opportunity to meet Rosa Ross, the wife of CTC General Secretary, who described Cuba's retired workers education program, initiated five years ago. This program allows retired workers to enter university programs and receive certificates in over 600 degrees. Presently, over 17,500 students from rural and municipal areas participate, with many students in their late 80's.

Barring further restrictions by the Bush administration on travel for professional research, next year's delegation has been invited to attend and participate in the May Day activities in Havana, which usually involves a march of over a million Cubans in the *Plaza de la Revolución*. ■

## Defending Cuba and the Cuban Five

A booklet published by the NYC NLG Chapter and the NLG Cuba Sub-committee, with analysis of the current situation in Cuba by Jane Franklin, John Gerassi, Joel Kovel and Leonard Weinglass (NLG member and attorney for one of the Cuba Five), and commentary and introduction by NYC NLG chapter member Michael Steven Smith at a forum organized by the NYC NLG chapter in May 2003. Price for a single copy is \$5 with proceeds to be contributed to Cuban Five Defense Committee. For bulk order information, contact the NYC NLG chapter. Available from the NYC NLG Chapter, 143 Madison Ave., 4th Fl, NY, NY 10016; 212-679-6018, x. 16; [www.nlgnyc.org](http://www.nlgnyc.org).

On February 26 and 27—15 members of the Guild's International Committee came together for an extraordinary weekend of meetings and discourse. The fact that people were willing to come together from throughout the country for the express purpose of strengthening international work reflects its critical implications, and the commitment of Guild members themselves.

We reviewed the amazing breadth of international work the Guild has done in the last several years which essentially fell into three categories: Work in support of specific countries or issues related to those countries (Cuba, Haiti, Iraq, Mexico, the Middle East, North Korea, the Basque country, El Salvador); coalition work with other international legal organizations such as the International Association of Democratic Lawyers (IADL) and the Commission for Labor Rights, the Association of American Jurists, and the recently formed organization of Latin American labor lawyers; educational work on international legal issues both nationally and in our communities. We discussed what distinguished the work the Guild does from other human rights organizations such as Amnesty International and Human Rights Watch, and the importance of the anti-imperialist perspective we bring to our work. And we began to focus on the future.

Perhaps the most critical part of the weekend was developing an expanded steering committee for the international committee, and a list of organizational priorities we needed to focus on between now and the Guild Convention in October in Portland, Oregon.

There was serious and critical discussion of the International Association of Democratic Lawyers (IADL) and of what the Guild must do to support and strengthen the work of that organization. How can we join with our IADL comrades in other countries to do programmatic work and go beyond just talking and issuing resolutions; how can we make our presence at the United Nations (IADL has consultative status at the UN) more effective and meaningful? We have been pushing—with mixed success—for Guild members to attend the upcoming IADL conference in Paris scheduled for June 7-11. It is critical that Guild members attend and participate in the scheduled commissions in a coordinated and meaningful way so that we leave Paris with clear strategies for future action. Information on the conference is available on IADL's website at [www.iadllaw.org](http://www.iadllaw.org) or from our representative to IADL, Jeanne Mirer, [mirerfam@earthlink.net](mailto:mirerfam@earthlink.net).

We recognize that we must do a better job of educating our members about international law, how those laws and treaties are part of U.S. law, and how these laws and principles can be incorporated in our legal work in the U.S. There is no clearer example of the importance of doing this than the Supreme Court's recent nod to international legal principles in its recent decision, *Roper v. Simmons*, declaring the death penalty for minors as unconstitutional. On the Wednesday before the Portland Convention, October 26, the International Committee will sponsor an all day CLE program on these issues. Plan now to join us in Portland for this important event!

As I've said continually in articles in Guild Notes and newsletters, the importance of the Guild's international work continually becomes more apparent. We need more Guild members to join in this work. Encourage others in your chapters to join the International Committee. Encourage others in your communities to join the Guild. We'll hopefully see you in Paris in June. ■

*Steven Goldberg is the International Committee Co-chair and can be reached at [Stevengoldberg@comcast.net](mailto:Stevengoldberg@comcast.net).*

*Gauntlet of Change continued from cover***Kathy and Marti, how deeply entrenched in the military culture is the problem of sexual harassment of women?**

**KG:** The problem of sexual harassment and assault is deeply ingrained in military training and culture. Sexual stereotypes and sexual violence are used to train soldiers to fight and obey orders without question. Combat skill, “manliness,” sexual prowess and sexual violence, are equated in frightening ways to enforce discipline and unit cohesion. It is, unfortunately, an effective way to train soldiers to fight in unpopular and unjust wars. Sexual harassment can only be addressed if these basic aspects of military culture are changed.

The problem is exacerbated by pervasive patterns of retaliation against those who complain about harassment or assault. Women who report harassment often find themselves subjected to “adverse personnel actions” such as poor performance evaluations and involuntary psychiatric evaluation, involuntary discharge, and further abuse by the harasser and his friends. As a result, many women choose not to report sexual harassment; among those who do, retaliation frequently undermines their credibility and leaves them even more vulnerable. While many women have spoken out, the threat of retaliation and further harassment cannot be underestimated.

**MH:** Simply put, there remains no justice for women whether they have been harassed or attacked. Sexual assault is part and parcel of the military culture. This situation is not going to change overnight, if at all in the foreseeable future. Military training requires dehumanization. It is not possible to kill if one perceives the enemy as a human being. The implications of that for women and children are obvious. When a woman becomes an object rather than a person, the results for a young, frightened, aggressive man, are predictable.

It is important to understand the history of women in the military. In 1978 women became full-fledged members of the U.S. Army, assigned to non-combat roles. Women stayed in the rear echelons until the 1989 U.S. invasion of Panama (Operation Just Cause). Last year, the United States had about 216,000 women on active duty worldwide, with another 151,000 in the Reserves and National Guard. (Women are 15% of the active duty force and 17% of the National Guard and Reserves.)

Currently, support units are mixed-sex, so in the new Army small brigades, or units of action, will deploy as they train and then join other units in the theatres. This would, in effect, do away with the “Collocation Rule,” which says that there will be no women in combat. Of course, the reality is that currently women are closer to combat in Iraq than in



PHOTO: LUKE HIKEN

Marti Hiken, co-chair of the NLG Military Law Task Force.

any previous war. More than 25 women have been killed in action in Iraq.

**How well is the problem documented?**

**MH:** According to a doctor with the Veterans Health Administration, Department of Veterans Affairs: “I think my sense is that we still do not really have a good sense of the magnitude of [sexual abuse and harassment]...our data collection systems from our screening questionnaire are relatively new. We have only been collecting this information since 2002.” (Sexual Assault Prevention and Response in the Armed Forces, 6-3-04)

**KG:** The irony here is that documentation has had so little effect on the problem. The military and independent agencies have repeatedly documented high rates of sexual harassment against military women and against civilian women living or working in military communities. While the military has reformed its policies repeatedly in response to these studies and to public scandals, none of the reforms has addressed the underlying issues or made any real change in the amount or level of harassment.

**After the Vietnam War, the numbers of women in the military greatly increased, as did the number of complaints about pervasive sexual harassment. We’ve seen reports in the media of the so-called Tailhook Incident in 1991. Was Tailhook a defining moment for women in the military?**

**KG:** There were a number of expose’s of sexual harassment and assault prior to Tailhook, including Congressional testi-

mony about rapes among soldiers during the first Gulf War. But Tailhook was a turning point because of the persistence of the women who made and maintained complaints, and because of clear evidence of cover-ups by high-ranking officers who witnessed (and in all likelihood participated in) the harassment.

But it's important to note that many young men and women, in and out of the military, have never heard of Tailhook. People are often shocked when they hear of women forced to "run the gauntlet," while Navy officers grabbed and fondled them, or drink beer from a dispenser shaped like a rhinoceros phallus.

### **What kind of response has Congress shown, if any, in addressing the problem?**

**MH:** I think that Scott Berkowitz, chairman of the Rape, Assault and Incest National Network, sums it up best in his testimony before the House subcommittee in 2004: "My...concern is the process of reform and the timeline for action. While this Task Force has many good ideas, so did the last task force and the one before that and the 15 before that." (Sexual Assault Prevention and Response in the Armed Forces, 6-3-04)

Rep. Louise Slaughter (D-NY) has introduced HR5291 (The Training, Assessment, Prevention, and Services to Address Sexual Assault and Domestic Violence in the U.S. Armed Forces Act—TAPS ACT). This 241-page act would change the Uniform Code of Military Justice, which sets forth rules for addressing sex assault crimes for military personnel and creates standardized policies, including a wide definition of sexual conduct, throughout the armed forces.

**KG:** Over the years, there has been considerable Congressional interest in this issue and a good deal of public attention to the problem, resulting in repeated revision of military regulations designed to prevent sexual harassment and assault. To date, however, none has reduced the problem in any significant way. Several organizations have addressed these issues, including the semi-official Defense Advisory Committee on Women in the Services (DACOWITS), Survivors Take Action Against Abuse by Military Personnel (STAAMP) and the Miles Foundation.

### **What kind of legal support materials exist to assist victims of abuse in the military?**

**KG:** The MLTF's compilation of legal memoranda, "Challenging Sexual Harassment in the Military," published

in the mid 1990s, is the only training and practice guide for attorneys and military counselors handling these cases. Guild members have been among the few attorneys to litigate individual harassment cases and Guild attorneys and counselors among the few who have represented victims of harassment in the military's own proceedings.

The MLTF is beginning a new project to update and add to these materials, to train lawyers and counselors to handle these cases, and to provide assistance and self-help materials to those subjected to harassment.

### **Has anything changed since the invasion of Iraq?**

**KG:** Reports of sexual assaults of female soldiers in Iraq and Afghanistan, and repeated scandals at the Air Force Academy led to Congressional hearings, mandating a Department of Defense (DoD) study of the problem and revision of regulations on sexual assault and related offenses. DoD issued new rules concerning sexual assault prevention and response (but not dealing with other issues of harassment) at the end of 2004. The new policy will require additional and periodic training about sexual assault issues, and rapid response to complaints of assault, with additional rules to assist victims in making complaints and receiving assistance after assaults. As the military promotes these regulations, we have an important opportunity to assist military women in using the policies, exposing their limitations and requiring more thorough response to incidents of harassment and prevention of retaliation against those who speak out.

**MH:** What we are dealing with here is the fact that the military becomes the soldier's — and in the case of domestic violence — the husband's enabler. Sexual violence within the military is at the very least sanctioned by the top brass. Women don't report the incidents because reporting the crimes hurt careers. They fear that they will be seen as cowards if they report the incidents and won't be backed up by their units. There is also the fear that they will be seen as having mental problems, being lesbians, or sleeping around.

### **The new [MLTF] project coincides with the Department of Defense's release of a new policy on sexual assault? How will the project dovetail with this policy, if at all?**

**KG:** The project will begin with educational work critiquing the new policy, pointing out its limitations and the underlying causes of military sexual harassment. Later the project will conduct impact litigation around (1) the services' failure

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to follow the provisions on the new policy; (2) inadequacy of the new policy or its internal inconsistencies; and, (3) retaliation against complainers, including cases focusing on the Military Whistleblower Protection Act. To date, the third area has seen the most significant litigation, and may provide the best area for future work.

#### **Will the project be involved in oversight of the new policy?**

**KG:** The MLTF hopes to work with other organizations, including those Marti mentioned and other civil rights and women's organizations, to monitor the new policy and its effect on military harassment.

As the Department of Defense issues new directives and regulations, the Military Law Task Force's work will continue to assess these changes and to keep soldiers and lawyers/counselors abreast of current policies and practices. As time goes on, the project also will produce advanced materials for lawyers.

**MH:** In addition, the Women's Rights Project will be involved in challenging the lack of oversight of sexual abuse and harassment on the part of the U.S. military.

#### **On a personal note, how did each of you become interested in and involved in the issue of military law?**

**MH:** During the American War in Vietnam, a group of us women, who were actively working with GIs at Fort Ord, sat down together to discuss why we were actively involved in this work. The similarities among us were interesting. We all came from no-nonsense, strong working class backgrounds and had a history of family members who were or had been in the military. We had been involved in draft counseling and anti-war activities at one point or another. We all had older brothers, and also fathers who had deserted the family. We all had extensive histories of hanging around our brothers' friends when young. We all came from Democratic Party/Roosevelt/New Deal families that had been greatly affected by the Depression. We could all recall WWII and the horrors of the bombs dropped on Japan. Finally, we were all strong women.

**KG:** I began working in this area during the Vietnam War, when GI's from Fort Ord asked our campus anti-war group to support their peace demonstration at the base. They taught me a great deal about the reality of the war, and about the many ways in which the military abused its own

### **Publicized Harassment Events:**

**1991:** Navy Tailhook Association Convention in Las Vegas. There were no convictions.

**1997:** Gene McKinney, the most senior enlisted man in the Army, was court-martialed for sexual harassment and obstruction of justice. Acquitted of the harassment charges but convicted of obstruction, he was dropped in rank and reprimanded.

**1999:** Command Sgt. Major Riley Miller, the Army's most senior enlisted man in Europe, was accused of sexually assaulting a female subordinate.

**2000:** Maj. Gen. Larry G. Smith was accused of sexual harassment by the highest-ranking woman in Army history, Lt. Gen. Claudia Kennedy.

Smith was being considered to head the inspector-general's office; in that post, he would have been responsible for investigating harassment claims.

**2003:** Air Force Academy Scandal, which erupted when it was revealed that over the past decade, 142 cadets made sexual assaults charges that had resulted in zero convictions.

The Miles Foundation reports that from August 2002 through March 2005 there were 316 cases of sexual assault in Iraq, Afghanistan and Kuwait. The Department of Veterans Affairs reports that 75% of those who suffered from sexual assault did not tell their Commanding Officers and 90% of the women had rape trauma within 30 days of their assault. Most of the assailants were of superior rank.

troops. In the same way, women in the military taught me about sexual discrimination and sexual harassment. Like Marti, I found important links between the oppression these women faced and sexism in the broader community. I suspect that doing military law is much like doing prison law—there are so many atrocities, so many abuses, that counselors and attorneys cannot help but be outraged. And I find that there are important connections in the work — anti-interventionist and anti-militarist goals mesh with feminist and lgbt rights, and with anti-racist struggles, in ways that educate us all about the common basis of oppression. ■

*The MLTF seeks volunteers to work on the Women's Rights Project. Please contact Kathy or Marti at [kathleengilberd@aol.com](mailto:kathleengilberd@aol.com) or [mlbiken@pacbell.net](mailto:mlbiken@pacbell.net).*

*Heidi Boghosian is Executive Director of the National Lawyers Guild.*

# Stop Loss: Santiago vs. Rumsfeld

by Steve Goldberg

On April 15, Emiliano Santiago boarded a military plane to Afghanistan. When he was 18 years old and completing his junior year in high school in eastern Oregon, he joined the Oregon National Guard for a specific enlistment term of eight years. He fulfilled his commitment, was promoted to sergeant, received various commendations and awards. But on the date those eight years were up—June 27, 2004—Santiago was told he would not be allowed to leave the Guard. Although his unit had never been ordered to active duty, it had been alerted to its “possible” activation in April 2004. The Army’s position, under its stop loss policy, was that the alert was sufficient to prevent Santiago’s separation from the military. On April 6, within hours of oral argument before a three judge panel of the Ninth Circuit Court of Appeals, Santiago was advised that his request for an injunction was denied, and that the district court’s decision denying his petition for discharge was affirmed.

The strategy for challenging the government’s stop loss policy was created by attorneys in San Francisco—Josh Sondheimer and Michael Sorgen—working with the Guild’s Military Law Task Force, and initially applied in two cases in California. (One case was settled; the other is on appeal to the Ninth Circuit). Subsequent cases were filed in Washington, D.C. and Oregon. Santiago’s case moved quickly through the courts. After a preliminary injunction was denied on December 28, 2004, the parties and court agreed that a final judgment be issued immediately. That happened on December 29; the case was appealed on December 30. The Ninth Circuit agreed to hear the case on an expedited basis, briefs were filed, and the oral argument was held in Seattle, Washington on April 6. (The argument was carried on CSPAN). The appeal could not have been handled without the amazing work of Los Angeles Guild attorney Lisa Jaskol, and two members of her firm who were brought into the litigation, David Ettinger and Jon Eisenberg. All handled the case on a pro bono basis.

Although the case was unsuccessful (*en banc* review will still be sought by the Ninth Circuit once the panel’s opinion, hopefully with a dissent, is issued), it nonetheless personifies the work Jules Lobel described in his recent book *Success Without Victory*.



Emiliano Santiago, at the Ninth Circuit argument in Seattle. Photo: Linda Boise

- After stop-loss was implemented by the government, Marti and Luke Hiken of the Military Law Task Force immediately organized efforts to challenge it. Guild attorneys—many of whom had not been active in the Guild and certainly in military law issues—stepped forward to do this work. The attorneys working on the cases shared work and research, discussed strategies and generally supported one another.

- We always understood the difficulty of these cases, and the importance of supporting anti-war activists doing the political work around the incursions in Iraq and Afghanistan. In Oregon, Military Families Speak Out did a tremendous amount of

organizing and speaking at rallies; they also organized a demonstration at the time of the oral argument in Seattle. Further, high school teachers—well aware of the huge recruitment effort by the military (recently immortalized in *Doonesbury*) were present at the hearing in December. At their request, I did an in-service training on the case for political science high school teachers, and have spoken to students at several high schools.

- These cases have provided a great opportunity to bring law students into this work. After a training by Luke in Portland in January 2004, a military counseling project was set up by students at Lewis & Clark Law School. Barbara Dudley worked on getting funding; Thad Betz, a second year student, coordinated the project. The students also did much of the research for the lawsuits. The oral argument before the Ninth Circuit was in fact held at the University of Washington Law School in front of hundreds of students and other Guild supporters in part organized by Northwest Regional Vice President, Peggy Herman. I’ve heard from many of them who expressed admiration at the what the Guild had done. We need to sign them up!

More challenges to stop loss need to be brought. Guild attorneys also need to educate in their communities around these cases to support the work being done by military family organizations and other anti-war activists. Information and pleadings are available on the Guild website: <http://www.nlg.org/mltf>. ■

## Miami Forum on Dissent Since 9/11

By Kate Healey

If you weren't able to attend the Miami Forum on Dissent on March 11-13 you missed a great educational opportunity. It was also a gathering of extraordinary minds from different places and perspectives, including academics, lawyers, union leaders, journalists, community leaders and more. There were over 40 different speakers participating in eight panel discussions and 16 workshops. It truly was an action packed weekend.

The idea for the forum came from Ray Del Papa, a well-known South Florida activist, and Jennifer Van Bergen, activist, author, and Guild member.

September 11th was a devastating blow to the American psyche that required much grieving and self reflection. In the months following the attacks many of us began to see our grief being used to set a course of U.S. foreign and domestic policy that began the unraveling of not only our rights and liberties but of the human rights and freedoms of others throughout the world. "Our grief is not a cry for war!" a standard peace slogan, is what many of us were thinking during the gearing up of the invasion of Afghanistan and again before the invasion of Iraq.

In the final months of 2004, Ray and Jennifer decided to form a new activist and educational group: Partners in Protest, Inc. (PIP). In the months following, PIP's organization began to take shape and the Forum on Dissent was no longer just the idea of two people talking politics: it was now a full-time job. Four others joined the PIP team: attorney and Guild member Alan Taylor; Jim Goettler, a Seattle-based activist/organizer and concert producer; Kate Healey and Debra Smith, Broward and Palm Beach organizer/activists, who handled media and graphics.

The keynote speaker at the opening panel on Friday night was a founding member of the internationally known women's peace and justice group CODEPINK, Medea Benjamin. She recounted her experiences being arrested for yelling peace slogans and holding a banner inside the Democratic National Convention in Boston, the Republican National Convention in New York City, and the recent inaugural parade in Washington, D.C., and gave a rousing appeal for future direct action.

Another Friday highlight was New York criminal defense

attorney Lynne Stewart, via teleconference, who was recently convicted of violating special administrative measures ("SAMs") and allegedly providing material support to terrorists. A champion of civil liberties and defender of the underrepresented, Lynne spoke about the infringement of attorney-client privilege and how the judiciary has been used to attack one of the watchdogs of liberty: criminal defense lawyers. Without criminal defense lawyers, who will protect us from government incursions on our rights? Lynne also conducted a workshop on Sunday with Jennifer Van Bergen on material support provisions of anti-terrorism laws.

The rest of the weekend brought out speakers such as Howard Simon, Executive Director of the Florida Civil

**"Our grief is not a cry for war!" a standard peace slogan, is what many of us were thinking during the gearing up of the invasion of Afghanistan and again before the invasion of Iraq.**

Liberties Union; Professor Elizabeth Iglesias from University of Miami Law School; Alan Kobrin of the Miami Green Party, Leslie Cagan the leading voice of United for Peace and Justice; Haitian priest and human rights activist, Father Jean Juste; Steckley Lee of NLG Mass Defense; Chuck Michaels, a Baltimore activist, attorney, and author; Max Rameau of Miami Cop

Watch, and many more. Two of the most inspiring speakers were John "Splitting the Sky" Boncore, a survivor of the Attica uprising and Native American activist, and Charles B. Gittings of the Project to Enforce the Geneva Conventions, who spoke about what he sees as the war crimes of this administration. Camillo Mejia, giving his first public speech since release from military jail, told about his journey from soldier to anti-war conscientious objector. His was perhaps the most heartfelt and moving speech given.

Sunday evening was highlighted by award-winning journalist Amy Goodman who showed a video and told some amazing stories. Her colleague Jeff Cohen, author and co-founder of the organization Fairness and Accuracy In Reporting (FAIR), spoke on misinformation in media, the corporate media, embedded media, and the lack of dissent therein. Through their work Amy and Jeff have demonstrated a tireless dedication toward getting out the stories that too few in the business have the courage to report, being what Amy calls "The Exception to the Rulers."

Many others contributed their time and expertise. Naomi Archer, David Meieran, and Gan Golan of Save Our Civil Liberties presented the fruits of their research about the new



model for homeland security. For those who don't know SOCL, they arose out of the FTAA demonstrations. David Meieran also contributed his time and services for PIP's marvelous website. Chuck Michaels discussed the 12 common characteristics of a national security state.

Kit Gage of the First Amendment Center conducted a workshop on the history of dissent. Local groups, Broward Anti-War Coalition (BAWC), the Greens, Coalition for Instant Runoff Voting, and groups from across the country, like The Voters, Citizens Against Torture, came to share their knowledge.

Local Miami Herald columnist Jim Defede and WLRN radio host Michael Stock moderated panels. The Guild's David Gespass contributed a military law training to attorneys and non-attorneys alike. Another NLG attorney, Rob Ross, spoke about the FTAA-related litigation in Miami, while Panagioti of Lake Worth Global Justice, one of the litigants, spoke from his personal perspective, and Ray Taseff, a public defender, spoke from the ACLU perspective.

The Indymedia film "The Miami Model" was shown Saturday night and Sunday brought a panel on Human Rights and Dissent including Haitian, Cuban, and African-Muslim American speakers. Closing the Forum, Jennifer and her daughter Giselle sang Joni Mitchell's Fiddle and the Drum.

PIP thanks everyone who participated and contributed to this fantastic weekend. ■

See [www.partnersinprotest.org](http://www.partnersinprotest.org) for more information.

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## Write Letters in Support of Lynne Stewart!!



**Margin:** Please leave at least a one-inch left-hand margin to allow us to bind the letter into the appendix to the sentencing memorandum that is being filed on Lynne's behalf.

*Typewritten letters if possible are preferred.*

**Inside Address:**

Honorable John G. Koeltl  
United States District Judge  
Southern District of New York  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

**Creeting:** "Honorable Sir" or "Dear Judge Koeltl:"

**Body:** Briefly say who you are and your relationship to Lynne, if any. Briefly discuss yourself—your position in work and in society.

State that you are aware that Lynne is to be sentenced following a jury verdict of guilty, on serious charges. Tell the Judge why you believe she should not go to jail (i.e. age and lifetime of service to the community, no actual harm ever resulted, could lead to further government restrictions, etc.). If possible, you should tell of an incident where she helped you out or what you may know of her commendable community service. Do not try to argue that she is not guilty or was unfairly convicted. Focus on the unfairness of the government's actions in bringing the charges; the way in which the government portrayed her, etc. You are asking the Judge to view her with mercy.

Please mail the final product to the following address:  
Jill R. Shellow-Lavine, Esq.  
2537 Post Road  
Southport, CT 06890

**Do NOT send your letters to the judge.** We ask that you forward your letter to Ms. Shellow-Lavine so that the lawyers can present it to Judge Koeltl with the other letters being written for this purpose. This is the manner in which letters will have the greatest impact. If they are sent directly to the Judge's chambers, they may not be accounted for and could cause the judge a substantial inconvenience (and annoyance).

If you have any questions, please do not hesitate to contact the defense committee by email: [info@lynnestewart.org](mailto:info@lynnestewart.org).

# National Lawyers Guild 2005 Convention

## NEC Elections

During the plenary at the NLG Portland Convention (October 26-30, 2005), elections will be held for six national officers:

- **One Executive Vice President (EVP).** Executive Vice Presidents serve a three-year term. There are a total of two EVP slots. The EVP is a member of the Executive Committee. This slot requires a significant time commitment, regular (sometimes daily) email communication with the National Office and EC and ability to participate in conference calls every three weeks. The EVPs take responsibility for areas of programmatic work of the organization and special projects of the National Executive Committee (NEC).
- **Two National Vice Presidents (NVP).** National Vice Presidents serve a two-year term. There are a total of three NVP slots. The NVPs take responsibility for areas of programmatic work of the organization and special projects of the National Executive Committee (NEC).
- **One President-Elect.** President-elects serve a one-year term (without a vote) and then serve a three-year term as President. This slot requires a major time commitment, regular (frequently daily) email communication with the National Office and EC and ability to participate in conference calls every three weeks. The President is responsible for the overall political and organizational leadership of the organization, in connection with the EC, the NEC, and the Executive Director. He or she is the principal "face" of the organization, along with the Executive Director. The President is responsible for relationships with other social justice organizations. The President, together with the Treasurer, is responsible for fundraising.
- **One Student National Vice President.** SNVPs serve a two-year term. There are a total of two SNVPs. The SNVPs work together with the Law Student Organizer in the National Office to organize and develop student chapters and programs.
- **One Treasurer.** The treasurer serves a three-year term. There is one treasurer. The treasurer is a member of the Executive Committee. This slot requires a significant time commitment, regular (sometimes daily) email communication with the National Office and EC and ability to participate in conference calls every three weeks. The Treasurer has significant responsibilities for fundraising and budget.

Nominations may be received from the floor, but if you wish to submit a written candidate's statement in advance, we will make copies available to all Convention attendees at registration.

**Written statements should be submitted to the National Office for inclusion in the pre-Convention issue of Guild Notes by July 1 and should include your name, chapter, telephone number and email address in case we have any questions.**

You may email your statement to: [nlgno@nlg.org](mailto:nlgno@nlg.org) (please write "candidate statement" in the subject line) or mail it to National Lawyers Guild, National Office, 143 Madison Avenue, 4th Floor, New York, NY 10016.

# NLG Mass Defense Wins Protections for Protestors

by Carol Sobel

In recent months, NLG Mass Defense lawyers have won landmark policy changes to protect demonstrators against unlawful police actions aimed at disrupting demonstrations and criminalizing dissent. The changes were reached in settlements of lawsuits in Oakland and Los Angeles, and in the recent passage of sweeping legislation by the Washington, D.C. City Council entitled "First Amendment Standards and Police Standards Act of 2004."

Passed in January, the D.C. Council's legislation specifically cites the disclosure of police abuses by the litigation brought by the Partnership for Civil Justice on behalf of demonstrators in D.C. over the past several years. Mara Verheyden-Hilliard, co-chair of the NLG National Mass Defense Committee, testified before the Council in hearings on the legislation. The D.C. Act restricts the use of police lines to encircle demonstrators unless there is probable cause to arrest, requires police to wear visible identification, requires that the police give notice and an opportunity to leave if an unlawful assembly is declared, and requires release of all eligible persons within four hours of an arrest at a demonstration.

In Oakland, lawyers for the NLG, the ACLU and other civil rights attorneys reached a settlement in October 2004 in a class action lawsuit, *Local 10, ILWU v. City of Oakland*, in which 52 people alleged that their First Amendment rights were violated when Oakland police opened fire with "less-lethal" munitions on a peaceful

anti-war protest on April 7, 2003. The Oakland Police Department has agreed to a new crowd control policy, implementing sweeping reforms to end the indiscriminate use of "less lethal" weapons, pepper spray and police motorcycles to control or disperse crowds or demonstrations. The lawyers are now preparing to go to trial on the damages portion of the case.

The Los Angeles Police Commission recently approved the settlement reached by the parties last fall in *National Lawyers Guild, et al. v. City of Los Angeles, et al.*, a lawsuit filed by the NLG and the ACLU in 2001 to challenge the use of "less-lethal" weapons and other tactics to disrupt and disperse lawful demonstrations during the Democratic National Convention in Los Angeles in 2000

and October 22, 2000. Key provisions of the settlement prohibit the police from: deploying "less-lethal" weapons as a means of crowd dispersal, declaring an unlawful assembly where it is feasible to isolate and arrest individual participants engaged in unlawful conduct, using motorcycles or bicycles to strike lawful demonstrators as a method of crowd control; and preventing participants in lawful assemblies from using public sidewalks adjacent to march routes. As part of the settlement, the NLG has agreed to prepare a "Roll Call Training" video on the role of the NLG legal observers during public demonstrations. ■

*Full copies of the settlement agreements and legislation described above are available on the NLG web site at [www.nlg.org](http://www.nlg.org).*

## NLG Peace and Conflict Resolution Project

A new Committee is being organized by long time Guild member Eric Sirotkin.

It is tentatively called the "NLG Peace and Conflict Resolution Project."

As Abraham Lincoln said, "The nobleness of lawyering is peacemaking."

The aim of the committee is to explore and advocate for creative alternative models of conflict resolution, including traditional non-dominant culture models, that work to build relationship and engage in restorative justice. As in proposals for a U.S. Department of Peace, the committee aims to reframe the notions of peacemaking, make it an organizing principal in our society and assist other projects to integrate elements of peace into their work.

If you would like to join the committee please contact  
Eric Sirotkin at [sirotkin@igc.org](mailto:sirotkin@igc.org) or 505-266-2753.

# Wait! Pull Back!

## Environmental Justice and the Practice of Sacred Law and Traditional Wisdom by Indigenous Peoples

By Tom Stephens

On March 5, I had the pleasure of appearing on a panel at the Law Union of Ontario's annual conference in Toronto, along with Kate Kempton of the Toronto law firm Olthuis Kleeer Townshend. Kate's discussion of what she has learned representing indigenous peoples regarding rebuilding sovereignty and self-determination holds profound lessons regarding environmental justice, which I will try to briefly summarize here.

### Different World Views

The applicable world-view of "environmental law" in 21st century post-industrial society is linear, hierarchical, and based on dominance. This dominance permits and provokes subjugation of nature and peoples who hold nature as sacred and internal, and provokes creation and recognition of rights in individual and especially corporate property, in the form of precisely defined and carved-out parcels. These property rights, in turn, are valuable for purposes of commodification and exploitation of resources, primarily for their narrowly defined economic benefits. Environmental regulations and law are "linear," in the sense that they assume a direct progression, from proposals and initiatives about resource exploitation and protection, to the outcomes of regulatory and legal proceedings. Interests, all themselves defined within boxes, are weighed and "balanced" against each other, not with each other as a model of sharing would create. That linear, anti-historical model does not accurately describe the fundamental issues and values at stake in today's conflicts over resources, sovereignty and environmental health and justice.

One characteristic of the dominant, linear world-view that distorts our perceptions and our decisions regarding our relationship to nature involves putting the environment in a box, separated from issues of cultural and economic survival. Under this view, "more" is "better," including more exploitation of the environment by dominant economic and cultural forces. The false ideological and psychological "box," separating the environmental from the socio-economic and from self-identity, blinds us to the irreversible consequences that more exploitation of rapidly diminishing resources threaten for us all. In our time, the "line" that symbolizes this world-view depicts us, through the transnational corporate forces of dominance, patriarchy and white supremacy, driving ourselves

to the end of the line (a "dead end"), and off the edge of the cliff of social, ecological, economic and civilizational survival.

The contrasting indigenous world-view, symbolized by the circle, in which our environment and culture are intrinsically sharing with each other, is the basis of indigenous sacred and traditional law and wisdom and, at its best, also of environmental justice. Kate Kempton has an indigenous associate who describes her practice, in his language of Cree, as "sesqua", or "Wait! Pull back!" That is what we must do to meet the fundamental environmental justice challenges of the 21st century, by recognizing and consistently acting upon the interrelationship between our environment and our cultural and economic survival. Such practices and philosophies encountered our natural resources in their spectacular fullness millennia ago, they established ways of living on sacred ground in peace and justice, and they continue to safeguard a remnant that remains subject to their jurisdiction today. When will we ever learn?

### Change or Die

Trying to protect the essential environmental interests and fundamental human rights of indigenous peoples, other people of color and low-income people, within the dominant, hierarchical and linear framework of what we know as "environmental law," is like trying to fit a big round ball into a small square box: it is bound to fail. And because of the huge global issues at stake in today's world regarding environmental health and human survival, if we continue to pursue this strategy, we will eventually fail in the struggle for basic human survival. No amount of scientific regulation or careful legal or administrative weighing of data will change this stark reality.

Unlike the line, the circle has no end points, yielding a very different and much more authentic version of cherished human "freedom." This is potentially the basis of a different, more holistic, sustainable, fair, and successful environmental law. Only within a sacred, democratic circle is it possible to see how things weighed in dollar amounts do not always outweigh others that are beloved, irreplaceable and necessary for survival; to effectively assert rights, power, and control over vital interests, without falling into the trap of dominance and subjugation that denies them to others; and to implement sustainability on individual, local, national and international levels. We must implement alternatives, both to preserve

material survival of the environment, and to establish justice among humans. To continue unfettered exploitation, with the illusion of the separate environmental “box” and the potential for infinite “growth,” is a death sentence for both humans and our cultures.

We must remember the sacred wisdom of our childhood, that (in Kate Kempton’s words) what we “need” is not the same thing as what we “want.” And what we think we want, in the “linear” world, is not what we really need—for identity, survival, and happiness. We need to say “wait,” to “pull back,” and “to take this whole assembly of lines apart” in order to provide both a human future for our children and a natural future for our world. The long-overdue recognition that environmental justice must become an integral part of the public policy of democratic governments around the world, and that environmental racism and disproportionate exposure to environmental contamination and risk must be opposed and eliminated, is just one necessary step on this road. ■

*Tom Stephens, lebensbaum4@earthlink.net, would like to express his appreciation to Kate Kempton, KKempton@OKTLaw.com, for her review and editorial assistance with this essay.*

## **Mumia Abu-Jamal Defense Fund**

It has been a year since the U.S. Supreme Court denied a request to consider Mumia Abu-Jamal's last appeal of his 1981 conviction.

That appeal alleged that Judge Albert F. Sabo was overheard saying he was “going to help ‘em fry the nigger.” A court stenographer signed a sworn affidavit saying she heard Sabo, who died two years ago, make the statement to an unidentified court employee. The appeal also said Pennsylvania Supreme Court Justice Ronald Castille acted improperly when he did not remove himself from the panel hearing.

In December 2001, U.S. District Judge William H. Yohn overturned Mumia's death sentence but upheld his conviction. Both sides have appealed, and Mumia remains on death row in western Pennsylvania.

The National Lawyers Guild Foundation is accepting donations for the defense of Mumia Abu-Jamal. Mumia is National Jailhouse Co-Vice President of the Guild.

### **Please give generously.**

Make checks payable to: National Lawyers Guild Foundation, and include the words “Mumia Abu-Jamal” on the memo line. Mail contributions to: **National Lawyers Guild, 143 Madison Avenue, 4th Floor, New York, NY 10016.**

# Give Back to the Guild

Do you value the work that the National Lawyers Guild does? Has a Guild attorney helped you or someone you know? Won't you reach out and help the Guild continue its work—work it has been doing for over 65 years and, with your support, will continue doing. As long as we are needed, we will be there.

### **Bequests**

Include the National Lawyers Guild in your will or estate plan, and leave a legacy of defending civil rights and civil liberties to future generations.

Request information on making gifts of life insurance, retirement plan benefits, stock, property, cash or proceeds from a charitable trust.

### **Stock Gifts**

Save on capital gains taxes, and make your contribution with stock or mutual fund shares, instead of cash. If you have appreciated securities worth more than you paid for them, you gain a charitable deduction for the full fair market value of the shares and avoid capital gains tax.

### **Charitable Gift Annuity**

Establish a charitable gift annuity and you, or someone you choose, will receive fixed income for life. You can use your income payments for current financial needs or defer them until you retire, and you qualify for an income tax deduction the year you make the gift.

*For information about opportunities to support the National Lawyers Guild through planned giving, contact Marjorie Suisman, Esq. at (617) 589-3836.*

# Report: Annual Conference of the Law Union of Ontario

By Hugh M. Davis

The Law Union of Ontario, which describes itself as “a group of socialist and progressive lawyers, law students and legal workers,” held its annual conference in Toronto, Canada on March 4 and 5, 2005 with attendance by NLG Midwest Regional Vice-President Cynthia Heenan, NLG Sugar Law Center Staff Attorney Tom Stephens and Detroit practitioners Tamara French and Hugh “Buck” Davis as a part of a NLG Midwest Regional and Law Union cooperative effort.

Stephens took part in a workshop on environmental racism (a focus of the Sugar NLG Law Center) entitled “*Environmental Racism: A New Collaboration Between Aboriginal and Environmental Law*,” which focused on serious issues of the siting of polluting and destructive industrial and logging operations in and around indigenous (aboriginal) lands. The issue of environmental discrimination in the placement of polluting enterprises around economically depressed and minority residential areas is receiving growing attention in Canada.

Tamara French participated in a workshop entitled: “*Immigration: Fighting Against Exclusion*.” She concentrates on immigration law in the United States. A great deal of the work being undertaken by the Law Union centers around the increased “security” measures being utilized against middle-eastern or Muslim immigrants and refugees in Canada. The most infamous incident involved Canada providing the United States with erroneous information which was used to detain Maher Arar and render him to Syria for torture and interrogation about his non-existent “terrorist” connections. He was picked up in the airport in New York while merely changing planes.

The Law Union, much of whose membership practices criminal defense, also presented a seminar focused on vastly increased racial profiling and erosion of “Section 8” (searches and seizures) and “Section 9” (arbitrary detentions), the Canadian Charter’s equivalents of the U.S. Fourth and Fifth Amendment protection from the tactics utilized against minority youth and immigrant groups as everyday police procedures. As in the U.S., these aggressive and discriminatory police practices result in escalating violence.

The Law Union, like many Canadians, is firmly opposed to the United States’ war in Iraq and consider the Bush

regime to be the most dangerous and reactionary within their memory. But the Canadian government has substantially tightened the requirements to enter Canada as either a war resister, refugee or conscientious objector. Jeff House, a Law Union attorney, is taking up the cause of the increasing number of soldiers and youth who have gone to Canada to avoid (continued) military service in Iraq. More of the resisters are speaking out. House’s first case, challenging the legality of the war in Iraq, was recently denied at the first stage hearing, making international news. There were also workshops on: “*Legal and Community Strategies for Marginalized Workers*,” “*Police Involvement in Politics*,” “*Trafficking in Women*,” “*Religious Arbitration in Family Law*,” and “*The Youth Criminal Justice Act*.”

The conference ended with spirited plenary session entitled “*Invasion or Obligation? The Law and Ethics of Humanitarian Intervention*.” Law Professor Michael Mandel (author of the excellent book *How America Gets Away With Murder*) and Gerald Caplan (an authority on genocide prevention and consultant for the UN Economic Commission for Africa) debated whether, under conditions where the United States in essence controls the United Nations with its Security Council veto, there can be any actual “humanitarian intervention” which is not in reality an extension of great power interests. Insightful analyses of Rwanda, Kosovo, Afghanistan and Iraq were advanced.

We recommend that the Guild extend formal invitations to the Law Union to attend the Guild’s annual Convention with a view toward more cooperation. We congratulate the Law Union on its history of progressive activities since its founding in 1970, provoked in large part by the international rise in activism in support of human rights, opposition to the war in Vietnam, women’s rights, GLBT rights and environmental concerns. Their struggles and history are a mirror to those of the Guild over the last thirty-five years.

We further recommend the attendance by at least a strong representative group of the NLG Midwest Region at the Law Union Annual Conference next year. The level of political discussion and exploration of innovative lawyering in support of progressive movements is quite high. Better communication can lead to greater cooperation, particularly in cross-border immigration/war on terrorism/internal security issues. ■

# YEE HAW!

## Radical Lawyering in Texoma

By Victoria Gavito

The Texoma regional conference kicked off with some foolishness on Friday, April Fool's Day. After closing down two bars, one conference participant said, "Now, we're in Guild conference mode." But, by Saturday morning, Guild members from around the region—San Antonio, Dallas, Houston, Amarillo, Oklahoma City, and Austin—sat down to the very serious business of educating and organizing ourselves.

We kicked off the morning with introductions and a rabble rousin' YEE HAW! Maunica Sthanki, Texoma member and National Law Student Vice-President, declared that it was high-time we reclaim our region's culture, "It is radical to co-opt the language that is typical to Texas," she said.

Our first panel examined immigration policies and realities. Recognizing that at the root, it's all about labor, an organizer from the Central Texas Immigrant Workers' Rights Center and a Mexican day laborer shared their experience in organizing to reclaim unpaid wages. University of Texas law student and Guild member, Liz Wagner, spoke about her involvement in the "Boot the Bell" campaign and the Coalition of Immokalee Workers' recent victory



against Taco Bell.

Next, we learned how lesbian/gay/bi/trans (LGBT) communities are organizing around equal rights, including marital rights. One panelist, a long-time Guild lawyer, questioned the right-wing's use of the gay marriage debate as a tactic to distract the LGBT community from organizing around critical issues that truly challenge structural power. Additionally, we learned how the University of Oklahoma Law School Chapter organized around the Solomon Amendment, to create a safe space for LGBT students.

The final panel delved into the abyss of the Texas criminal justice system. Panelists challenged the notion of "blind justice" and questioned whether courts and lawyers should explore social root causes of crime. We were shocked by the story of Tulia, Texas, in which 10% of the African-American population

was rounded-up on the word of one racist narcotics informant. The legal community not only rallied to their defense, but also used the opportunity to reform Texas criminal law.

At the membership meeting, we took the first steps at building our membership by creating a Membership and Outreach Committee composed of lawyers and students from across our chapter. The Committee will host several house parties to incite the "old guard" back into action. Several students are beginning to form an Issues Committee, in order to focus some of our legal and organizing efforts to support local campaigns and a unified agenda. Finally, we decided to host a CLE in the fall to raise funds for a regional anti-racism workshop.

Finally, I'd like to thank the University of Texas Law School Chapter for taking the lead in planning this successful event, and to the new St. Mary's Law School Chapter's show of support. The energy and commitment that law students bring to the Guild is evidence that we are building a movement. Yee Haw! ■

*For more information about joining the Texoma Chapter committees please email [victoria@equaljusticecenter.org](mailto:victoria@equaljusticecenter.org).*

# Southwest Regional Conference Report

by Cindy Marrs

The Southwest Regional Conference was held in Albuquerque from April 1-3, and what a motivating conference it was! We had fun, strengthened community ties, and identified areas to focus our energy in the coming year.

We kicked off the conference with an April Fools party at the Albuquerque Press Club. One of Albuquerque's most popular activist bands, the Withdrawals, headlined the party. A music video was shown which included footage of the March 20, 2003 Albuquerque war protest, where the police attacked the peaceful demonstrators. The NLG and the ACLU are sponsoring a lawsuit against the police department and others for violating the civil rights of the protestors.

The party brought together a cross section of the community, including Guild members, community activists, five of our plaintiffs in the NLG/ACLU sponsored lawsuit, and members of the university community. Many people said before viewing the video, they had no idea how the police behaved at the war protest. This helped build support for our lawsuit, and helped build goodwill for the Guild in the community.

## Panel Presentations

This may have been the most enjoyable time I've had earning seven Continuing Legal Education (CLE) credits. With topics like: "The Lawyer's Role in Peacebuilding in the Community," "Building International Human Rights into Your Law Practice," "Immigration Consequences of Criminal Charges," and "Progressive Lawyering

**I appreciated hearing about how lawyers I respect and admire developed their careers. There are many ways a new lawyer can incorporate progressive work into her practice, and associating with the Guild can definitely help.**

Opportunities," I knew it would be fascinating. It was inspiring and encouraging to hear about the work Guild lawyers are doing in the community and around the world to build peace and justice.

During the community peace-building presentation, Albuquerque lawyers Larry Kronen and Louie Boelcke discussed the new parade ordinance they are negotiating with the city to protect the civil rights of protestors, and how acting as legal observers at demonstrations helps build good relationships with the peace movement and with the local authorities.

Janice Hart, a volunteer from the group Another Side, spoke about the work her organization is doing to counter recruiting in the schools. Her presentation, as well as comments from Reber Boulton and others in the audience, sparked a great deal of interest in the Guild's Military Law Task Force, and how we can expand the work we are doing in this area.

For the International Human Rights panel, Eric Sirotkin, Jennie Lusk and Ian Brannigan talked about international human rights work they have done with the Guild, and how it has influenced their lives. We heard about the Korea Peace Project, and delegations to South Africa, Chiapas, China

and Cuba. In addition, Bill Pratt, a member of the New Mexico Alliance for the International Criminal Court (ICC) spoke about the court and how it can build peace. It was empowering to hear about how Guild members work for international peace, and it helped me realize how I can do international human rights work through the National Lawyers Guild.

Tova Indritz, an expert on the immigration consequences of criminal convictions gave an informative presentation about the importance of knowing the immigration status of your clients who are facing criminal charges, as some people could face deportation even for pleading guilty to seemingly minor offenses. We were reminded that lawyers need to know the immigration status of their clients, even if they don't appear to be foreign nationals.

Finally, for the panel presentation on progressive lawyering, experienced and successful Guild lawyers explained how they built progressive work into their law practices. I appreciated hearing about the lawyers I respect and admire developed their careers. There are many ways a new lawyer can incorporate progressive work into her practice, and associating with the Guild can definitely help.



### Wounded Knee Event

Four activists, including Guild members Roger Finzel and Eda Gordon, and activists Bob Anderson and Allen Cooper, talked about what happened at Wounded Knee in 1973, when the federal government surrounded a building containing hundreds of people with armored personnel carriers and military for over two months, finally storming the building. Two people were killed over the course of the event, and hundreds were arrested and charged with crimes.

I was moved by the courage of the activists and the Guild volunteers who

turned out to help defend those who were facing charges. The lawyers and activists worked together and succeeded in getting the criminal charges dismissed. What an uplifting story!

### What's Ahead

Several good ideas and action items came out of our conference. We decided that we will expand our military task force activities and work with activists who are going into the public schools to counter military recruiting. We will build our relationship with the student chapter at the law school. We will form

a committee to study conflict resolution, including traditional ways that focus on reconciliation. We will improve communication within the local Guild and with chapters around the region. I will travel around the region to meet with Guild people and build alliances and good will. We would like to see more people from around the region at our next regional conference. We are stronger together. Let's unite! ■

*Cindy Marrs is the regional SWVP.*

## NLG Gainesville Lawyers Lobby Florida Legislature for Ex-felon Voting Rights

by Steckley Lee

NLG Gainesville lawyers are lobbying the Florida legislature to end Florida's disenfranchisement of people with felony convictions. Since March 2003, NLG Gainesville board members Caroline Kravath and Alan Bushnell have represented the chapter on the Florida Rights Restoration Coalition, a non-partisan statewide coalition of nearly forty local, state and national organizations dedicated to amending the Florida state constitution to re-enfranchise people with felony convictions. In Florida, people with felony convictions are stripped of their civil and voting rights, even after completion of their sentences, unless their rights are restored by the Clemency Board after a cumbersome, lengthy, and often futile application process. Loss of civil rights takes away not only the right to vote, but also the right to hold public office, serve on a jury, and qualify for certain types of state licenses necessary for many jobs, such as those in the construction and medical fields.

Over 600,000 Floridians, including almost one in three African-American men, cannot vote. Florida is one of only seven states that permanently disenfranchises exfelons, a practice dating back to Jim Crow attempts to prevent African Americans from voting,

and which contributed to the 2000 Presidential election when felon purge lists were used to unlawfully strike voters with no criminal record from the voting rolls. This legislative session, Ms. Kravath is part of a small delegation of Coalition members that is lobbying the Florida legislature in its current session to place a state constitutional amendment on the ballot that, if passed by voters, would amend Florida's constitution to automatically restore voting rights to individuals with felony convictions as soon as they complete their sentence and probation. The Coalition is supporting two bills that would accomplish this, Senate Joint Resolution 1190, sponsored by state Senator Frederica Wilson, and House Joint Resolution 1363, sponsored by Representative Yolly Roberson.

Ms. Kravath believes that the timing is right for this effort, as bipartisan support for automatic rights restoration is on the rise. ■

*Steckley Lee is the Guild Southern VP.*

*For more information on the Florida Rights Restoration Coalition: [http://www.aclufl.org/issues/voting\\_rights/florida\\_voting\\_ban.cfm#legislation](http://www.aclufl.org/issues/voting_rights/florida_voting_ban.cfm#legislation).*

# Feminists Take Direct Action for Reproductive Rights

by Andrea Costello

Feminist organizers with the group Morning-After Pill Conspiracy were arrested and charged with disorderly conduct when they sat in at the FDA in January to demand that the Food and Drug Administration (FDA) approve the Morning-After Pill (MAP) as an over-the-counter drug for all women. Members of the NLG's Anti-Sexism and Mass Defense Committees were there to provide legal support for the action. Guild attorneys, along with the Maryland federal public defender's office, were successful in getting the charges dropped.

The Anti-Sexism Committee supports the campaign led by the MAP Conspiracy—a national coalition of feminist organizations which include the New York Reproductive Rights Task Force; Redstockings Allies and Veterans, NYC; Gainesville Area (FL) National Organization for Women (NOW); Florida NOW Young Feminist Task Force; Gainesville (FL) Women's Liberation and the University of Florida Campus NOW that are leading the grassroots movement to make the MAP an over-the-counter drug. The group's name is a reference to the fact that women have to conspire to break the law just to get the MAP. The FDA's prescription requirement forces women to rely on friends who may have it because women cannot get MAP when they need it. The group started passing out the pills publicly on Feb. 15, 2004, in defiance of the prescription requirement. The campaign seeks to highlight the injustice of the prescription requirement and uses speak-outs where women use their own experiences to show that they are the real "experts" on why unrestricted access to the MAP is needed.

Feminists have defied the FDA's prescription requirement for the MAP by illegally distributing it. More than 2,300 women from across the country have also pledged to do the same until the FDA's acting Commissioner,

Lester Crawford, stops holding women's access to birth control hostage based on anti-woman politics, rather than science. The pledge is available to sign online at: [www.mapconspiracy.org](http://www.mapconspiracy.org).

The Morning-After Pill (MAP), or "emergency contraception," is simply a higher dose of regular birth control pills. It prevents pregnancy when taken up to 5 days after

sex, but it is most effective when taken within the first 24 hours. (It is not the same as RU-486, the abortion pill.) Plan B (TM) is manufactured by Barr Laboratories which applied for over-the-counter status. The Journal of the American Medical Association published a study in January 2005 showing that increased access to the MAP doesn't cause women to engage in more risky sex.

The FDA has been quick to get drugs on the market like

Vioxx (TM), which scientists objected to, but when it comes to drugs that benefit women, political pressure trumps medical science. The MAP is available without a prescription in 38 other countries. The FDA's own advisory panels voted in December 2003 that the drug is safe and voted 23-4 to approve it for over the counter use in the U.S.

NLG attorneys with Southern Legal Counsel in Gainesville, Florida, also represent several organizers with the MAP Conspiracy in a lawsuit filed in January 2005 to challenge the FDA's failure to approve MAP over-the-counter. The suit charges that the decision to reject Plan B (TM) for over-the-counter sales discriminates against women and violates administrative procedures governing the FDA. The full text of the lawsuit can be found at: [www.reproductiverights.org/press.html](http://www.reproductiverights.org/press.html). ■

*Andrea Costello is the co-chair of the NLG Anti-Sexism Committee.*



Feminist organizers with the Morning-After Pill Conspiracy campaign sit-in at the FDA's headquarters in Maryland.

PHOTO: BRANDON SCHULMAN

# John McTernan (1910-2005)

by Barbara Enloe Hadsell with Ben Margolis

*John McTernan was a founding member of the National Lawyers Guild. Along with his partner of over fifty years, Ben Margolis, John was a giant of the progressive legal community in California and throughout the nation for decades. On March 28, John died in his sleep in a suburb of Los Angeles at the age of 94. Anne McTernan, his wife of 53 years, was at his side. John is survived as well by four adult children.*

*I have adapted and edited much of what follows from an article written by Ben in 1984 for a Los Angeles NLG Chapter dinner celebrating what was then John's fiftieth year as a lawyer for social and economic justice.*



John McTernan was one of a relatively small group of attorneys, who both organizationally through the National Lawyers Guild and individually through legal work during a lifetime of exemplary achievement, stood on the front lines of raging political and legal battles to obtain the change so desperately needed by the many but so vigorously opposed by the powerful few. John sought to infuse the legal system with principles that would lend support to workers, intellectuals, women, ethnic and other minorities who suffered the use of law by the privileged few to protect property rights against human rights.

This small group of lawyers contributed a diverse combination of qualities. This included an intense devotion to the causes they represented, unusual technical skill in the law, a resourcefulness that could convert imagination into reality, a gift with language to analyze with clarity and persuade by eloquent expression, the skill to argue vigorously without resorting to personal abuse, and the character to be courageous by overcoming fear and by remaining steadfast in the face of adversity.

All of the lawyers in this small group possessed one or more of these qualities in abundance. A few possessed all of these qualities. John McTernan went beyond that; he unstintingly utilized his remarkable talents to further the goals of economic and social justice.

Following graduation from Columbia law school, John started out as an attorney for the National Labor Relations Board, shortly becoming a trial attorney assigned to various major cases in different parts of the country. It was in his

capacity as a union attorney in the *NLRB v. Cowell-Portland Cement Co.* case that Ben Margolis first met and worked with John in about 1946. That case resulted about 13 years later in the reinstatement of the company's locked out workers with backpay—all of this after the case had gone to the U.S. Supreme Court twice and a substantial number of workers had either died or disappeared.

The NLRB promoted John to Regional (Chief) Counsel for its Northern California Office. Later, he became Regional Counsel for the Office of Price Administration, a job he was forced to leave because of his unwillingness to compromise his ethical and political beliefs.

In 1944 John joined Ben to form a law firm in Los Angeles which remained John's professional home for many decades. Initially, John worked primarily as a labor lawyer since the firm represented all of the C.I.O. unions in Southern California. John handled NLRB cases, as well as court cases involving labor injunctions, criminal charges related to labor disputes, Fair Labor Standard Act cases, arbitrations, collective bargaining and until World War II ended, matters involving the War Labor Board and other wartime agencies.

John's work on social non-labor issues was of great importance. Ben and John jointly litigated a case which judicially outlawed the segregation of blacks into auxiliary unions, a device then used to deprive blacks of the basic rights of union membership. *James v. Marinship Co., 25 C2d 721 (1944)*. Together they battled against laws restricting the right of blacks to own and occupy housing. John argued in a California Supreme Court case preventing the eviction of a black family from their own home because of racial bigotry. *In re Laws, 31 C2d 846 (1948)*.

The two also worked on a series of cases establishing the right of Communist Party leaders to refuse to testify before a Grand Jury concerning their own membership in that Party, thus preventing the government from securing the names of other members, and protecting their First Amendment rights. These decisions were useful later in affording fifth Amendment protection to witnesses before Legislative Committees—particularly the House Committee on UnAmerican Activities.

In the latter part of the '40s John's practice took a decisive change. The Cold War, soon to be heated by the

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horror of McCarthyism, resulted in the more progressive and left unions either being expelled or withdrawing from the C.I.O. Ben and John stayed with those unions that left the C.I.O. and were rendered persona non grata by the rest of the union movement. John continued to represent the former C.I.O. unions against attacks and the raiding of their collective bargaining rights.

As a result of this “red-baiting,” the firm’s union work decreased drastically; political prosecutions became the order of the day. In the *Dennis* case, 341 U.S. 494 (1951), the U.S. Supreme Court sustained the constitutionality of the *Smith Act* and the conviction of the top Communist leaders. Not only were the defendants convicted, all five trial counsel were sent to jail on contempt charges! Immediately, the government instituted a second prosecution in New York. John’s extraordinary trial abilities resulted in a request that he go to New York to handle this second *Smith Act* case. He was then called to represent Steve Nelson in a state prosecution under an analogous state statute, and laid the groundwork for ultimate reversal of a conviction based on the Act’s unconstitutionality.

On his return to California, John became involved in a series of political matters of grave consequence.

In *Parker v. County of Los Angeles*, 338 U.S. 327 (1949), the U.S. Supreme Court refused to pass on the constitutionality of a loyalty oath required by the County of Los Angeles on the grounds that while employees had been threatened with discharge for refusing to sign a loyalty oath, they had not actually been discharged. However, John developed many of the basic constitutional arguments used in the fight against loyalty oaths in that litigation.

He then argued *Carlson v. London*, 342 U.S. 524 (1952), to the U.S. Supreme Court which, in a 5 to 4 decision, ruled against Carlson, holding that aliens could be denied bail pending deportation hearings.

This was followed by one of the most important cases handled by John, *Jencks v. U.S.*, 353 U.S. 657. Decided in 1957, *Jencks* established the rule that a defendant was entitled to examine and utilize reports submitted by informers to the government without first establishing that the reports were inconsistent with the testimony of a witness being cross-examined and that if the government failed to furnish such reports, the case must be dismissed. This decision sounded the death knell for the *Smith Act* prosecutions.

John and Ben made personal their commitment to progressive politics in a myriad of ways. When they asked Leo Branton to join the firm as a partner in 1954 following his participation with them and a few other brave attorneys in

**John’s work on social non-labor issues was of great importance. Ben and John jointly litigated a case which judicially outlawed the segregation of blacks into auxiliary unions, a device then used to deprive blacks of the basic rights of union membership.**

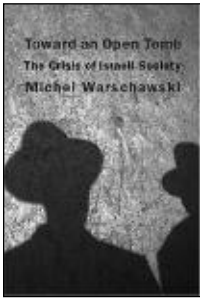
defending some of California *Smith Act* cases, the Margolis firm became the first west of the Mississippi to have a black attorney. Years later, Leo was lead trial counsel in Angela Davis’ 1972 criminal prosecution.

In a leading case affording First Amendment protection to lawyers, *In Re Sawyer*, 360 U.S. 622 (1959), John achieved a result many lawyers believed was impossible: setting aside disciplinary proceedings against a Hawaiian *Smith Act* lawyer who had been suspended for criticising the trial court and opining that a fair trial was impossible.

John litigated numerous cases that through novel means and persuasive argument protected the rights of workers and low income people. An example is the California Supreme Court case of *Buckeye Boiler Co.*, 71 C 2d 893 (1969). This case established that California courts have jurisdiction in suits by residents injured by a defective product manufactured by a corporation that did not conduct any regular business of its own in the state. In the absence of this rule, many large corporations whose products are used in California would be insulated against actions by injured persons who do not possess the means of suing in the state where the manufacturer operates.

In the seminal decision *Clayton v. Automobile Workers*, 451 U.S. 679 (1981), John yet again was fearless in proceeding against a union which he considered to be the wrong side of an issue involving workers’ rights. He successfully argued for the protection of workers against improper discharge by an employer as well as the breach by the union of the duty of fair representation without exhausting internal union remedies which could not have resulted in reinstatement. ■

*When the Margolis firm dissolved in the late 1980’s, I was fortunate to follow Ben and John from that firm to others founded by Los Angeles Guild attorneys who had grown up at their knees: first Litt & Stormer, and then my own firm, Hadsell & Stormer. During these years, John continued to utilize his skills in new areas of the law to expand the human rights of the many against the privileged few.*



**Toward an Open Tomb:  
The Crisis of Israeli Society**

by Michel Warschawski  
*Monthly Review Press 2004*

Reviewed by Larry Hochman

Something has happened to Israel's soul, Michel Warschawski cogently tells us. Warschawski, director of the Alternative Information Center in Jerusalem is a well-known anti-Zionist activist, author of the award-winning "On the Border" and husband of the noted Israeli civil rights lawyer Lea Tsemel. He details an escalating Israeli coarseness, self-dehumanization, paranoia and gratuitous ruthlessness.

In *Toward an Open Tomb: The Crisis of Israeli Society*, Monthly Review Press 2004, Warschawski observes that four million West Bank Palestinians have been literally imprisoned in order to ensure Israelis' safety and to "force them to capitulate" and accept Ariel Sharon's allegedly "generous offers." The "coarseness" is exemplified by an experience Warschawski and former Palestinian Authority presidential candidate Mustafa Barghouti had at a checkpoint where they were being "howled at" by Israeli guards. Warschawski thought they were screaming in Russian but Barghouti knew that wasn't the language. Warschawski demanded that the guards stop yelling and speak Hebrew—but then realized they were shouting in a Hebrew-military howl as they would at a herd of cattle.

A soldier, who for 75 straight hours drove a D-9 bulldozer that destroyed the center of the Jenin refugee camp, recounted his feelings in *Yediot Aharonot*:

"I wanted to wipe out everything...I didn't see any houses falling on live people but if they did, I don't give a shit...I enjoyed seeing the houses collapse, 'cause I know they don't care about dying, but destroying a house hurts them more... I had a great time...it was like I had concentrated the whole 18 years when I hadn't done anything [into] 3 days."

Warschawski detects a "new face of racism" in the form of repression and deportation of the Palestinian people and

rooted in fear and desire for vengeance. He recognizes that racism and violence "have always been in Israeli culture," but he finds evidence of mainstream governmental parties legitimizing racism. I would question the extent of the difference between the "new face" of racism and the old, however.

This very valuable and compact book focuses primarily on the effect of Israelis' actions on themselves rather than on their victims. "The lack of civility that has always been one of Israeli society's blemishes has mutated into sheer crudeness." Presumably, Warschawski's audience is Israelis and North American Jews. He deserves to be read by those who are doing pro-Palestinian work and those who should be.

There is certainly "coarseness" and "crudity" in U.S. Jewish communities as well, to say nothing of complicity in the occupation and subjugation of Palestinians. The question

**This very valuable and compact book focuses primarily on the effect of Israelis' actions on themselves rather than on their victims.**

for Warschawski's reader is what, if anything, to do about it. One can simply, like the bulldozer operator, not "give a shit." What compelling motive do Zionists have to change? What are they losing for things to continue as is?

Warschawski believes that Israel is in an internal "mad rush toward its own destruction." He posits that the political class in power and much of Israeli society as a whole "no longer recognizes any boundary, geographical or moral. Its brakes no longer seem to work..." He sees Israel "skidding down" into an "armed conflict, even a nuclear war, with the whole Arab and Islamic world." He finds Israel's course "unquestionably suicidal, as in the parable of Samson who was prepared to die with the Philistines." Somberly, Warschawski invokes Israel's "identification with the deadly symbol of Masada" and writes that "events are unfolding almost as if the Jewish state's tragic end was inscribed in its genetic code in the Israeli collective unconscious; as if in its heart Israeli society never really believed in its own project." The problem, he states, "is not so much the dramatic rise in violence inside the country as the resignation of those who are in line to be its next victims." (Here he references domestic family violence and Israeli road rage.) This is not fully persuasive, at least in the short run, given Israel's military dominance and full U.S. backing.

More supportable is his contention that Israel risks dragging down Jewish communities around the world. How, Warschawski asks, could this state of affairs come to pass

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after seven years of a peace process that seemed to open a new era in Israel-Arab relations and make possible a normalization of Israeli Jewish society? Warschawski, less skeptical of the Oslo accords than I, looks to the way the Israeli public experienced the failure of the July 2000 Camp David summit. Amos Oz and others pushed the theme that “the Palestinian right of return means the destruction of Israel.” That demand, in the eyes of the Zionist “left,” along with the Intifada of October 2000, proved “the destructive intent behind the Palestinian strategy.” From that, all the aspects of the “current degeneration would follow: consensus, moral collapse, a blackout of dissident opinions, repression first of the residents of the occupied territories, then of Israel’s Arab citizens, and finally of the minority of Israelis who denounced Barak...” Israelis interpreted peace not as establishing justice but as a “set of new Israeli security arrangements...as separation.”

As to the second Intifada, Warschawski takes pains to point out that it began in response to Sharon’s provocation. Sharon, accompanied by many hundreds of troops, made a show-visit to “Temple Mount,” emblematic of Israel’s aggression and expansion. This led to a spontaneous demonstration by unarmed youth. Only later did it grow violent, fed by indignity and frustration, the onus for which rests entirely with Israel.

Warschawski pinpoints what he regards as a break in the evolution of Israeli society: the night of November 5, 1995 when Yitzak Rabin was assassinated. He argues that Shimon Peres failed to launch a counteroffensive against the right or to continue “Rabin’s legacy” but sought instead “national reconciliation,” authorized the killing of Islamic leader Yayha Ayyash and intensified intervention in Lebanon, leading to the massacre at the Kana UN base. To avoid feared fratricide, unwarrantedly says Warschawski, Peres “capitulated unconditionally” to the right. “The 20-year interval of openness, liberalization, and attempts at peace...had come to an end,” Warschawski states. Peres was not going to be the “Israeli de Gaulle.”

Warschawski concludes that the left has given up and only a small minority is continuing to fight for Palestinian rights and to “stop Israel’s transformation into a fundamentalist state that has shed its last democratic pretenses...The relationship of forces is not encouraging and time is short.”

The reference to de Gaulle is instructive. Recall that the French “paras” had quelled the Algerian rebels by the end of the 1950s, yet Algeria won independence in 1962.

There is a dialectic at work and quantitative changes do pass into qualitative changes. Perhaps Warschawski’s gloom should be tempered. ■

*Larry Hochman is a long-time Guild member from the Detroit chapter, who became an attorney in mid-life after many years as a physics professor at University of Connecticut, San Jose State University, Queens College of CUNY and Eastern Michigan University.*

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