

Mass Dissent

Massachusetts Chapter

National Lawyers Guild

14 Beacon St., Boston, MA 02108

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MEMBERSHIP MEETING

SEPTEMBER 14, 5:30 pm

14 Beacon St., 1st Fl.
Boston

Supreme Court's Last Term

What was most striking about the Supreme Court's last term was how much this has become the Roberts Court. Clearly the Chief Justice has taken control of the Court, and this last term, he was in the majority a staggering 92 percent of the time, more than any other justice. While it might be tempting to think of the Chief Justice as having replaced Justice Kennedy as the swing vote, the better analysis is that the Chief Justice, always skillful at forgoing a majority consensus, now drives the Court's agenda to focus on issues of central importance to him.

In this issue of *Mass Dissent*, we first look at a case that reflects the Chief Justice's activist and conservative agenda, and likely the term's most important decision, *Citizens United v. FEC*, where the court wiped away decades of election reform with the notion that corporations – those artificial “persons” – have First Amendment rights (will corporations next be given the vote?). Guild member and voting rights activist **John Bonifaz** writes about this decision.

But the news was not all bad. In *Graham v. Florida*, Justice Kennedy, writing for the five-member majority found that life imprisonment without chance of parole for non-homicide offenses by minors violates the eighth amendment (the Chief Justice concurred). **Patty Garin** writes about this important decision, a decision

that we hope can be of use to her and Jonathan Shapiro when they challenge under the Massachusetts constitution life imprisonment without the possibility of parole for juveniles found guilty of first degree homicide in this state.

Next, **Ruthy Taranto** explores how the recent case of *Holder v. Humanitarian Law Project* may affect long protected First Amendment rights and prevent groups like the Humanitarian Law Project from trying to direct “terrorist” organizations towards legal and more peaceful resolutions.

While of course this term was mixed, we should make no mistake. The conservatives are increasingly in control and increasingly activist – as the Chief Justice's concurrence on *Citizens United* makes clear, even recent Court precedent will not stand in the way if the new majority considers that precedent wrong. With the departure of the Court's leading liberal, Justice Stevens, even giving all benefit of the doubt to his replacement, Elena Kagan, we cannot expect things to get better in the near future.

On a brighter note, we are also presenting a report from **Jeff Feuer** on the recent work of our Mass Defense Committee. If you are a criminal defense lawyer, you should join the Committee; we need you for our good work.

- David Kelston & Tony
Benningfield -

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Join a Guild Committee

Street Law Clinic Project: The Street Law Clinic project provides workshops for Massachusetts organizations that address legal needs of various communities. Legal education workshops on 4th Amendment Rights (Stop & Search), Landlord/Tenant Disputes, Workers' Rights, Civil Disobedience Defense, Bankruptcy Law, Foreclosure Prevention Law, and Immigration Law are held at community organizations, youth centers, labor unions, shelters, and pre-release centers. If you are a Guild attorney, law student, or legal worker interested in leading a workshop, please contact the project at 617-723-4330 or nlgmass-slc@igc.org.

Lawyer Referral Service Panel (LRS): Members of the panel provide legal services at reasonable rates. Referral Service Administrative/Oversight Committee members: Neil Berman, Neil Burns, Joshua Goldstein, Jeremy Robin, and Azizah Yasin. For more information, contact the Referral Service Coordinator at 617-227-7008 or nlgmass@igc.org.

Foreclosure Prevention Task Force: Created in June 2008, the Task Force's goal is threefold: (1) to draft and introduce policies that address issues that homeowners and tenants of foreclosed on houses face, (2) to provide legal assistance to these homeowners and tenants, *and* (3) to conduct legal clinics for them. If you are interested in working with the Task Force, please call the office at 617-227-7335.

Independent Civilian Review Board: In coalition with the American Friends Service Committee and Greater Boston Civil Rights Coalition, the NLG has been pushing for the creation of an independent civilian board to review complaints against Boston police officers. To get involved in the campaign, please contact the office at 617-227-7335.

NLG National Immigration Project: Works to defend and extend the human and civil rights of all immigrants, both documented and undocumented. The Committee works in coalition with community groups to organize support for immigrant rights in the face of right-wing political attacks. For more information contact the NLG National Immigration Project at 617-227-9727.

NLG Military Law Task Force: Provides legal advice and assistance to those in the military and to others, especially members of the GIRights Hotline, who are counseling military personnel on their rights. It also provides legal support and helps to find local legal referrals when needed. The MLTF and the Hotline exchange many questions and information through their listserves. For advice and information, GI's can call 877-447-4487. To get involved, please contact Neil Berman (njberman2@juno.com) or Marguerite Helen (mugsm@mindspring.com).

COALITIONS:

Jobs with Justice, a coalition-based organization addressing workers' rights. The NLG is a member of Jobs with Justice; any interested Guild members can attend meetings & events.

GUILD NEWS

NLG HAPPY HOUR

The NLG Massachusetts Chapter's Happy Hour - for Guild members and non-Guild members - takes place on the **2nd Wednesday of every month, 5:30 - 8:00pm, at Kennedy's Mid-Town Pub** (44 Province St., 2nd Fl., Boston, close to Suffolk Law School), and follows the **NLG Presents...** event. Next Happy Hour will be on September 8, 2010. Please join us.

Meeting on **Tuesday, September 14**. We will start with a wine and cheese **reception at 5:30 pm**; the meeting will start at 6:00 pm. During the meeting, we will talk about this year's NLG National Convention and discuss resolutions presented for a vote and also candidates who are running in the NLG elections (617-227-7335).

MEMBERSHIP MEETING

All Guild members are invited to the NLG Membership

NATIONAL CONVENTION

This year's NLG National Convention will be held in New Orleans between Wednesday-Sunday, September 22 - 26, at Hotel Monteleone (504-523-3341). For more info, please visit www.nlg.org/members/convention/.

Street Law Clinic Report

The following Guild members conducted trainings for law students and/or clinics for members of Boston area community organizations and agencies:

May 28: *Workers' Rights* clinic at Cambridge Learning Center, by **Mark Stern**.

June 1: *Legal observing* at a die-in at the Israeli Consulate in Boston against an attack on the international humanitarian flotilla, by **Neil Berman, Sara DeConde, and Urszula Masny-Latos**.

June 6: *Legal observing* at a training organized by Community Justice Collaborative in Roxbury, by **Makis Antzoulatos**.

June 23: *Legal observing* at a protest against AIPAC at Sheraton Boston Hotel, by **Urszula Masny-Latos**.

July 10: *Legal observing* at a rally and march against Arizona Governor Jane Brewer and her anti-immigrant policies at Sheraton Boston Hotel, by **Sam Berk, Cecilia Candia, Sara DeConde, Carl and Chris Williams**.

July 30: *Civil Disobedience* clinic for Student Immigrant Movement, by **Carl Williams**.

WELCOME DANIEL WERNER

We are very thrilled to announce that this academic year Daniel Werner will coordinate our Street Law Clinic project. Daniel is a 2L at New England School of Law and has been involved in several organizations that work on issues ranging from homelessness to drug addiction to sentencing law.

Daniel will be contacting Guild members soon about getting involved in the SLC.

Congratulations to Makis Antzoulatos!

In July 2010, Guild member Makis Antzoulatos and his wife Meghan Doran welcomed the birth of their daughter Devlin Harper Doran.

The Guild wishes the parents and the baby a wonderful life.

ARTICLES FOR MASS DISSENT

The October issue of *Mass Dissent* will focus on prisoners' rights and lives.

If you are interested in submitting an article, essay, analysis, or art work (cartoons, pictures) related to the topic, please e-mail the articles to nlgmass-director@igc.org.

The deadline for articles is September 15.

NLG Presents... - JUNE & JULY EVENTS & HAPPY HOUR

And in case you missed:
the June event -

“Report from trips to Palestine”

NLG member **Marjorie Suisman** and her son **Max Geller** shared their experiences from their recent trip to West Bank and a painful ordeal at their arrival to Israel where Max was detained for several hours. A very interesting discussion on the subject continued through the Happy Hour that followed the presentation.

(Photos: Urszula Masny-Latos)

(right, l.-r.) Marjorie Suisman and Max Geller lead a discussion on their experience in Palestine during their recent trip there.

(below, l.-r.) Marjorie Suisman, Roger & Max Geller, and Judy Somberg enjoy a glass of wine at the Happy Hour afterwards.



the July event -

“Turning Truth into Fiction”

A lively discussion about challenges facing immigrants in the US, as well as the search by all for one's place in society, followed **Iris Gomez's** presentation of her recently published novel "Try to Remember". It was fascinating hearing an author -- our very own immigration lawyer extraordinaire, Iris Gomez-- explain how she constructed a novel from her own experiences. Then, after book purchasing and signings, many of us stayed together for dinner with Iris while others moved on to "Happy Hour".

Please send us your suggestions for future "Think and Drink" programs.



Iris Gomez (*center*) shares personal stories behind her first newly publish novel "Try to Remember".

(Photos: Sara DeConde)



Iris ready to sign copies of her book for very happy buyers.

Defend Our Democracy: Amend the Constitution

In *Citizens United v. Fed. Election Comm'n*, the United States Supreme Court considered whether federal campaign finance laws apply to a film critical of Senator Hillary Clinton intended to be shown in theaters and on-demand to cable subscribers. On January 21, 2010, the Court held that corporate funding of independent political broadcasts in candidate elections cannot be limited under the First Amendment. This 5-4 decision written by Justice Kennedy and joined by Chief Justice Roberts, Justice Alito, Justice Scalia, and Justice Thomas struck down a provision in the Bipartisan Campaign Reform Act of 2002, commonly known as the McCain-Feingold Act, that prohibited all corporations, both for-profit and not-for-profit, and unions from broadcasting "electioneering communications," which was defined by the Act as any broadcast, cable, or satellite communication that mentioned a candidate, within 60 days of a general election or thirty days of a primary. In the majority opinion, Justice Kennedy wrote that if "the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech." This reasoning extended First Amendment

rights to corporations, viewed as associations of citizens, with Justice Kennedy finding no way to distinguish between media and other corporations to avoid restriction of First Amendment rights. Although this decision now allows the broadcasting of these corporate "electioneering communications," the Court did uphold requirements for disclaimer and disclosure by sponsors of advertisements.

DEFEND OUR DEMOCRACY: AMEND THE CONSTITUTION

by John Bonifaz

Our democracy is in crisis. On January 21, 2010, the United States Supreme Court swept away longstanding precedent that had barred corporate spending in our elections. The ruling, issued in *Citizens United v. Fed. Election Comm'n*, means that corporations may now spend their billions of dollars in general treasury funds to advocate for or against candidates at the federal, state, and local level. While our campaign finance system was in need of fundamental reform prior to this ruling, we are now faced with such a direct and serious threat to our democracy that it requires a constitutional amendment response.

To best understand this threat, we need only look at the resources now available to the nation's top Fortune 100 compa-

nies to influence our election outcomes. In 2008 alone, the Fortune 100 companies' combined profits exceeded \$600 billion. In that election year, the total amount of money spent by all of the congressional and presidential campaigns, the political parties, and the political action committees (including corporate PACs) was approximately \$5 billion. If the Fortune 100 companies had been able to spend just two percent of their profits that year, they would have more than doubled the total amount of funds expended throughout the country by all the campaigns, parties, and PACs.

And then there is the psychological impact of this ruling. Any elected official who dares to challenge a corporate interest must now face the potential of being targeted by a massive independent expenditure campaign financed by corporate general treasury funds. Without even an actual threat from a corporation, our politics, as a result of this ruling, will favor corporate interests over the public interest to a far greater extent than existed when the ban on corporate spending in our elections remained in place.

But the roots of this crisis go beyond this one Supreme Court ruling. For the past three decades, corporate America has misused the First Amendment to advance a corporate rights doctrine so as to strike down democratically-enacted reforms in multiple areas, including the environmental, health care, consumer rights, civil rights, and campaign finance fields. By arguing that corporations are "persons" with free speech rights – an argument that ignores common sense as well as the Framers' intent, cor-

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Defend Our Democracy: Amend the Constitution

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porate interests have effectively captured the First Amendment for their own profit-making purposes. The *Citizens United* ruling marks an extreme extension of this corporate rights movement under the First Amendment.

The notion that free speech under the First Amendment is intended for corporations as well as individual human beings is antithetical to what the Framers believed. James Madison saw corporations as “a necessary evil” subject to “proper limitations and guards.” Thomas Jefferson hoped to “crush in its birth the aristocracy of moneyed corporations...” For the first 200 years of our nation’s history, our courts never treated corporations as persons with free speech rights under the First Amendment.

In the wake of the *Citizens United* ruling, we must begin the process of restoring the First Amendment and fair elections to the people. While there are many calling for legislative fixes in response to this ruling, we must face the reality that only a constitutional amendment will enable

us to reclaim free speech rights for people, not corporations. House Joint Resolution 74, introduced by Representative Donna Edwards (D-MD) and House Judiciary Committee Chair John Conyers, Jr. (D-MI), would amend the US Constitution to make clear that Congress and the states shall have the power to regulate corporate spending in the political sphere. The amendment already has 24 co-sponsors in the US House of Representatives (including Representatives Edward Markey and James McGovern of Massachusetts). Other important amendment approaches would prevent corporate misuse of the First Amendment to block public welfare laws.

There are those who doubt that we can amend the Constitution. But consider the example of Doris “Granny D” Haddock. On March 9, 2010, she passed away at the age of 100. When she was 89 years old, she started a walk across the country to call for an overhaul of our campaign finance system. Fourteen months and 3,200 miles later, she arrived in Washington, DC. Her

action inspired people around the world and placed a spotlight on the corruption of money in politics and the critical need for reform.

When Doris Haddock was born, the Nineteenth Amendment to the US Constitution – guaranteeing women the right to vote – had yet to be enacted. In her lifetime, she saw nine different amendments enacted into the Constitution. She is a powerful example that fundamental change, including a constitutional amendment, can happen.

We have amended the Constitution before in our nation’s history. Twenty-seven times. It is now time to pass and ratify a 28th Amendment which guarantees that we the people, not we the corporations, govern in America.

John Bonifaz is the Legal Director of Voter Action and the Director of the Free Speech For People Campaign (www.freespeechforpeople.org), a new campaign which seeks to restore free speech and fair elections to the people.

2010 NLG NATIONAL CONVENTION: Law for the People

September 22 - 26

Hotel Monteleone, 214 Rue Royale, New Orleans, LA, 800-217-2033

Registration: <https://www.nlg.org/members/convention/registration/> or 212-679-5100

Keynote Speaker: John Thompson

Award Recipients: The Al-Haramain Defense Team, Mary Howell, Urszula Masny-Latos, Midnight Special Law Collective, and Sarah White

Graham v. Florida

by Patty Garin & David Kelston

In *Roper v. Simmons*, 543 U.S. 551 (2005), the Court announced a “categorical rule” prohibiting the death penalty for defendants who committed their crimes (homicide in the *Roper* case) before the age of 18. The death penalty is reserved, the Court said, for the most culpable defendants, and juveniles cannot with reliability be among those offenders because of an undeveloped sense of responsibility, heightened susceptibility to negative influences and outside pressures, and their “more transitory” and “less fixed” character. Thus, in *Graham v. Florida*, 130 S.G. Ct.2011 (2010), the Court, relying on *Roper*, announced another categorical rule: life sentences without the possibility of parole for non-homicide offenses committed by juveniles offend the Eighth Amendment’s prohibition on cruel and unusual punishment. Justice Kennedy wrote for the five member majority (he was joined by Justices Stevens, Ginsburg, Breyer and Sotomayor), with the Chief Justice concurring on narrower grounds.

Terrance Graham, 16 years old and with three other juveniles, attempted to rob a barbecue restaurant in Jacksonville, Florida. An accomplice struck the manager in the head with a metal bar, and the youths fled without taking any money. Graham was arrested, pled guilty, and was sentenced to probation. Despite his seemingly earnest promises to the court to reform, he was arrested less than six months later. The court found he had violated his probation by a home invasion robbery (he was not in fact convicted of this offense),

and he was sentenced to the maximum sentence for the earlier armed robbery to which he had pled: life imprisonment, which, because Florida has abolished its parole system, left executive clemency, an exceedingly rare occurrence, as his only chance for release. Justice Kennedy’s opinion for the *Graham* Court was simple, logical, persuasive and welcome.

Established Eighth Amendment jurisprudence, he began, requires that the punishment be proportional to the crime, with the analysis beginning with “objective indicia of national consensus” – *i.e.*, what our evolving national standards of criminal law provide. While federal law and a significant majority of the states permit life sentences for juveniles in non-homicide cases, the Court found that in fact only a handful of states actually imposed such sentences. Thus, wrote Justice Kennedy, “it is fair to say that a natural consensus has developed” against such sentences. Next, relying on the *Roper* analysis (since community consensus alone is not determinative), the Court, noting that “[l]ife without parole is an especially harsh punishment for a juvenile,” found the sentence without sufficient “penalogical justification” – the purposes of retribution deterrence, or incapacitation were all found wanting when considered in these circumstances. The Court then announced its categorical rule: “This Court now holds that for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole.”

What is most welcome about the *Graham* decision is that the Court – too often willing to be activist these days in the wrong

direction – did not shy from a salutary categorical rule when it could easily have decided the case on narrower grounds based on the facts before it. Also telling was Justice Thomas’s dissent, joined in whole by Justice Scalia and in part by Justice Alito, showing that at least three of the justices indeed adhere to an originalist jurisprudence which, in its purest incarnation, purports to tolerate little evolution since the time of the founders and, in this case, finds the whole notion of proportionality a judicial “creation.” Justice Stevens’s concurrence – an answer to the dissenters – reminds us of why we will miss him: the “Court wisely rejects [Justice Thomas’s] static approach to the law. Standards of decency have evolved They will never stop doing so.”

Under current Massachusetts law, a child as young as 14 will receive a life sentence without the possibility of parole if he or she is convicted of first degree murder. *See* M.G.L. c. 119 § 74; M.G.L. c. 265, § 2. All youth 14, 15 and 16 charged with first or second degree murder are automatically tried as adults in Massachusetts Superior Court. *See* M.G.L. c. 119, § 74. (“The juvenile court shall not have jurisdiction over a person who had at the time of the offense attained the age of fourteen but not yet attained the age of seventeen who is charged with committing murder in the first or second degree.”) There is no point in the proceedings where the judge or jury can consider the juvenile’s age, life history, potential for rehabilitation or other mitigating factors. In Massachusetts, every child convicted of first degree murder who was 14 to 16 at the time of the offense receives

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a mandatory life without parole sentence. There are no exceptions.

As of September 2009, there were 57 males in Massachusetts serving life without parole sentences for crimes committed when they were 14 to 16. (*See Until They Die a Natural Death*, Children's Law Center of Massachusetts, September, 2009). African American youth in Massachusetts are disproportionately affected by the juvenile life without parole sentences. While they only make up 6.5% of the population of all children under age 18, African American youth are 47% of those sentenced to serve life terms without the possibility of parole for a childhood offense. Sixty-one percent of youth under age 18 sentenced to life without parole in Massachusetts were young boys of color. *See Until They Die a Natural Death*, p. 14.

The Massachusetts sentencing scheme for juveniles convicted of first degree murder is one of the harshest in the country and in the world. Only one other state, Connecticut, mandates both that all 14 to 16 year olds be tried in

adult court and that all 14 to 16 year olds convicted of first degree murder receive a natural life sentence. All other states allow for discretion either by the district attorney or judge concerning the court (juvenile or adult) or the sentence. Six states and the District of Columbia prohibit all life without parole sentences for juvenile offenders. The states that permit a sentencing court to use its discretion in sentencing a convicted juvenile to life without the possibility of parole have sentenced markedly fewer juveniles to this sentence than have states where life without parole is a mandatory sentence as in Massachusetts.

The United States is the only country in the world that subjects juvenile offenders to the possibility of a life without parole sentence. *See* Amnesty International and Human Rights Watch, *The Rest of Their Lives: Life Without Parole for Youthful Offenders in the United States in 2008* 2008, p. 1. We have 2,484 serving the sentence; the rest of the world has none.

Relying on *Roper* and *Graham* and the recent scientific developments in adolescent brain development and adolescent psy-

chology, it is likely that juvenile life without parole sentences will soon be challenged in Massachusetts as unconstitutional both under the Eighth Amendment and Art. 26 of the Massachusetts Declaration of Rights. In April of 2010, John Odgren, the mentally-ill adolescent with Asperger's Syndrome who killed a classmate at Lincoln Sudbury High School - for no apparent reason - was convicted of first degree murder and sentenced to life without parole. Although John Odgren has a lifetime of mental health issues, no criminal record, and, due to his Asperger's Syndrome, functions socially and emotionally at about the level of a 12 or 13 year old, he was sentenced to spend the rest of his life in prison. The Court had no opportunity to consider the many mitigating factors in sentencing this very young and very mentally ill defendant.

As the Supreme Court recognized in *Graham*, "juvenile offenders cannot with reliability be classified among the worst offenders" and their transgressions are "not as morally reprehensible as that of an adult." "From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." It is time for Massachusetts to reform its sentencing scheme for juveniles charged with murder.

Patty Garin is a partner at Stern Shapiro Weissberg & Garin in Boston; David Kelston, member of the Mass. Chapter Board of Directors, is a partner at Adkins Kelston Zavez, also in Boston.

NLG ADVISORY COMMITTEE

The NLG Massachusetts Chapter is creating an advisory committee which will consist of Guild members and representative of community organizations that work on issues dear to the Guild and Guild members. We will hold an initial meeting with those interested in serving on this new committee.

**THURSDAY, SEPTEMBER 30,
NORTHEASTERN UNIVERSITY LAW SCHOOL**

Please let us know if you would like to attend or would like to invite an organization you work with.

What happened to Brandenburg?

by Ruthy Taranto

The First Amendment has taken a hard hit. With heightened national security and the dreaded “T-word” lurking, the liberty/security balance has been tipped. Civil liberties has taken a time out while Government moves full steam ahead in the name of safety. What is an advocate with an unpopular cause to do?

The right to free speech is a friend of the advocate but an easy target to suppress. Recall that it is not the role of Government to “giveth and then taketh away”; it is Government’s role to protect this right, especially when it is under attack. In theory this sounds straightforward, but real life has proven to be more complicated. Advocates, take note.

The case is *Holder v. Humanitarian Law Project*, 2010 U.S. Lexis 5252. At issue was federal law 18 U. S. C. §2339B which prohibits “knowingly providing material support or resources to a foreign terrorist organization.” Material support may take the form of money, weapons, training, services, transportation, and speech, among other things. The law specifically prohibits anyone from giving expert advice to terrorist organizations. The question before the courts was what if the expert advice is on how to handle disputes lawfully and the speech advocates only nonviolent activity? After 12 years of litigation, the Supreme Court granted certiorari and answered accordingly.

On June 21, 2010, in a 6-3 decision, the Supreme Court ruled that advising militant organizations (so designated as “terrorist” organizations) on how to handle disputes peacefully and lawfully constitutes “material support” to a terrorist organization. A retired judge, several human rights groups, and others that comprised the

Humanitarian Law Project (HLP) can no longer work for peace on behalf of the Kurdistan Workers’ Party (PKK) in Turkey or on behalf of the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka. Teaching members of these organizations on how to use humanitarian and international law to peacefully resolve disputes, training the organizations on how to petition the United Nations for relief, and political advocacy on behalf of the PKK and LTTE constitutes “material support” and is condemned criminal activity.

Surely anyone who has given *Brandenburg* the once over would come to the opposite conclusion? In the past, the First Amendment has even secured citizens’ rights to express approval of criminal activity, so long as the speech was not intended and not likely to incite imminent lawless action. If *Brandenburg* implies that inflammatory speech, such as advocacy of criminal conduct, is protected then the First Amendment should certainly protect the advocacy of *lawful* activity. The Supreme Court decided no. The HLP (and everyone else) is banned from “coordinating” with terrorist organizations, regardless of whether the coordination consisted of advocating lawful alternatives and discouraging criminal activity. Arguably, §2339B can land a humanitarian in prison for up to 15 years for an act that some may even call *righteous*.

The reasoning of the Supreme Court is that organizations such as PKK and LTTE are so tainted by their terrorist activity, that any contribution, such as expert advice, facilitates terrorist conduct. According to the Supreme Court, it does not matter if the HLP intended to only contribute to the legal activities of the organizations, and not the illegal; the legal activities are so corrupted by the illegal that

they are one in the same. Support given to any activity of a terrorist organization is support given to lawless, violent conduct.

It is one thing to use our criminal justice system to put away terrorists when we finally catch them. It is quite another to use our criminal justice system against Americans who speak out to so designated “terrorist organizations” in order to guide them in the right direction. There are advocates who speak out for much less a worthy cause.

Furthermore, the Court reasoned that even if the speech did not directly lead to violence, it might “legitimate” the group. Advising a terrorist organization on lawful conduct may help the organization use the law to its own illegal advantages. But this is all hypothetical. Hypothetical situations do not trump First Amendment rights. Prevention seems to be on the mind of the Court, but it is likely a wrong assumption that the HLP did not have prevention in mind.

If you are not an advocate with an unpopular cause and you believe that this particular violation of free speech does not apply to you, I urge you to reconsider. When speech prohibitions are not narrowly tailored as they should be, it is an abuse of governmental power. *Everyone* has a stake in Government’s abuse of power, not just the humanitarian groups whose futile efforts are highlighted in *Holder*. There may come a day when you find yourself on the wrong side of the violation and the rest of us will be forced to keep our collective mouth zipped lest it constitute “material support.”

Ruthy Taranto is a second year student at Brooklyn Law School in New York.

Mass Defense Committee of Mass Chapter Defends Mass Activists

by Jeff Feuer

In October, 2009, the Massachusetts Chapter was contacted by a coalition of student groups and environmental activist groups to provide legal advice, training and support for a series of pro - "clean energy" and anti - "climate change" actions and demonstrations that they were planning to hold throughout the remainder of 2009 on various Massachusetts college campuses and in Boston. The centerpiece of their actions were winter-time "sleepouts" at the colleges to focus attention on the need for the colleges to use clean sources of energy to provide electricity, and a month-long sleep and camp-out on the public grounds of the Boston Common as part of an massive and intensive campaign to get the Massachusetts legislature to pass a comprehensive bill mandating the use of "clean energy" in the state. Guild attorneys met with the student organizers of this campaign and provided a series of free comprehensive training sessions for students and activists on issues of active resistance and civil disobedience related to their environmental campaign. In addition, Guild attorneys trained a large number of students to serve as legal observers for the month-long overnight actions planned for the Boston Common, where mass arrests for trespassing and other possible criminal charges were anticipated.

Following these trainings, numerous sleepouts were held on dozens of college campuses throughout the state throughout October and November, 2009. In addition, several hundred students and environmental activists set up camp on the Boston Common near the State House to begin a month-long sleepout campaign during the freezing Boston winter, designed to

influence the public and legislators to support a clean energy bill. As the Boston Common officially was closed from 11:00 p.m. to 7:00 a.m., the demonstrators were fully prepared to be arrested during their action. However, as has been the tradition for many years with political protests in Boston, the Boston Police showed remarkable restraint and tolerance for this demonstration. Instead of arresting the protestors and shutting down their camp, the police allowed the demonstration to continue for the entire month of November and into early December, 2009. On only five occasions during this period, did the police enter the protestors' camp during the overnight hours that the Common was closed to the public, wake up the sleeping demonstrators, tell them they were trespassing, and offer them the opportunity to leave. When the demonstrators refused to do so, the police merely took down names and addresses and told them that they would receive a summons in the mail to attend a clerk-magistrate's show cause hearing on whether a criminal complaint for trespassing should be issued against them. Remarkably, the police then left and allowed the sleepout to continue! Some of this "good behavior" by the Boston Police may be attributable to the mutual respect that Guild attorneys and legal observers have been able to develop with the police department over the past 20-25 years of political protests in the city. In total, more than 200 demonstrators had their names taken down by the police.

In December, demonstrators began receiving summonses to appear in court for their show cause hearings. Unfortunately, the hearings were all scheduled for a few days immediately preceding or following Christmas - a time when almost none of the demonstrators

(the vast majority of whom were college students) would be in the Boston area. The demonstration organizers again contacted the Guild. As a result of a first round of negotiations between the Guild's Mass Defense Committee, the Suffolk County District Attorney's office and the Clerk-Magistrate of the Boston Municipal Court, the Guild was able to postpone all of the scheduled hearings until the first two weeks of February, 2010 or later. We were also able to convince the DA's office and the court to reschedule hearings for students who were studying out of state and/or abroad until May, 2010 and September, 2010. Despite the logistical nightmare of trying to communicate with and coordinate the schedules of some 200 demonstrators and the eight volunteer Guild attorneys who were going to represent them pro bono at the show cause hearings, we were able to schedule approximately 170 hearings for the first two weeks of February, 2010.

There followed another round of negotiations between the Guild, the DA and the Clerk-Magistrate. The Guild was able to achieve a resolution that would conclude all of the cases without establishing any arrest or criminal record for any demonstrator who chose to accept the deal. The agreement was that, for any demonstrator who agreed to pay \$50.00 in court costs for each summons that s/he received, the clerk-magistrate would deny the application for a criminal complaint and the matter would be fully concluded. Since no demonstrator had actually been arrested, there would be no arrest record. Since all of the applications for criminal complaints filed by the police department would be denied, there would be no criminal case file opened. In addition, since it was the long-standing policy of the Boston Municipal Court to destroy all

NLG Massachusetts Chapter Sustainers

In the spring of 2003, the Massachusetts Chapter of the NLG initiated the Chapter Sustainer Program. Since its inception, the Program has been very successful and has been enthusiastically joined by the following Guild members:

Adkins, Kelston & Zavez • Anonymous • Michael Avery • Susan Barney & Kamal Ahmed • Samuel Berk • Neil Berman • Steven Buckley • Howard Cooper • Barb Dougan • Robert Doyle • Melinda Drew & Jeff Feuer • Carolyn Federoff • Roger Geller • Lee Goldstein & Ken Quat • Benjie Hiller • Stephen Hrones • Martin Kantrovitz • Nancy Kelly & John Willshire-Carrera • David Kelston • Leslee Klein & Mark Stern • Shelley Kroll • Petrucelly, Nadler & Norris • Hank Phillippi Ryan & Jonathan Shapiro • Allan Rodgers • Martin Rosenthal • Sharryn Ross • Anne Sills & Howard Silverman • Judy Somberg • Stern, Shapiro, Weissberg & Garin

The Sustainer Program is one of the most important Chapter initiatives to secure its future existence. Please consider joining the Program.

YES, INCLUDE MY NAME AMONG NLG MASSACHUSETTS CHAPTER SUSTAINERS!

I, _____, am making a commitment to support the Massachusetts Chapter of the Guild with an annual contribution of:
_____ \$500 (not including my membership dues)
\$ _____ (other above \$500)

As a sustainer I will receive:

- special listing in the Dinner Program;
- 1/8 page ad in the Dinner Program;
- acknowledgement in every issue of *Mass Dissent*;
- two (2) free raffle tickets for a Holiday Party raffle;
- invitation to special events.

Three ways to become a sustainer:

- contribute \$500 or more a year (not including dues)
- pair up with another person and pay \$250 each, or
- join the "Guild Circle" and pay \$50/month minimum.

Please mail to: NLG, Massachusetts Chapter
14 Beacon St., Suite 407, Boston, MA 02108

Mass Defense Committee Defends Mass Activists

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documents relating to the denials of an application for a criminal complaint after a year, there would be no paperwork of any kind documenting any offense by any demonstrator. In addition each demonstrator would legally be able to answer "no" to any employment, financial aid, graduate school, bar, or other application that asked if he or she had ever been arrested or convicted of a crime. This was particularly important to the many students who were participating in their first major direct action campaign and who had never previously faced arrest or criminal charges. Moreover, the deal permitted the demonstrators to continue to engage in their political campaign and future direct action plans without the threat of a criminal case and/or possible bail or probation violations

hanging over them.

With this agreement in place, the "show cause" hearings proceeded smoothly in February, although it came as a surprise to one of the police prosecutors that all of these demonstrators were being represented pro bono by Guild attorneys. Every demonstrator, with one exception, chose to accept the deal and had his or her case fully concluded. One older non-student activist decided to refuse to pay any sort of fine to the government as a matter of principle and chose to proceed with the "show cause" hearing. A criminal complaint for trespass was issued against him and a volunteer Guild attorney will continue to represent him throughout the subsequent criminal proceedings. The organizers and many of the individual demonstrators repeatedly expressed their gratitude to the Mass. Chapter's

Mass Defense Committee for negotiating what they felt was an excellent resolution to these potential criminal charges, in that they were quickly resolved and allowed them to focus their enthusiasm and abilities directly on their clean energy campaign and not on having to defend against time-consuming criminal charges. The Mass Defense Committee also was pleased with the tone of the negotiations with the DA's and Clerk-Magistrate's office and the willingness of these government agencies and the Boston Police Department to recognize the legitimacy of political protests, even when civil disobedience is involved.

Jeff Feuer, member of the Mass Chapter Board of Directors and Mass Defense Committee, is a partner at Goldstein & Feuer in Cambridge.

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" ... an association dedicated to the need for basic change in the structure of our political and economic system. We seek to unite the lawyers, law students, legal workers and jailhouse lawyers of America in an organization which shall function as an effective political and social force in the service of people, to the end that human rights shall be regarded as more sacred than property interests. Our aim is to bring together all those who regard adjustments to new conditions as more important than the veneration of precedent; who recognize the importance of safeguarding and extending the rights of workers, women, farmers, and minority groups upon whom the welfare of the entire nation depends; who seek actively to eliminate racism; who work to maintain and protect our civil rights and liberties in the face of persistent attacks upon them; and who look upon the law as an instrument for the protection of the people, rather than for their repression."

Preamble to the Constitution of the National Lawyers Guild, originally adopted February 22, 1937, and most recently amended in July 1971.

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14 Beacon St., Suite 407, Boston, MA 02108

NAME: _____

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| over \$30,000 to \$40,000 | \$150 |
| over \$40,000 to \$50,000 | \$200 |
| over \$50,000 to \$60,000 | \$250 |
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* Any **new** member who joins after September 1 will be carried over to the following year. Dues may be paid in full or in quarterly installments. Dues of \$80 cover the basic membership costs, which include publication and mailing of *Mass Dissent* (the Chapter's monthly newsletter), national and regional dues, and the office and staff.

No one will be denied membership because of inability to pay.