

The Assault on Free Speech, Public Assembly, and Dissent

**A National Lawyers Guild Report
on Government Violations of
First Amendment Rights in the United States**

2004

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Foreword by Lewis Lapham

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Foreword

The spirit of liberty is the spirit that is not too sure that it is right.

Judge Learned Hand

The facts assembled in the following pages attest to the pathology of a government so frightened of its own citizens that it classifies them as probable enemies. Mustering evidence from witnesses everywhere in the country (from trial judges in Oakland and Philadelphia as well as from First Amendment lawyers in New York, Portland, Boston, Washington and Miami) the report cites a long list of recent incidents in which various law enforcement agencies (federal, state, municipal) have deployed one or another of the increasingly sophisticated methods of intimidation (checkpoints, rush tactics, pop-up lines, containment pens, mass and false arrests, etc.) meant to negate the freedoms of speech and silence the voices of dissent.

To read the testimony is to know that the American democracy is in serious trouble. Not because the country lacks for a successful economy or a splendid military equipage, but because the wisdoms in office find the practice of democratic self-government vulgar and unsafe. Too loud, too uncivil and disrespectful, too many people in the room who don't belong to a health club or the Council on Foreign Relations, not enough marble in the ceilings and the walls. The corporate and political gentry disapprove of the company and deplore the noise; whether seated in the Senate, installed in a television studio, charged with the management of an insurance company or a police precinct, they don't like to be reminded that democracy is by definition a work in progress, a never-ending argument between the inertia of things-as-they-are and the energy inherent in the hope of things-as-they-might-become.

The country was founded by people unafraid to engage the argument, which, if it was to mean anything, required honest and sharply pointed speech, often dangerous, nearly always fierce. Protestant dissenters who arrived on the shores of Massachusetts Bay with little else except a cargo of contraband words, they possessed what they believed to be truthful refutations of the lies told by the lords temporal and spiritual in Europe, and they settled the New England wilderness as an act of intellectual opposition framed on the

premise of what they called, “the quarrel with Providence.” Transferred in the 18th century from the choir lofts of religious feeling to the hustings of secular politics, the quarrel resulted in the Declaration of Independence and a Constitution predicated on James Madison’s notion that whereas “in Europe charters of liberty have been granted by power,” America has set the example of “charters of power granted by liberty.” The government established in Philadelphia in 1787 sought to ally itself with the shifts of changing circumstance, with the continuing discovery of new or better evidence, with the ceaseless making and remaking not only of fortunes and matinee idols but also of the laws.

Because the dissenting spirit stands with the party of things-as-they-might-become, in time of war it attracts the attention of the police. The parade marshals regard any breaking through the rope-lines of consensus as unpatriotic and disloyal; the unlicensed forms of speech come to be confused with treason and registered as crimes. Seeking to calm their own nerves by instilling the habits of obedience, the authorities do the country the disservice that Teddy Roosevelt had in mind in 1918 when he disagreed with President Wilson’s theory of World War One: “To announce that there must be no criticism of the President, or that we are to stand by the President right or wrong, is not only unpatriotic and servile, but it is morally treasonable to the American public.”

So it was, and so it is. The American democracy depends less on the size of its armies than on the capacity of its individual citizens to rely on the strength of their own thought. We can’t know what we’re about, or whether we’re telling ourselves too many lies, unless we can see and hear one another think out loud. To the extent that a democratic society gives its citizens the chance to speak in their own voices and listens to what they have to say, it gives itself the chance not only of discovering its multiple glories and triumphs but also of surviving its multiple follies and crimes. Dissent is what rescues democracy from a quiet death behind closed doors.

President Bush on campaign for reelection likes to tell his audiences that, as Americans, “we refuse to live in fear,” and of all the tales told by the government’s faith healers and gun salesmen, I know of none so cowardly. Where else does the Bush administration ask the people to live except in fear? On what other grounds does it justify its destruction of the nation’s civil liberties? Why else does the FBI

search large scale street demonstrations for “anarchists” and “extremist elements,” place under surveillance citizens known to have read the works of Leon Trotsky or the Rubbiyat of Omar Khayyam?

Ever since the September 11 attacks on New York and Washington, no week has passed in which the government has failed to issue warnings of a sequel. Sometimes it’s the director of the FBI, sometimes the attorney general or an unnamed source in the CIA or the Department of Homeland Security, but always it’s the same message—suspect your neighbor and watch the sky, buy duct tape, avoid the Washington Monument, hide the children. Let too many freedoms wander around loose in the streets, and who knows when somebody will turn up with a bread knife or a bomb? Let too many citizens begin to ask impertinent questions about the shambles of the federal budget or the ill-conceived occupation of Iraq, and the government sends another law-enforcement officer to a microphone with another story about a missing nuclear bomb or a newly discovered nerve gas, another Arab seen driving a suspicious truck north to New Jersey or west to Oklahoma.

Notwithstanding its habitual incompetence, the government doesn’t lightly relinquish the spoils of power seized under the pretexts of apocalypse. What the government grasps, the government seeks to keep and hold, and the National Lawyers Guild performs a necessary service by publishing its report on the American government’s attempt to preserve the American democracy by destroying it. The deal is as shabby as the one offered to the luckless villagers of Vietnam. For the sake of a vindictive policeman’s dream of a tranquil suburb, the country stands to lose the constitutional right to its own name.

Lewis Lapham

Preface

This report documents the ongoing reaction of law enforcement to the legal exercise of free speech in the United States. It finds that legitimate concerns regarding public safety have been abused by the United States Department of Justice. The abuses have been so aggressive that rights of free assembly and free speech guaranteed by the First Amendment of the United States Constitution are simply no longer available to the citizens of this country.

This report surveys federal and local police actions in the United States during the period 1999-2004 involving lawful public expressions of dissent and free speech. All of the police activities cited are from firsthand experience of the National Lawyers Guild, the oldest human rights organization in the country. Hundreds of Guild attorneys, legal workers, and law students around the country have served both as legal observers at First Amendment protected public assemblies and as counsel to individuals who sought to air their views at such public assemblies.

The conclusion of this survey is that rather than protecting First Amendment rights of United States citizens and prosecuting police abuses as it ought to do, the Justice Department under Attorney General John Ashcroft has systematically encouraged these abuses and acted as a cheerleader for government officials using excessive force and abusing their authority against citizens engaged in free speech.

By making enemies of those who speak out, law-enforcement agencies engage in unnecessary, costly, and dangerous practices against law-abiding individuals, wasting limited resources and frightening many from voicing their opinions. And by turning a blind eye to rampant and systemic police unlawfulness, the Attorney General is abrogating his duty to uphold the laws of the United States.

Introduction

In times of crisis, governmental respect diminishes for the protections of speech embodied in the First and Fourteenth Amendments to the Constitution of the United States.¹

Alexander Meiklejohn warned that interpreting the First Amendment in a fashion that authorizes the legislature to balance security against freedom of speech denies the essential purpose and meaning of the Amendment.² The security of a nation pledged to self-governance, he wrote, is never endangered by its people. Yet over the past few years a rash of antiterrorism laws and policies—both official and unofficial—have resulted in unlawful police practices that place enormous constraints on free-speech guarantees. The current administration has supported these practices, justifying them as necessary during a period of national crisis.

Most of these practices have not, in fact, made this country safer³ and are often used as pretextual justification to broadcast the message that the act of engaging in First Amendment protected activity is unlawful. The government routinely depicts as public enemies, and even potential terrorists, those who speak out against U.S. government policies. In contrast to the administration, however, most Americans favor the freedom to voice unpopular opinions: In a 2003 survey by the First Amendment Center to measure public support for First Amendment freedoms, 95% of respondents agreed that individuals should be allowed to express unpopular opinions in this country and two-thirds supported the right of any group to hold a rally for a cause, even if that cause is offensive to others.⁴

Several major trends have given rise to a host of police practices that not only unlawfully interfere with the exercise of protected speech but also result in affirmative harm to innocent individuals. The trends are:

- **Punishment absent unlawful activity**, violating the Fourth and Fifth Amendments and giving rise to state claims of assault and battery, false imprisonment, trespass on the person, negligence in

causing injuries, and negligent hiring, screening, retention, supervision, and training of officers, as well as conspiracy and malicious prosecution.

- **Police-initiated violence**, a dynamic acknowledged by the United Nations Commission on Human Rights, the District of Columbia Report on the Investigation of the Metropolitan Police Department's Policy and Practice in Handling Demonstrations in the District of Columbia, and the Independent Review Panel that investigated the actions of the Miami-Dade Police Department and the Miami-Dade Corrections and Rehabilitation Department during the 2003 FTAA ministerial.
- **Failure of the Department of Justice (DOJ), under the leadership of Attorney General Ashcroft, to prosecute police officers and police departments** for engaging in unlawful practices that violate the civil rights of individuals around the country.

These trends and practices are informed in part by the DOJ's enactment of domestic terrorism laws following the attacks of September 11, 2001, and the recent relaxation of the 1976 Attorney General guidelines on FBI surveillance, allowing spying on and infiltration of political groups and meetings. With the hasty passage of the USA PATRIOT Act in 2001, those who criticize the government or maintain ties with international political movements may find themselves under investigation for domestic terrorism. The term "terrorism" is defined so broadly in the Act that anyone who engages in traditional forms of protest may arguably fall under its description.⁵

Punishment Absent Unlawful Activity

Although greatly exacerbated following the 2001 attacks, an increase had been evident for several preceding years in massive police presence and punishment absent unlawful activity at large demonstrations. Such punishment of those wishing to exercise their First Amendment rights has taken several forms, including content-based permitting, arrests in anticipation of actions, the setting of record-high bails of up to \$1 million for misdemeanors, and the use

of chemical weapons and “less lethal” rounds against crowds without provocation. Activities that cause individuals to fear engaging in speech because of possible punishment are profoundly dangerous to the proper functioning of any democracy. In addition, the government generates erroneous and negative portrayals of protesters that are repeated uncritically by the media and that perpetuate frightening stereotypes. Furthermore, anticipatory punishment is illegal: In *Collins v. Jordan*, the Ninth Circuit reaffirmed that First Amendment activity may not be banned merely because similar activity resulted in instances of violence in the past: “The courts have held that the proper response to potential and actual violence is for the government to ensure an adequate police presence and to arrest those who actually engage in such conduct rather than to suppress legitimate First Amendment conduct as a prophylactic measure.”⁶

It should be noted that police violence has escalated since the 1999 World Trade Organization meeting, when thousands of individuals of all ages and backgrounds flocked to Seattle for protests. According to the final report of the Seattle City Council’s World Trade Organization Accountability Review Committee, what police described as massive violence by protesters was in fact an abdication of police and city leaders’ responsibility during the planning process. The report concluded that Seattle police chief Norman Stamper’s “failure to provide leadership...contributed to the lack of proper planning, which placed the lives of police officers and citizens at risk and contributed to the violation of protesters’ constitutional rights.”⁷

The suppression of legitimate First Amendment activities by legions of police and government agents suited in body armor and engaging in paramilitary tactics has a terrifying effect on demonstrators and creates an atmosphere of violence. Such tactics frighten protesters and encourage aggressive behavior among police officers, resulting in unnecessary confrontation and injuries.

FBI-Encouraged Police Spying on and Infiltration of Political Groups

On May 30, 2002, Attorney General Ashcroft amended the Attorney General’s guidelines on FBI domestic spying.⁸ Under the new guidelines, agents may use data-mining services and may search

public databases and the Internet for leads to terrorist activities; both of those activities were formerly forbidden. The revised guidelines also shift the authority to begin counterterrorism inquiries from FBI headquarters to special agents in charge of FBI field offices. Nearly thirty years earlier, in 1976, Attorney General Edward Levi wrote guidelines limiting federal investigative power that became known as the Levi guidelines. That revision came about following the shocking revelations of the 1975-76 hearings of a Senate committee, the Church Commission, which exposed the surveillance, infiltration, and disruption tactics used against U.S. political groups by the FBI and the CIA in the COINTELPRO program. Central to the new guidelines was that investigations could only be initiated if “specific and articulable facts” indicated criminal activity. In 1983, Attorney General William French Smith relaxed the Levi guidelines so that a full investigation could be opened if there existed a “reasonable indication” of criminal activity.

After the Attorney General’s guidelines were loosened by Ashcroft, the FBI, in an internal newsletter in 2003, encouraged agents to step up interviews with antiwar activists “for plenty of reasons, chief of which it will enhance the paranoia endemic in such circles and will further serve to get the point across that there is an FBI agent behind every mailbox.”⁹ This language reveals an “us vs. them” approach that vilifies the subject of surveillance. On November 23, 2003, news broke of a classified FBI memorandum dated October 15, 2003, sent to more than 15,000 local law-enforcement organizations days before antiwar demonstrations were held in Washington and San Francisco, encouraging police to report potentially unlawful activities of protesters to the FBI Joint Terrorism Task Force.¹⁰ Examples of “criminal” activity cited were using tape recorders and video cameras and wearing sunglasses or scarves as protection from pepper spray. The memo revealed that the FBI had collected detailed information on the tactics, training, and organization of antiwar demonstrators.¹¹ The memorandum contained information on how some demonstrators prepared for protests and used the Internet to raise funds for legal defense.

The relaxing of restrictions on governmental domestic spying and the FBI memorandum suggest the existence of an ongoing, national drive to collect intelligence related to protests through local law enforcement. There is compelling evidence of the existence of this ongoing effort: Civil libertarians have sued the government to find

out why their names are on a “no fly” list intended to stop suspected terrorists from boarding planes; federal and local authorities in Denver and Fresno have spied on antiwar demonstrators and infiltrated planning meetings; and the New York Police Department questioned many arrestees at demonstrations about their political affiliations and their opinions on the war in Iraq. In addition, the government issued subpoenas for the records of the National Lawyers Guild’s Drake University chapter and to compel antiwar activists to appear before a grand jury months after they attended a Guild-sponsored antiwar conference on the university’s campus in 2003.

An overarching consequence of the government’s accelerated suppression of free expression and its failure to prosecute police departments for aggressive and unlawful conduct is that individuals are intimidated from voicing their views. Would-be protesters or communities frequently targeted by the police, many of whom are thinking about exercising their First Amendment rights publicly for the first time, may decide that it is not worth the risk of encountering police violence and possible arrest. This is particularly true in the case of individuals who have police records or who have concerns about their immigration status.

The Imperiled First Amendment

Activities Protected by the First Amendment

The First Amendment protects “pure speech,” which is expressed in events such as demonstrations and rallies and activities such as picketing and leafleting. The First Amendment also protects “symbolic speech,” which is nonverbal expression intended primarily to communicate ideas, such as street theater and wearing T-shirts with slogans. For example, the Supreme Court recognized the right of high school students to wear black armbands in symbolic protest of the Vietnam War.¹²

The Supreme Court has repeatedly held that sidewalks, streets, and parks are long-established First Amendment forums:¹³

Wherever the title of streets and parks may rest, they have immemorially been held in trust for use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.¹⁴

The Supreme Court has held that public inconvenience, annoyance, or unrest are not sufficient reasons to carve out exceptions to the First Amendment.¹⁵ Justice William Douglas wrote:

A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purposes when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.

This is why freedom of speech...is...protected against censorship or punishment...(4) There is no room under

our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.¹⁶

In *Edwards v. South Carolina*,¹⁷ the Supreme Court struck down convictions for breaching the peace for 187 black students who marched to the South Carolina Statehouse holding anti-segregation signs.

The state cannot prohibit free-speech rights in public forums such as parks and streets. But it can regulate such speech, using narrowly drawn statutes that give limited discretion to officials to restrict speech at particular times and places and in particular ways, as long as the justification for such prohibition is not content-based.

Free speech can also be limited by “time, place and manner” restrictions, as long as those restrictions are reasonable. Justifiable regulations include requiring a permit to hold a meeting in a public building or to conduct a demonstration that may interfere with traffic. But restrictions that are overly burdensome violate the First Amendment. In the 1960s officials in Southern cities frequently required civil-rights activists to apply for demonstration permits, but then granted or denied the permits arbitrarily. In *Shuttlesworth v. Birmingham*,¹⁸ the Supreme Court struck down such licensing schemes as unconstitutional. The *Shuttlesworth* Court held, in part, that a “law subjecting the right of free expression in publicly owned places to the prior restraint of a license, without narrow, objective, and definite standards is unconstitutional, and a person faced with such a law may ignore it and exercise his First Amendment rights.”¹⁹

Attorney General Ashcroft’s Unlawful Failure to Prosecute Police Abuse

After passage of the Crime Control and Law Enforcement Act of 1994, the Department of Justice was tasked with collecting data on the frequency and types of abuse complaints filed nationwide. The 1994 Act included a new statute under which the DOJ may sue for declaratory relief (a statement of the governing law) and equitable relief (an order to abide by the law with specific instructions describing actions that must be taken) if any governmental authority

or person acting on behalf of any governmental authority engages in “a pattern or practice of conduct by law enforcement officers...that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.”²⁰

In 1996 the DOJ initiated several federal pattern-and-practice civil investigations of police departments, and subsequently it forged agreements with police departments around the country. The DOJ’s Civil Rights Division investigated police misconduct in Steubenville, Ohio and Pittsburgh and worked out agreements with those cities to institute reforms aimed at curbing practices that constituted violations rather than risk the DOJ’s taking a case to court for injunctive action.²¹ DOJ-proposed reforms included improving policies and training on the use of force, instituting more effective reporting mechanisms and disciplinary procedures, and establishing early-warning systems to identify officers engaging in abuse or at risk of doing so.²² In June 2001, the Los Angeles Police Department and the City of Los Angeles entered into a consent decree requiring change in such areas as complaint investigations and documentation of the use of force. A consent decree is an agreement between involved parties submitted in writing to a judge. Once approved by the judge it becomes legally binding.

When Attorney General Ashcroft took office, however, there were significant changes in the DOJ’s approach to oversight of police misconduct. The Attorney General has shown an aversion to entering into consent decrees, rather preferring to enter into memoranda of understanding with police departments, and often lifting existing consent decrees.

For example, in 1997 the DOJ intervened in a civil-rights lawsuit against police in Pittsburgh and helped design systemic reforms. Under John Ashcroft’s authority, however, the DOJ’s Civil Rights Division joined with Pittsburgh officials in 2002 in asking a federal judge to lift the consent decree, even though the court-appointed auditor had just documented several remaining problems. The court granted the Justice Department’s motion in part, over the objection of the NAACP, the ACLU, and other groups that had initiated the lawsuit prior to the DOJ’s involvement.²³

In another example of Attorney General Ashcroft’s shying away from consent decrees, the DOJ requested an order partially lifting the consent decree between the State of New Jersey and the Department

of Justice entered into in 1999 amid allegations that police were engaging in racial profiling. A U.S. District Judge signed an order in early April 2004 ending federal oversight of the Office of Professional Standards, the internal affairs unit of the New Jersey police. Civil-rights leaders were critical of the judge's decision, saying that the consent decree should not be lifted in pieces.

Mr. Ashcroft publicly indicated his reluctance to use the law to prosecute police departments in his remarks to the Fraternal Order of Police in its 55th Biennial National Conference in Phoenix on August 14, 2001. In explaining how in 1999 the District of Columbia Metropolitan Police Department "asked for help to determine if its officers used excessive force in dealing with members of the public," he described how the Justice Department began to "fix the problem:"

No court orders were involved. No consent decrees were issued. Through hard work and good will on both sides we were able to produce results.²⁴

Consent decrees are generally regarded as critical in implementing institutional reform in police departments. Former U.S. Assistant Attorney General John Dunne has noted that consent decrees force top-level police officials to commit to reform.²⁵ He also supports bringing pattern-and-practice suits and says they cast "a whole new light on the matter of Civil Rights Division responsibility."²⁶ Indeed, Mr. Ashcroft's "hard work and good will" approach clearly had no long-term effect on the MPD's pattern and practice of using excessive force against members of the public, as a 2004 report by the D.C. City Council's Committee on the Judiciary explains in detail.²⁷

By not exercising federal prosecutorial oversight of national, systemic police violations of civil rights, Attorney General Ashcroft is essentially acting as a conspirator with police departments around the nation to deprive people of their constitutionally protected rights. Ashcroft could, for example, bring pattern-and-practice suits under the Federal Civil Rights Act, 42 USC Sections 1981-1988, especially Section 1983 (the Civil Rights Act of 1871). The Supreme Court identified the three primary purposes intended by the Congress that enacted the statute: 1) to override certain kinds of state laws; 2) to provide a remedy where state law was inadequate; and 3) to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice.²⁸

Mr. Ashcroft's tolerance of police abuse of power also violates international human-rights law as contained in treaties to which the US is a party. Once ratified, treaties are the law of the land and are binding on all levels of government:

- **The International Covenant on Civil and Political Rights**, signed by the President in 1978 and ratified by the U.S. Senate in 1992, which prohibits excessive police force.
- **The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**, signed by the President in 1988 and ratified by the U.S. in 1994.
- **The Universal Declaration of Human Rights**, adopted by the General Assembly of the United Nations in December 1948.

The National Lawyers Guild's Role in Defending Mass Movements

Individuals and grassroots organizations rely on the National Lawyers Guild to monitor large, national demonstrations as well as smaller, local gatherings and to help ensure that infringements of First Amendment liberties do not go unchallenged.²⁹ In large part this trust is the result of the Guild's history of working for nearly 70 years to challenge governmental infringement of the rights of individuals. Its unique "legal observer" program sends trained observers to monitor law enforcement at rallies and marches in an effort to create a safe atmosphere for people to express their political views as fully as possible without unconstitutional disruption or interference by police.³⁰ Legal observers are typically, though not exclusively, law students, legal workers (nonlawyers whose professions largely involve working with the law), and lawyers who may or may not be licensed in the jurisdiction in which the demonstration takes place. Legal observers are trained and directed by Guild attorneys.³¹ In many cases such attorneys have established attorney-client relationships with activist organizations or are engaged in litigation challenging police tactics at political protests.

The primary role of the legal observer is to be the eyes and ears of the legal team—to observe and record incidents and the activities of law enforcement in relation to the demonstrators. This includes documenting arrests, use of force, intimidating display of force,

denial of access to public spaces like parks and sidewalks, or other behavior on the part of law enforcement that restricts the ability to express political views. Documentation is conducted in a thorough and professional manner so that lawyers representing arrestees or bringing an action against the police are generally able to objectively evaluate the constitutionality of government conduct. Information gathered by legal observers has contributed to an extremely successful track record in defending and advancing the rights of demonstrators, including in criminal trials and in several major lawsuits against federal and local government bodies for unconstitutional actions. The New York State Conference of Bar Leaders awarded its 2003 Award of Merit to the New York City chapter of the National Lawyers Guild for its mass defense work.

The Guild, which has a 35-year history of monitoring First Amendment activity, has witnessed a notable change in police treatment of political protesters since the November 1999 World Trade Organization meeting in Seattle. At subsequent gatherings in Washington, D.C., Detroit, Philadelphia, Los Angeles, Miami, Chicago, Portland, and Detroit, a pattern of behavior that stifles First Amendment rights has emerged that includes the following:

- content-based rally-permit procedures and onerous liability-insurance requirements;
- checkpoints to search demonstrators' bags without probable cause;
- so-called "free-speech" zones, constricting protesters into pens of metal barriers;
- pretextual and unjust arrests before, during, and after protests;
- abusive and unjustified use of less-lethal weapons for crowd control;
- unprecedented high bails, up to \$1 million, for protesters charged with misdemeanors; and
- detention of protesters without access to counsel, in violation of the Sixth Amendment, and without prompt processing for release on bail.

These initiatives, implemented prior to the September 11, 2001 terrorist attacks and since then carried out in the name of "national security," are clearly designed to make it difficult to express political viewpoints. Such restrictions on political expression have clearly

gained great momentum and have become magnified and codified in law in recent years.

How the Police, with Justice Department Approval, Violate the First Amendment

Police infractions of civil liberties are evident before, during, and after demonstrations throughout the country. The next three sections, in that order, lay out strategies used by law enforcement that systematically violate the constitutional rights of individuals nationwide.

Chilling Political Expression Before Demonstrations

In the late 1990s there was a noticeable shift from reactive law enforcement to preemptive law enforcement. Preemptive policing includes engaging in mass false arrests and a range of other activities designed to stop individuals before they engage in associative activities. False and pretextual arrests occurred before the 2000 World Bank/International Monetary Fund (IMF) demonstrations in Washington, D.C. Police also shut down a central meeting place and organizers' offices while confiscating literature, signs, and banners—materials clearly protected by the First Amendment—as well as medical supplies. These tactics have been repeated at most large demonstrations following the World Bank/IMF protests, but in nearly all instances they are illegal. Probable cause must exist for each and every person arrested in order to constitute lawful arrest.³²

Other pre-demonstration tactics include intimidation by the media, police infiltration, passing unconstitutional ordinances in advance of specific demonstrations, and denying permits based on content.

Intimidation by the Media

One of the first measures is to deter people from attending demonstrations altogether. The media plays a large role in this by depicting protesters as violent and by showing striking images of weapon-bearing police officers in riot gear well in advance of a given event. Such early media coverage of *anticipated* confrontations

between police and protesters is now commonplace. For many people hoping to join in First Amendment protected activities, such images serve as a deterrent to attending.

An independent review panel investigating the actions of the Miami-Dade Police Department and the Miami-Dade Corrections and Rehabilitation Department during the FTAA conference acknowledged that the media played a large role in shaping police treatment of protesters. In its June 2004 draft report, the review panel wrote that “[m]edia coverage and police preparation emphasized ‘anarchists, anarchists, anarchists’ and this contributed to a police mindset to err, when in doubt, on the side of dramatic show of force to preempt violence rather than being subject to criticism for avoidable injury and destruction based on too reserved a presence of police force.”³³ Further, the report found that police were trained to address massive civil disturbance because “intelligence indicated some groups might attempt to ‘violently disrupt the FTAA conference and cause damage to both private and public property.’” The report of the review panel found, in fact, that “[t]here were no massive disturbances.”³⁴

In April 2000, when the Fire Department, EMS, and police raided activists’ “convergence space” at the World Bank and International Monetary Fund protests in Washington, D.C., Charles Ramsey, the police chief, and Terrance Gainer, the former executive assistant chief, told the press that activists were making homemade pepper spray and Molotov cocktails. On April 15, 2000, the Associated Press quoted Gainer as saying that police had seized what appeared to be a Molotov cocktail—a container with a rag and what appeared to be a wick in it. The chief was later quoted on television on *The News with Brian Williams*, speaking about the alleged homemade pepper spray on April 27, 2000. Neither statement was substantiated in the Fire/EMS records on the materials seized at the convergence center, or in the MPD and Fire/EMS witness testimony.³⁵ Police later admitted that the Molotov cocktail was a plastic container stuffed with rags. They also admitted that the makings of “pepper spray” were peppers, onions, and other vegetables found in the kitchen area, while so-called “ammunition” found in an activist’s home was merely empty shells on a Mexican ornament.³⁶

Months before the 2000 Republican National Convention in Philadelphia, local media reported Mayor John Street’s prediction that protesters were coming to the city to be disruptive: “I have

strong feelings about First Amendment stuff, but we have got some idiots coming here. Some will come and say whatever obnoxious things they want to say and go home. Some will come here to disrupt, to make a spectacle out of what's going on. They are going to get a very ugly response.”³⁷

The Metropolitan Police Department in D.C. gave the media an inflated number of expected protesters before the September 2002 World Bank/IMF meetings. The chief told the City Council and the press that the Police Department expected 20,000 to 30,000 protesters, despite the fact that the Department's internal operation plans specified no more than 4,000 anticipated attendees.³⁸

In Washington, D.C., the media reported that law-enforcement authorities met on September 20, 2002 to plan maneuvers against groups planning disruptive or violent demonstrations during the World Bank/IMF meetings. Terrance Gainer and D.C. police had met with the U.S. Attorney's office and the Department of Justice to discuss protest plans that, they claimed, included efforts to shut down the District, clog the Capitol Beltway, and vandalize stores and police cars.³⁹ The *Washington Post* quoted Gainer as saying that authorities discussed whether protest activities “are so deleterious to security efforts that we ought to take proactive action, whether there are violations of the law that are so potentially egregious that they outweigh the First Amendment rights of someone to come in and speak with their life and shut down our intersections.”⁴⁰

In response, on September 20, 2002 the Anti-Capitalist Convergence (ACC), a coalition of activists formed in 2001, issued a press release saying that police have been “spreading lies about the nature of the demonstrations and the actions planned.”⁴¹ The statement indicated that the ACC's plans called for marches, bike rides, antiwar leafleting, and theater. It cited accusations that the group was planning violence as “reckless and unfounded.” Guild member Mara Verheyden-Hilliard, an attorney for the D.C.-based Partnership for Civil Justice, also dismissed Gainer's comments:

[Claiming that protesters plan violence] is their standard demonization tactic. There has been no call for violence by any of the people in organizations who are coming to Washington to protest. The police department is once again demonstrating their contempt for the constitutional rights of protesters in

this city. Frankly, when they talk about preemptively shutting down protests and First Amendment speech, that is a hallmark of a police state and a repressive government.⁴²

Days before the World Economic Forum in New York City in February 2002, local newspapers carried continual, multiple visual images—often on the front page—of police officers wearing defensive body armor (riot gear) and carrying automatic weapons. In an effort to counter those particular negative images and messages, the National Lawyers Guild convened a press conference of civil-rights lawyers on January 30, 2002 to announce the presence of legal observers at the then-upcoming World Economic Forum. The coalition of attorneys announced plans to mobilize legal observers on the streets to protect the rights of the thousands of demonstrators expected to attend. The lawyers also criticized the role that the media played in deterring individuals from expressing their viewpoints:

The National Lawyers Guild is especially concerned about the intimidating images, including police in riot gear, that have repeatedly appeared in the print and electronic media surrounding this event. We want to ensure that individuals who wish to peacefully express their political views may do so without fear of unduly harsh treatment by the police.

*Leslie Ann Brody, Mass Defense
Committee of the National Lawyers
Guild's New York City Chapter*

Under the auspices of the National Lawyers Guild, dozens of attorneys and trained legal observers were indeed on hand at the demonstrations and maintained a prominent presence throughout the summit.

Major media coverage was given to the Georgia governor's May 2004 declaration of a state of emergency because of protests expected in connection with the Group of Eight summit to be held on Sea Island the following month. The Guild issued a press release condemning this as a gross overreaction to vastly inflated security concerns. Guild president Michael Avery stated:

The government is using an exaggerated threat of disruption in order to demonize and discourage legitimate political protest. If the declaration of emergency by Governor Sonny Perdue of Georgia were justified, it would have made sense to put the entire South under a state of emergency for the entire period of the civil rights movement.

Obviously such draconian security measures have no place in a constitutional democracy. It is precisely when conditions are tense and difficult that we need the protection of the Constitution for the right to protest and dissent the most.⁴³

Perhaps not surprisingly, only a few hundred protesters actually appeared, and the small number of arrests that took place were mainly for blocking traffic.

The May 17, 2004 cover of *New York* magazine promoted two companion articles, accompanied by a photograph of a protester wrapped in a U.S. flag. One headline read, “The Circus is Coming to Town: A Bush-hating nation of freaks, flash-mobbers, and civil-disobedients is gathering to spoil the GOP’s party.”⁴⁴ The other headline taunted, “Cops to Protesters: Bring It On.”⁴⁵ The latter article depicted protesters as violent “wannabe revolutionaries and anarchists.”⁴⁶ The article went on to apply the “terrorism” brush to protesters by describing how the police would utilize “vehicle checkpoints around the perimeter of the Garden manned with heavy weapons, dogs, and portable Delta barriers, which are enormous metal contraptions that lie almost flat in the road and can be raised very quickly with the flip of a switch. They are substantial enough to stop a large truck.”⁴⁷

Nearly the entire front page of the July 12, 2004 edition of the *New York Daily News* contained a fear-inspiring proclamation. The cover read: “*ANARCHY THREAT TO CITY Cops fear hard-core lunatics plotting convention chaos.*” Inside the paper, a two-page headline further announced: “*FURY AT ANARCHIST CONVENTION THREAT, These hard-core groups are looking to take us on. They have increased their level of violence.—Police Commissioner Raymond Kelly.*” The *Daily News* reported how “Kelly and company have to combat a shadowy, loose-knit band of traveling troublemakers who spread their guides to disruption over the Internet.”

According to the article, on April 28, 2004, the New York Police Department (NYPD) announced special procedures to board trains one stop before coming into Penn Station during the RNC and using bomb-sniffing dogs and detection devices. The article referred to alleged excerpts from an anarchist website that suggested methods for misleading the bomb-sniffing dogs: “Go to a rifle, *pistol* or *skeet* shooting range, spend an hour shooting to *saturate* clothing with smell of gunpowder, go directly to a New Jersey Transit, LIRR or subway train headed for Penn Station. . . . try to get near police and dogs, *loiter* as long as possible around the dog, try to pet it if possible” (emphasis added).

Bruce Bentley, the RNC Coordinator for the New York City chapter of the National Lawyers Guild, pointed out that, “[a] closer look of the article reveals how little information is provided to support such headlines, and raises several questions that the *Daily News* did not pursue, nor did the many other media sites that repeated the story without further investigation.” He asked:

- Why did Commissioner Kelly wait *more than two months* before making these claims?
- Why did Commissioner Kelly fail to identify the website and the group, if it posed such a serious threat?
- Why has no one else been able to locate the original website by doing an Internet search using the excerpts?
- Why were the excerpts, which only referred to distracting the dogs, offered as proof to support the contention that “they have increased their level of violence?”
- Is not the language in the excerpts less likely to be from anarchist “hard-core lunatics,” and more likely to be from someone who would be more familiar with words such as “pistol,” “skeet,” “saturate” and “loiter”?

Pretextual Searches and Raids of Organizing Spaces

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

- conduct a warrantless search of the premises under the guise of an administrative search; or

- find a housing violation as the pretext to close down the premises.

The Supreme Court has held that administrative searches such as fire and building inspections may not be used a pretext for a criminal investigation.⁴⁸ Human Rights Watch sent a letter of concern to Washington, D.C. police chief Charles Ramsey in April 2000 questioning, among other matters, the necessity of closing protesters' "convergence center" under the guise of its being a fire hazard, and asking what the exact nature of the fire-code violation was and whether the property owners had previously been cited for preexisting code violations.⁴⁹

On April 15, 2000, Fire and Emergency Medical Services officials and police in Washington, D.C. raided a "convergence center" on Florida Avenue NW. The stated reason was fire-code violations, although the action was later found to violate prohibitions on infringement of free speech: "The agencies effectively closed down the convergence center not primarily for public safety reasons, but for other reasons that presumably include disrupting the planned demonstrations and securing, for law enforcement purposes, information on those participating in the demonstrations."⁵⁰ Police seized puppets and literature for the next day's World Bank protests in what the *New York Times* described as "a preemptive show of force."⁵¹

Attorneys from the National Lawyers Guild and the Partnership for Civil Justice secured a signed emergency agreement at 2 a.m. in federal district court with city attorneys to reopen the convergence center. Police breached the agreement, however, and kept the center locked until the protests were over. Later the lawyers obtained production notes for a video to train D.C. police on how to handle protesters that suggested showing "footage when Intel shut down the convergence center." The reference to the police intelligence unit (Intel) was evidence that the raid was in fact about disrupting protest, not addressing fire-code violations. The same notes refer to such training topics as "locking up the troublemakers on the first night," "sleep deprivation tactics," and "going in when you spot a section of 'All Black.'" The D.C. City Council Committee on the Judiciary's report on the investigation of the MPD indicated that documents obtained by the committee supported the notion that the raid was a police operation intended to interrupt demonstrators' activities. The

committee found that the police and fire department/EMS actions were clear violations of First Amendment protected activities.

The Los Angeles chapter of the National Lawyers Guild had success in enjoining such administrative searches before the 2000 Democratic National Convention (DNC). The Guild and the ACLU sent a letter to the Los Angeles police and fire departments on August 7, 2000, demanding that they cease from harassing DNC protesters at their organizing space, including by making visits without a warrant, demanding to see the lease, and asking to conduct a fire inspection. The letter went on to state:

The repeated attempts to enter the Convergence Center, without warrants, is a clear infringement of the right to be free from unlawful searches.... The City may not circumvent the constraints of the Fourth Amendment by substituting other city employees for Los Angeles police officers. The same Fourth Amendment protections apply to the execution of administrative search warrants.

Absent legitimate exigent circumstances, which do not exist here, no government agent may enter the building without a judicial warrant.... Supreme Court cases “make it very clear that an administrative search may not be converted into an instrument which serves the very different needs of law enforcement officials. If it could, then all of the protections traditionally afforded against intrusions by the police would evaporate, to be replaced by the much weaker barriers erected between citizens and other government agencies.”⁵²

Before the DNC, the Guild and several other groups sued police chief Bernard Parks and the City of Los Angeles.⁵³ The lawsuit resulted in a temporary restraining order, in effect for the duration of the Convention, enjoining defendants from “seizing from the Convergence Center or destroying any puppets or printed material” and “entering the Convergence Center on the basis of purported administrative violations, including building and safety, zoning, and fire code violations, in the absence of a prior order issued by this Court.” The injunction did not bar execution of warrants for other criminal activity.

In May 2003, before the World Agricultural Forum was to convene in St. Louis, local police detained a number of people in a sweep of at least three buildings said to be used by protesters. In at least some cases officers were accompanied by building inspectors who checked for occupancy permits and building-code compliance. Police chief Joe Mokwa promised an explanation in a press conference. One police source said that about 15 people from various locations were in custody.⁵⁴ Friends of one woman who was arrested said police had stopped the van she was riding in and confiscated pills in an unmarked container that she explained were vitamins. An occupant of the van said that plainclothes officers had videotaped them. People who identified themselves as protesters said police had been stopping them in recent days for riding bicycles without helmets or driving vehicles with burned-out lights.

At the November 2003 FTAA demonstrations in Miami, the Lake Worth Police Department (LWPD) and the Lake Worth Fire Prevention Bureau engaged in unlawful actions against Lake Worth Global Justice (LWGJ) members and volunteers in violation of their constitutional rights for over a month following the LWGJ's move into a warehouse, according to LWGJ's attorneys. LWGJ is an incorporated, nonprofit, grassroots social-justice organization that participated in several marches, rallies, and other First Amendment activities. The group's members constructed large puppets to use as a form of political expression during the protests. Similar puppets have been created and used in expressive activities at demonstrations throughout the United States. There is no evidence that they have ever been used in anything other than lawful activities.

Over a four-week period in October and November 2003, the LWPD and the Fire Prevention Bureau conducted numerous unlawful actions involving LWGJ members and volunteers, including subjecting them to an unlawful inspection and search for alleged fire-code violations; conducting surveillance; and carrying out police stops and detentions without reasonable suspicion. In LWGJ's view these acts of intimidation were intended to have a chilling effect upon the constitutional rights of LWGJ members, volunteers, and supporters. A letter dated November 13, 2003 was sent to Lake Worth city attorney Larry Karns demanding an end to these unconstitutional practices.

On October 13, 2003, fire captain Mark Carsillo of the Fire Prevention Bureau demanded to conduct an administrative inspection

and search of the warehouse for alleged code violations. LWGJ did not consent to the search. However, Captain Carsillo, who stated that he required the presence of two LWPD officers at the warehouse for his protection, conducted an unlawful, warrantless inspection of the LWGJ warehouse, in violation of Florida law.⁵⁵ In Florida a warrant is required for any inspections conducted pursuant to state or local law concerning, among other things, fire and safety, where consent is sought and denied.⁵⁶ A warrant must be issued to conduct such an inspection, and it can only be executed by a judge for cause and cannot be executed between 6 p.m. and 8 a.m. or on a Saturday or a Sunday. Notice that such a warrant has been issued must be given at least 24 hours before the warrant is executed.

On May 5, 2004, Boston organizers of a nonviolent activist group experienced firsthand the governmental pressure put on an academic institution to prohibit them from meeting on campus. When Bl(A)ck Tea Society⁵⁷ members arrived for their scheduled meeting on the campus of the Massachusetts Institute of Technology to discuss plans for protests at the summer's Democratic National Convention, they were greeted by two armed and uniformed Cambridge police officers, one of whom refused to identify himself, the chief of the MIT campus police, and a plainclothes police agent who also refused to identify himself. The officers were guarding and blocking the door to the room the group had reserved, denying access to the meeting space that Bl(A)ck Tea Society members had been using for several months.⁵⁸

Bl(A)ck Tea Society members were never informed of any such cancellation of their room reservation. When asked about the matter, the campus police chief refused to identify who was responsible for shutting the meeting space down, or even who directed him to block the entrance. However, sources later claimed that John Kerry's Secret Service had visited the MIT campus multiple times to convince, or to simply inform, MIT officials that they should not allow the Bl(A)ck Tea Society, an expressly nonviolent group, to meet on their premises. This is part of a larger pattern, according to the *Boston Herald*; the Secret Service also visited Georgia to pressure institutions not to host activists organizing for the Group of Eight summit.⁵⁹ The MIT administration had decided that members of the Bl(A)ck Tea Society were not to enter the scheduled meeting room or have any other meetings on MIT property, under threat of police arrest.⁶⁰

Police Infiltration and Surveillance Absent Allegations of Criminal Conduct

In the mid-1970s, a U.S. Senate Select Committee disclosed a longstanding and wide-ranging national surveillance, infiltration, and counterintelligence program against lawful activities of civil-rights and antiwar protesters.⁶¹ The Church Commission's disclosure of an FBI/CIA counterintelligence program (COINTELPRO) that targeted the lawful activities of leaders like the Rev. Dr. Martin Luther King and thousands of other individuals and organizations advocating changes in social conditions and government policies for infiltration and surveillance launched an era of government regulation of political surveillance. The FBI adopted political surveillance guidelines,⁶² lawsuits were brought against the political intelligence units of state and municipal police departments (which activists referred to as "red squads"),⁶³ and some localities adopted municipal ordinances.⁶⁴ Each led to guidelines governing law-enforcement interaction with First Amendment political, associational, and religious activities by members of the public. Although varying in form among local policing organizations, each had the lynchpin characteristic of requiring specific information that criminal activity was taking place before police could investigate political activity, particularly surveillance of First Amendment and associational activity and use of undercover infiltration as an investigation technique.

The creation of rules was particularly significant because the U.S. Supreme Court and lower courts had consistently ruled that collection of information by lawful means, for lawful purposes, by police agencies caused no injury and hence did not give rise to a justifiable court case.⁶⁵ This was so notwithstanding any implied intimidation, threat, or "chilling effect" experienced by those subject to surveillance.

The quarter-century era of guidelines requiring a criminal activity predicate before police engage in surveillance and infiltration of protected political activity abruptly ended in January 2001. A federal appeals court granted a request by the City of Chicago to virtually eliminate the consent decree governing political surveillance by the Chicago Police Department.⁶⁶ The court ruled that the Police Department's professed need to keep tabs on incipient terrorist groups warranted the virtual elimination of rules regulating political

surveillance of even lawful activities. Following the September 11, 2001 terrorist attacks, this trend spread across the nation as the FBI⁶⁷ and other police agencies eliminated or significantly weakened guidelines governing police political surveillance.⁶⁸ While weakened rules still exist on paper in some jurisdictions, these looser rules usually contain exceptions so broad that police are authorized to conduct widespread surveillance without a criminal activity predicate.⁶⁹

Police infiltration of protest groups may have unlawful consequences, such as when police engage in disruptive and provocative activities. For example, a decision to use force, if based on false reports filed by infiltrators, is improper.⁷⁰ Infiltrators may also engage in illegal actions such as pretending to be protesters and spraying mace into a crowd.

The Los Angeles chapter of the National Lawyers Guild is challenging police infiltration and has a limited court order directing the police to disclose the identities of undercover infiltrators, or “scouts,” as the Los Angeles Police Department calls them. The Guild has argued, in the context of Democratic National Convention litigation, that decisions to use force were based on false reports from these infiltrators and that the Guild is entitled to know who the infiltrators are because they have “relevant” evidence.⁷¹

In late 2002 the Partnership for Civil Justice (PCJ) uncovered proof not only that the D.C. police send undercover officers and use informants at protest-planning meetings but also that they have an ongoing campaign of infiltration, and not merely passive surveillance, in which officers pose as long-term activists within the local “movement,” and that information collected is being relayed to federal law enforcement. Such infiltration is in the absence of allegations of criminal misconduct. Guild members at the PCJ won an order requiring the police to disclose the identities of these “activists.” A City lawyer said the ongoing surveillance was necessary not because of suspected criminal activity but because police need to know whether more officers are required for upcoming marches. Activists unmasked two other infiltrators, one of whom reportedly suggested that activists should either plant bombs on Potomac River bridges or call in bomb threats during the presidential inauguration.⁷²

Guild members at the Partnership for Civil Justice obtained an amateur videotape that shows two men wearing plain clothes, one with his face was covered with a black ski mask, sifting through the crowds at the inauguration, assaulting and pepper-spraying protesters.⁷³ After pressure and litigation by the PCJ, the District acknowledged that the two men were on-duty undercover police officers on an intelligence detail. The report on the investigation of the MPD by the Committee on the Judiciary describes the tape as showing “Investigator Cumba...[whose] face is hidden by a black ski mask and a white hood.... holding a can in his right hand. He is seen walking through the crowd, and he shoves someone out of his way to his left. In two series of shots he appears to hold the can and spray its contents at other persons in the crowd....At no time is there any indication that the officer announced he was a police officer, as is required by department policy.”⁷⁴ PCJ litigation further uncovered that FBI Joint Terrorism Task Force agents took notes describing protesters boarding buses coming from other states en route to the inauguration. Police also monitored activist gatherings, including one at the First Congregational United Church of Christ.

In its report on the investigation of the MPD’s policy and practice in handling demonstrations in the District of Columbia, the D.C. City Council’s Committee on the Judiciary found that the Metropolitan Police Department has conducted and continues to conduct surveillance of political organizations to learn about plans for demonstrations. Such surveillance is conducted through the Internet and other media and by deploying non-uniformed (“plain clothes,” “casual clothes,” or undercover) officers to meetings.⁷⁵ The Committee found that undercover officers attended meetings and took part in activities pretending to be activists, using false names and personal histories and wearing clothes intended to help them fit in with other activists.⁷⁶ Former undercover officers told the Committee that they were directed to “absorb,” “infiltrate,” or “burrow” into the organizations.⁷⁷ Officers would summarize information related to an event in an “undercover officer report” within 24 hours. The report would then be transmitted to the MPD’s Intelligence Unit. Undercover assignments were not just event-limited, however; police monitored groups for up to a year, and the activities monitored exceeded the planning of events. Furthermore, no guidelines about the constitutionality of surveillance were given to undercover officers. And although the former undercover officers felt that their information had prevented disruption during demonstrations, they testified that they never observed criminal

activity or violence beyond some minor property damage. The Committee found that the MPD management failed significantly in engaging in an undercover surveillance operation absent guiding policies or instructions to the undercover officers.⁷⁸

Prompted by information that activists from several groups were going to protest the 2002 TransAtlantic Business Dialogue meeting of international business leaders in Chicago, police officers infiltrated five protest groups that year.⁷⁹ Undercover officers attended meetings and rallies (making video and audio recordings) of the American Friends Service Committee, Anarchist Black Cross, The Autonomous Zone, the Chicago Direct Action Network, and Not in Our Name. Police also conducted other spying actions in 2003, but would not reveal the names of the organizations targeted, according to an internal police audit⁸⁰ obtained by the *Chicago Sun-Times*.⁸¹ None of the police spying resulted in criminal charges against activists.

On July 25, 2004, a Georgia state official speaking at the Georgia Association of Chiefs of Police conference in Savannah revealed that as many as 40 undercover narcotics officers had dressed up as protesters at the Group of Eight (G-8) summit in early June.⁸² The undercover officers wore baseball caps, T-shirts, and shorts and attended classes on how to act like protesters. They also held video cameras and worked in four teams of eight to ten officers. The officers had access to a digital database of photographs, according to Georgia homeland security director Bill Hitchens, who claimed that the database included photos of “[e]verybody in this country that was involved in anarchist movements, the leadership and anybody who had ever been tagged for being involved in violent demonstrations before.”⁸³ According to the Associated Press, Hitchens said that the undercovers blended in so well that when they were in the Multi-Agency Command Center, the Secret Service accused him of bringing protesters into the Center.

Laura Raymond, an NLG national student organizer who worked with the legal team on the ground in Brunswick and Savannah, described the presence of police officers disguised as activists:

The undercover police officers were seemingly everywhere in Georgia and for the most part were quite obvious. After arriving in Brunswick on Sunday, June 6, 2004, I immediately began taking

note of the undercovers literally everywhere that protesters were gathering. Legal observers were documenting their presence as well with photographs and video. At times it felt very surreal because the legal team and activists were constantly being filmed by uniformed police, soldiers in fatigues, and men who were clearly undercover. This was true when we were simply walking down the street, sitting in the park, or otherwise just waiting around. Given the small number of protesters and the overwhelming police presence and surveillance, if this doesn't translate into intimidation of free expression then I don't know what would.

Although the federal government did not disclose the number of officers it sent to the G-8 summit, Hitchens claimed that 136 state and local agencies deployed some 11,056 police and security forces, including 4,800 National Guard troops and a small number of state police from Florida and South Carolina.⁸⁴ Congress allotted \$35 million to bring in the National Guard and to pay for overtime, meals, lodging, and police equipment.

Police officers did not only pretend to be protesters; some overstepped their authority by posting signs that said the seven-mile causeway link from Sea Island to the mainland was off-limits to pedestrians. Glynn County police chief Matt Doering told the Association of Chiefs of Police that his department lacked the authority to ban pedestrians as long as they weren't blocking traffic.⁸⁵

A Chicago Court-mandated internal police audit issued in mid-February 2004 revealed that undercover police officers infiltrated five social justice organizations in that city in advance of protests at the TransAtlantic Business Dialogue summit, held in Chicago in November 2002. The audit also revealed that Chicago police launched at least four other spying operations in 2003. Guild member Jim Fennerty participated in a press conference on February 25, 2004 with the targeted groups Not in Our Name, American Friends Service Committee, The Autonomous Zone, and Anarchist Black Cross. The Chicago spying operations were initiated after a 2001 federal appeals court abolished restrictions contained in a 1981 consent decree resulting from a 1974 lawsuit on police spying on political activists.

Undercover detectives from the New York Police Department's intelligence division reportedly infiltrated meetings that the Bl(A)ck Tea Society held in a Boston church to plan for protests at the Democratic National Convention. According to *New York Newsday*, the Massachusetts State Police, who had also been also monitoring the Bl(A)ck Tea Society, grew suspicious when they saw a car with New York State license plates pulling up in front of Downtown Community Church.⁸⁶ They followed the car after the meeting and discovered the occupants were detectives after they stopped it for speeding. In a letter to New York City police commissioner Raymond Kelly and Michael Cardozo of the Corporation Counsel of the City of New York, Guild members and counsel in *Handschu v. Special Services Division* sent notification of the political surveillance, which is not authorized under New York's new *Handschu* guidelines. "The New Guidelines are of course 'binding on all members of the service [NYPD] who are engaged in the investigation of political activity.' They do not permit undercover attendance at lawful political meetings except as part of an authorized investigative activity. We notify defendants to cure the practice of attending lawful First Amendment meetings undercover except as specifically authorized by the new *Handschu* guidelines."⁸⁷

The police have evaded responding to the notice that they engaged in undercover political surveillance prohibited by the new *Handschu* guidelines by stating that because the group or a person or a member of the group did not present a claim in writing that his or her constitutional rights were violated, they are under no obligation to respond.⁸⁸

Four undercover state police officers were arrested with activists blocking an intersection during the 2000 Republican National Convention in Philadelphia. A total of at least six undercover state troopers were arrested at the protests, even though city and state officials denied that they were infiltrating groups during the protests.⁸⁹ A state trooper was among those arrested during an August 1, 2000 raid on a warehouse being used by protesters, and it was unclear where the sixth trooper was arrested. Philadelphia police are restricted from undercover operations under a 1987 mayoral directive that says police must seek the mayor's permission, along with that of the city's managing director and the police commissioner, before infiltration of protest organizations.⁹⁰

Content-Based Exercise of Discretion in Denying Permits and in Paying for Permits and Liability Insurance

Permit schemes must be content-neutral regulations authorizing reasonable “time, place and manner”⁹¹ regulations (such as traffic-control considerations) to prevent licensing officials from discriminating against groups or speakers with whom officials disagree.⁹² Written ordinances or regulations by which local police departments issue permits for street parades or large demonstrations should contain specific and narrowly defined standards, as well as a clearly explained process by which permits are granted, such as the expected size of the gathering that may require increased police security measures. Unwritten policies directing officials to deny permits based on applicants’ dress, for example, constitute unconstitutional viewpoint discrimination.⁹³

Historians point out that rulings denying the right to march hold symbolic weight.⁹⁴ The very act of marching has had psychological and emotional power over the past 200 years, power that does not exist with stationary forms of protest. “The simple act of moving forward in a group, made up of diverse contingents, has a visceral force that energizes not only participants but observers.”⁹⁵ Marching during the civil-rights movement was itself a form of political expression—the march from Selma to Montgomery in 1965 brought the voting-rights movement into the national eye.⁹⁶ Michael Kazin, a history professor at Georgetown University specializing in social movements, says that “[e]very social movement of any importance has had mass marches, not just picnics or gatherings....[t]he prohibitionists marched on Washington in 1913, women’s suffragists marched on Washington, there have been antiwar marches, there were pro-war marches.”⁹⁷

Yet cities around the country are passing ordinances placing unreasonable or undue restrictions on marches and public demonstrations, or are denying permits altogether. In the spring of 2001, organizers of a “Free Mumia” rally on behalf of death-row inmate Mumia Abu-Jamal and commemorating the anniversary of the MOVE bombing were informed by Philadelphia officials that their permit requests for a demonstration and an around-the-clock vigil at City Hall were being denied. In the past, other groups, including corporate supporters of the 2000 Republican National Convention, were granted permits with greater access to City Hall.

The denial of this permit appeared content-based to those familiar with Philadelphia officials' expressed negative views about both MOVE and Mr. Abu-Jamal. This was successfully litigated by the Partnership for Civil Justice, also litigating on behalf of the National Lawyers Guild, and the City agreed to no longer use a discretionary permitting scheme.

Months after the terrorist attacks of September 11, 2001, the city of Cambridge, Massachusetts raised obstacles for Harvard Living Wage Campaign organizers to obtain a demonstration permit. The group contacted the city manager, who told them he was not issuing any permits until further notice because a demonstration on September 20, 2001 had, as he described it, "gotten out of hand." Inquiry calls from others revealed that permits would be issued on a case-by-case basis. When representatives from the National Lawyers Guild, the ACLU, the Cambridge Women's Commission, and the Abortion Access Project later met with the city manager, the police commissioner, and other city officials to clarify the application process, the officials told the groups that a "special events permit" procedure would require \$500 bonds for demonstrations.⁹⁸

The delaying of granting permits can cause enormous problems during an event, especially when hundreds of thousands are expected to attend. This happened in New York City for the February 15, 2003 antiwar rally, when an estimated half-million protesters filled the streets. The event was destined to be chaotic after a permit to march down First Avenue past the United Nations, then proceed west on 42nd Street and north to Central Park, was denied by a judge. That ruling was upheld on appeal, with security concerns being cited. Attorneys for the organizers pointed out that permits had been granted for huge marches such as the Salute to Israel and Puerto Rican Day parades, but judges were not swayed. Police also confused organizers by offering an alternate route and then denying it days later, permitting only a stationary rally at First Avenue and 51st Street.⁹⁹

In the final days before the protest, the City refused to even discuss the possibility of a march. In the end, only a few days before hundreds of thousands were expected to converge on Manhattan, the City of New York and the Second Circuit Court of Appeals refused the right for anyone to march anywhere in the city. In a brief, the Department of Justice urged the court to give significant weight to

security issues arising from the September 11 attacks.¹⁰⁰ Aside from the legal precedent this set, hundreds of thousands of people arrived in New York City for the protest and met on street corners and at other landmarks, only to be told that they could be arrested for stepping off the sidewalk.

In May 2003, the Maine chapter of the National Lawyers Guild sued the city of Augusta, Maine, alleging that a parade ordinance requiring a permit fee was unconstitutional.¹⁰¹ The suit was stayed for 90 days to allow the City to amend the ordinance to be content neutral. The City did not file an answer, however, so the Guild requested a default judgment. Since the judge did not want to make a default ruling on a constitutional issue, according to Guild members, “he practically begged us to settle, which we did given limited resources.” The plaintiff protesters got back 75% of the permit fee. However, when the same plaintiffs were planning their 2004 march, there was not only a larger permit fee but also an indemnification requirement of \$10,000. The Maine Civil Liberties Union and the Guild jointly filed a suit in federal district court on the permit-fee issue—they received a temporary restraining order on the insurance issue, and the city amended the ordinance.¹⁰² Lynne Williams, regional vice president for the Guild and counsel on the case, said, the ordinance “does not make provision for indigency waiver, effectively denying poor people or people who don’t have the \$1,900 to \$2,100 for the fee and the surety bond the right of free speech.”¹⁰³

At the request of Miami police chief John Timoney, city officials in Miami amended a local ordinance in fall 2003 in anticipation of the arrival of thousands of protesters for the Free Trade Area of the Americas (FTAA) meeting. On February 4, 2004, Lake Worth for Global Justice Inc. filed a lawsuit to suspend enforcement of a city ordinance governing public demonstrations pending its revision. Three National Lawyers Guild attorneys represented them.¹⁰⁴ A federal court lawsuit before U.S. District Judge Donald Graham targeted provisions of the code that long predated the FTAA meeting and claimed that the ordinance was an illegal restriction of First Amendment rights.

At a hearing on a request for a temporary restraining order, Judge Graham expressed concern about the constitutionality of the ordinances. On February 5, 2004, the judge ordered the City to issue a permit to Lake Worth for Global Justice and any other organizations or individuals wishing to engage in similar activities

and to give notice to the court of any permit denials so that the court could hold a hearing to review the city's reasons for the denial. In response to the lawsuit, the City repealed the controversial "Parade and Assembly Ordinance" and substantially revised its permit scheme. The ordinance prohibited protesters from carrying props such as balloons and bottles and required a permit for public gatherings of seven or more people if gatherings lasted more than 30 minutes. The ordinance was used during the protests as a pretext to unlawfully arrest demonstrators.

Before the June 2004 G-8 summit in Georgia, a legal committee drafted the model for an ordinance restricting protests for adoption by local governments. The legal committee was suggested by the Secret Service and consisted of attorneys from the Georgia Attorney General, the U.S. Attorney, and city and county lawyers.¹⁰⁵

Three months before the June 2004 G-8 summit in Sea Island, Georgia, the nearby city of Brunswick and Glynn County passed an ordinance restricting public demonstrations and requiring a permit for gatherings of six or more people. A month before the summit, the Glynn County Commission voted to relax the ordinance, doing away with the deposit and allowing 100 people to gather without a permit. The law requires organizers to pay refundable deposits in the amount of the city's estimated cost of police protection and cleanup and limits demonstrations to two-and-a-half hours in duration. The revised Brunswick ordinance was adopted in May 2004 and provides that "the permitting officer may deny the application for permit upon any of the following reasons or combination of reasons:8) The plan of the event as proposed is likely to substantially restrict and/or congest traffic [vehicular or pedestrian] on any of the public roads, right of ways, sidewalks or waterways in the immediate vicinity of such event." The City Commission admitted to being advised by U.S. Attorneys to pass these ordinances.¹⁰⁶

In response to the City of New York's refusal to act on granting march and rally permits, on June 28, 2004, the New York City Council adopted a Right to Assemble Resolution calling on the New York Police Department, the City Parks Department, and Mayor Bloomberg's office to respect the First Amendment rights of protesters at the 2004 Republican National Convention. It passed by a vote of 44-4. At issue were the denial of rally and march permits, the creation of designated free-speech zones, the use of barricades and excessive force at protests, and the surveillance and infiltration

of activist groups. The NYPD and the Parks Department denied a permit to the coalition United for Peace and Justice to rally in Central Park. The resolution calls for prompt and flexible processing of permit applications and rally locations within sight and sound of the demonstration's focus.

Paying for Permits and Liability Insurance

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

The City of Los Angeles has been barred from charging liability insurance or any department service charges for parades or other demonstrations. This is a result of the litigation brought by the National Lawyers Guild before the Democratic National Convention in 2000.¹⁰⁷

In *Forsyth County, Ga. v. Nationalist Movement*,¹⁰⁸ the Supreme Court invalidated a county ordinance because it tied the amount of the parading and assembly fee to the content of the speech. The ordinance allowed the permitting administrator to vary the fee based on an estimated cost of maintaining public order, up to \$1,000 daily. There were no narrowly drawn objective standards to guide the administrator. In Minnesota and some other jurisdictions, the issue is levying against defendants to repay the costs of a demonstration.¹⁰⁹ This also is content-based and probably unconstitutional for the same reasons, but as yet it is undecided by the Supreme Court. In March 2003, governor Tim Pawlenty of Minnesota was quoted throughout the media as saying that he wanted anyone arrested at antiwar protests to either pay law-enforcement costs or be prosecuted. Pawlenty wanted judges to order restitution for costs related to arrests and was considering proposing legislation that would require restitution.¹¹⁰ Brian P. Lees of the Massachusetts State Senate came out in favor of this in Boston. Representative Eugene O'Flaherty was

quoted in the *Boston Globe* as saying that it might be one way to recoup losses to the city finances.¹¹¹ In Vermont, the Brattleboro and Burlington police departments have requested hundreds of dollars in “fees” for permits to march, basically telling peace groups that they have to pay for the costs that marches incur on the city budgets.

The Supreme Court has not, however, said that the government can never charge for certain costs related to issuing a permit. Local governments can assess certain administrative charges, but they cannot charge for ordinary services such as police services. That is why it is important to know what, specifically, a city wants to charge for and how it arrived at that fee. It is also important to know what the permit scheme requires: If one needs a permit for anybody to lawfully “parade” on a sidewalk or congregate in a park, regardless of the number of people or whether traffic laws will be obeyed, one can probably challenge the entire scheme.¹¹²

Mass False Arrests and Detentions

Police frequently engage in the practice of conducting mass false arrests, a tactic that usually results in extensive media coverage and sends a message of intimidation to would-be protesters. As mentioned in previous sections of this report, many of these arrests are not based on probable cause and are thus false arrests.

On April 15, 2000, hundreds of nonviolent protesters with a permit assembled at the United States Department of Justice in Washington, D.C. to protest the “prison-industrial complex” as part of larger World Bank/IMF protests. After a rally, the demonstrators marched west from the DOJ, escorted by police who advised them that they did not need a permit as long as they remained on the sidewalk, which they did. When one of the organizers told the police that the group wanted to march to Dupont Circle and then disperse, police officials directed the demonstrators to proceed up 20th Street to Dupont Circle. As the protesters moved up 20th Street, police in riot gear surrounded the procession, preventing movement or dispersal. There was no police order for demonstrators to disperse before the procession was trapped in this fashion. After blocking the procession, the police did not allow even those people who asked to be allowed to leave to disperse. The police imprisoned the people who had been caught in their trap for longer than an hour. This group included not only nonviolent protesters but also journalists

displaying press credentials, passers-by who had been attracted by the protesters' message, and unknowing tourists and others who were in the area only by coincidence. The police then arrested nearly everyone caught in their trap, including lawful demonstrators, bystanders, journalists, and tourists. Altogether more than 600 people were arrested.¹¹³

Because these arrests took place before the meetings and the main protests began, they rendered it difficult and frightening for arrested individuals to participate in demonstrations over the following two days. Such arrests discouraged others from participating in or observing those demonstrations by signaling to them that they might be arrested without cause. During these arrests, law enforcement took video footage of demonstrators from ground level and from nearby rooftops. Law enforcement also used the arrests as an opportunity to collect information on demonstrators, including their identification, photographs, fingerprints, and other information, and to compile records on lawful demonstrators.¹¹⁴

The arrestees were held in harsh conditions. They were restrained in plastic handcuffs that inflicted pain, discomfort, and distress. Arrestees were confined on buses and denied food and water, in some cases for as long as 18 hours. They were denied use of a bathroom for hours, causing discomfort and humiliation. Police denied them use of lawfully dispensed prescription medications for preexisting conditions. Arrestees were also denied use of a telephone to contact family members or attorneys. Metropolitan Police Department officers deliberately misinformed arrestees about their rights, falsely stating that detention would continue, in some instances for days, unless detainees posted and forfeited fifty dollars. The police did not advise the detainees of the option to post fifty dollars and appear at a hearing to contest the arrest.¹¹⁵ This mass arrest is the subject of class action by the Partnership for Civil Justice.¹¹⁶

Intimidation by FBI Questioning

Three men in Denver who had planned to travel to a protest at the 2004 Democratic National Convention instead were in court in St. Louis appearing before a grand jury after being interviewed by the FBI.¹¹⁷ The FBI's Joint Terrorism Task Force conducted interviews

of individuals in several states, including Colorado, to ask whether they had information about plans to disrupt the Democratic and Republican conventions.

After being interviewed by the FBI, the three men in their early twenties from Missouri, planned to drive to Boston to participate in a demonstration at the 2004 Democratic National Convention, but were unable to because they had to respond to a subpoena. Their lawyer said that other people who had planned to go with them decided not to once they heard of the FBI questioning. Two of the people interviewed in Colorado—Paul Bame from Fort Collins and

The national office of the National Lawyers Guild received a surge of reports of FBI questioning of activists about plans to attend the Democratic National Convention. Agents questioned 20 activists in Lawrence, Kansas, and people in Kansas City, Missouri were questioned as well. The FBI asked these questions: (1) “Do you know of anyone planning violence at the DNC? (2) “If you found anything out, would you tell us?” and (3) “Do you know that lying about the first question is a felony?” Many of the activists indicated that they preferred to answer only with an attorney present; the FBI instructed them to get one and come back. Agents located the cell phone of one person and called him four times in a half-hour period. FBI agents called the parents of another activist. The Guild received a communication from activists in Kansas dated July 28 suggesting that the Topeka, Kansas City, Columbia, Fort Collins, Kirksville, and St. Louis FBI investigations might be the work of an illegal “red squad” operating in Lawrence, Kansas. The agents doing the questioning have identified themselves as working with a Joint Terrorism Task Force; such task forces involve cooperation between local police and federal agencies, including the FBI.

Sarah Bardwell with the American Friends Service Committee—said they had been asked similar questions and had refused to answer.¹¹⁸ NLG attorneys are representing Paul Bame as a plaintiff in the lawsuit brought to challenge the unlawful arrests (including his own) and excessive use of force by law enforcement at the FTAA protests in Miami, which was filed in March 2003.

Criminalizing Political Expression at Demonstrations

Policing tactics during demonstrations include establishing screening checkpoints; creating so-called free-speech zones; conducting mass false arrests and detentions; employing pop-up lines; using dangerous rush tactics with police on motorcycle, bicycle, and horseback; and using deadly “less lethal” weapons. Other tactics include closing streets and public sidewalks to people who are not carrying event-approved identification, and stationing police with video cameras on rooftops and deploying officers to photograph and film people in the area, including people who are not attempting to enter restricted zones.

Checkpoints

Police checkpoints, also called screening checkpoints, are a relatively unprecedented security measure in terms of protests in which all bags are subject to search at a designated checkpoint. In addition, protesters’ banners and signs are inspected to disallow large poles that police allege may be used as weapons. Checkpoints can create bottlenecks, slow down the process of getting to the protest site, and discourage would-be protesters from attending. Word that checkpoints will be employed can in itself have a chilling effect on First Amendment activities. Some would-be demonstrators may choose not to attend upon learning of possible personal inspection by police before reaching the demonstration. This is particularly true for people from communities that already feel targeted, such as people of color, immigrants, and religious and ethnic minorities (e.g., Muslims, Arab Americans, and South Asians).

The District of Columbia announced that it would use “screening checkpoints” around the National Mall area and the Pennsylvania Avenue parade route during the 2001 presidential inauguration in Washington, D.C. After making this announcement, the District failed to respond to questions from attorneys for demonstrators seeking to know what guidelines would be used, so that protesters could know what restrictions would be in place. Leaving so much to the discretion of the police always entails the danger that individuals will be unconstitutionally singled out on the basis of their political

viewpoint or racial, ethnic, or religious background. The Partnership for Civil Justice, also litigating on behalf of the National Lawyers Guild, filed a lawsuit raising concerns that the checkpoints would be used to exercise political and racial profiling.

The suit, *International Action Center v. United States*,¹¹⁹ sought a preliminary injunction requiring the government to specify the guidelines that would be employed. While the injunction was technically denied, the Court shared many of the stated concerns, calling checkpoints “inconsistent with our way of life” and noting that “the very term checkpoint has...an odious connotation.” The relief sought was largely granted at the preliminary hearing, in which Judge Gladys Kessler pressed the government to provide details and explain the basis on which searches would be conducted. The government assured the Court that aside from the visual inspection of containers, the police would be held to the *Terry v. Ohio*¹²⁰ standard, under which they may not stop or “pat down” anyone without a legitimate, articulable suspicion that the person may possess a weapon. The Court emphasized that it was not granting further relief because of those representations.

Because of the First Amendment concerns raised by the Plaintiffs, the government was put on notice that the kinds of excesses seen in recent demonstrations were of grave concern to the Court and would not be tolerated. The District of Columbia Metropolitan Police Department transferred policing authority to the Presidential Inaugural Committee in policing checkpoints along the Inaugural Parade Route. Furthermore, the Court granted the relief sought against the District of Columbia and issued an injunction against an unconstitutional provision that required a permit for all speeches.

Describing parts of Miami during the 2003 FTAA protests, reporter John Pacenti of the *Palm Beach Post* wrote, “Security fences cut up downtown like a jigsaw puzzle, with numerous checkpoints.”¹²¹ Checkpoints with armed officers were established to enter the frozen security zone around the Intercontinental Hotel, where FTAA meetings were held. Several streets were off-limits to anyone without proper credentials. Members of the embedded media and local businesspeople were given credentials. Yet the process for issuing credentials was “greatly compromised,” according an AFL-CIO after-report. Most credentials did not have a photograph of the bearers. Media credentials had photographs, but the means to obtain the credentials proved that possibly counterfeited letterhead and even

e-mails were adequate to validate applicants as press members. “Even less secure were the non-photographic identifications provided to FTAA participants, staff, law-enforcement personnel and neighboring business people...the serial numbers did not correspond to any particular individuals, and the cards were given in bulk lots of several hundred to the private security personnel in neighboring office buildings for dispersion to the workers in those buildings...The system designed to permit entry of motor vehicles to the frozen zone was similarly flawed.”¹²² Police squad cars monitored nearly every block, and Florida Highway Patrol troopers searched vehicles before allowing them to move on.¹²³ Police stopped individuals at random, conducting pat-downs and “dumping the contents of their backpacks into gutters,” according to Linda Rodriguez-Taseff, president of the South Florida chapter of the ACLU.

Free-Speech Zones and the Secret Service

So-called “free speech” zones, also referred to as secure zones or protest zones, are areas established by law enforcement for protesters to stand in. They are often fenced off and at some distance from the event being protested. A lawsuit brought before the 2000 Democratic National Convention in Los Angeles resulted in an injunction striking down a secure zone of more than eight million square feet around the convention site, striking down the City’s parade-permit ordinance, and striking down the City’s park-permit regulations. Following the Court’s issuance of a preliminary injunction, the City stipulated to a permanent injunction. The Los Angeles chapter of the National Lawyers Guild was a plaintiff in *SEIU v. City of Los Angeles*,¹²⁴ with Guild lawyers as counsel. The court granted the injunction, finding that “the sidewalks and streets contained within the designated ‘secure zone’...are traditional public fora for the exercise of First Amendment rights.”

When the President travels, Secret Service agents visit the venue in advance and give orders to local law enforcement to establish free-speech zones. Protesters opposing the President’s policies are then quarantined in those zones, far from sight of the President and out of view of the press. When President Bush was in Pittsburgh on Labor Day in 2002, Bill Neel, a 65-year-old retired steelworker, held a sign proclaiming, “The Bush family must surely love the poor, they made so many of us.”¹²⁵ Local police

who, at the direction of the Secret Service, established a chain-link fenced “designated free-speech zone” on a baseball field, arrested Neel after he refused to move on. While anti-Bush protesters were directed to the free-speech zone, pro-Bush sign-holders were allowed to flank the President’s path. At Neel’s trial, police detective John Ianachione testified that the Secret Service asked the local police to confine “people that were there making a statement pretty much against the President and his views” in a free-speech area.

At a 2001 pro-Bush rally at Legends Field in Tampa, two grandmothers and another protester were arrested for holding up small, handwritten protest signs outside the zone. Seven people were arrested on charges of “obstructing without violence and disorderly conduct” at a pro-Bush rally at the University of South Florida Sun Dome after refusing to be penned in a protest zone hundreds of yards from the Dome.

Activist Brett Bursey was arrested for holding a sign that read “No War for Oil” when George Bush visited Columbia, South Carolina. Under orders from the Secret Service, local police set up a free-speech zone half a mile from where Bush was speaking. Bursey was standing among a large crowd of people holding pro-Bush signs when police singled him out and asked him to go to the free-speech zone. When he refused to comply, he was arrested. When he asked police officers whether the content of his sign was the reason for his arrest, they acknowledged that it was. Five months after he was arrested on the charge of trespassing, the charge was dropped because South Carolina law prohibits arresting people for trespassing on public property. The Justice Department then charged Bursey with violating a rarely enforced federal law involving “entering a restricted area around the President of the United States.”¹²⁶ Some believe that the federal government seeks to set a precedent in a conservative federal jurisdiction that might later be used against protesters nationwide. On January 7, 2004, Bursey was fined \$500 after a judge found him guilty of entering a restricted area during a presidential visit. U.S. Magistrate Bristow Marchant did not give Bursey any jail time.

In anticipation of large numbers of protesters expected to flood Washington for the September 2001 World Bank/IMF meetings, District of Columbia police officials announced plans to set up nine-

foot-high fencing encased in concrete around a two-mile section of downtown Washington.

In response, lawyers from the Partnership for Civil Justice, also litigating on behalf of the National Lawyers Guild, filed a lawsuit on August 20, 2001 in federal court seeking to stop D.C. police and federal authorities from cordoning off and prohibiting free speech in large sections of downtown Washington for the September demonstrations against the World Bank and IMF, asserting that such measures would infringe on organizers' First Amendment rights.¹²⁷ The suit sought an injunction to bar the police from setting up what lawyers have called "exclusion zones" that prohibit free-speech activities from taking place on the sidewalks, streets, and public parks within the designated area. The suit named D.C. police chief Charles H. Ramsey, the District, the director of the National Park Service, and the federal government as defendants. According to National Lawyers Guild member Mara Verheyden-Hilliard, of the Partnership for Civil Justice, the exclusion zones run counter to the established rights of members of social justice movements to march freely for what they believe in. "It's the way to speak to each other, to speak to the world," she said. "When the government begins to create these artificial areas to deny full access to our public land, it infringes on people's First Amendment rights."¹²⁸

Demonstrators hoping to be within sight and sound of the delegates entering and leaving the Democratic National Convention at the Fleet Center in Boston in late July 2004 were forced to protest in a special "demonstration zone" adjacent to the terminal where buses carrying the delegates arrived.¹²⁹ The zone, which was surrounded by two chain-link fences separated by concrete highway barriers, was only large enough for around 1,000 persons to congregate safely. Its outermost fence was covered with black mesh designed to repel liquids, and much of the area was under an abandoned elevated-train line. Another black net, topped by razor wire, covered the zone. Tables and chairs were not permitted, there were no sanitary facilities, and there was no way for demonstrators to pass written materials to convention delegates.¹³⁰ The federal judge who heard a challenge to the demonstration zone by the National Lawyers Guild on behalf of protest groups on July 22 said in open court, "I, at first, thought before taking the view [of the site] that the characterizations of the space as being like an internment camp were litigation hyperbole. I now believe that it's an understatement. One cannot conceive of what other elements you would put in place to make a

space more of an affront to the idea of free expression.”¹³¹ Despite that, the judge denied the groups’ challenge to the conditions and ruled that they were justified by concerns about the safety of the convention delegates.

Mass False Arrests and Detentions

Another way in which police prevent people from protesting is by conducting mass arrests—frequently false arrests—so that segments of demonstrators are literally removed from the area and detained. In its draft report, the Independent Review Panel (IRP) investigating the FTAA demonstrations in Miami cited a statement in the Miami-Dade Police Department After-Action Report that substantiates this: “The courts assisted by staggering bond hearings and releases so that arrestees were not able to quickly return to the conference site.”¹³² The IRP was unable, however, to find support for this statement when questioning the Administrative Office of the Courts.

At the WTO protests in 1999, Seattle police trapped, herded, and arrested demonstrators outside a designated “no protest” zone. On December 29, 2003, U.S. District Judge Marsha Pechman ruled that police had no probable cause to arrest 157 protesters in downtown Seattle during the WTO conference. The City maintained that protesters were only arrested for pedestrian interference after they failed to disperse. Court documents revealed that protesters had been forced down the street and then arrested by police, who made no effort to distinguish between protester participants and innocent bystanders. Arrestees were booked into a holding center at Naval Station Puget Sound at Sand Point using the same photocopied arrest document, which contained inaccurate information. All forms were signed by a single police lieutenant, who later acknowledged that he had not made a single arrest himself. Judge Pechman labeled the police department’s documentation of the arrests “atrocious.”¹³³

Police in Washington, D.C. conducted mass arrests on September 27, 2002. Of a total of 647 demonstrators arrested that day, approximately 400 were arrested in Pershing Park. Findings from a confidential report (February 27, 2003) revealed that Mayor Williams and the D.C. Metropolitan Police Department engaged in a cover-up of the lack of lawful justification for the mass arrests. *Barham et al. v. Ramsey, et al.*, the class-action lawsuit filed by the

Partnership for Civil Justice, also litigating on behalf of the National Lawyers Guild, charged the District of Columbia and federal agencies with falsely arresting hundreds of demonstrators, observers, and passers-by on September 27. “D.C. and federal law-enforcement authorities executed an illegal and unconstitutional coordinated plan to sweep the streets of political activists and place them in preventive detention,” said attorney Carl Messineo.¹³⁴ The lawsuit also described severe and excessively long conditions of confinement, including people being shackled wrist to opposite ankle.

D.C. Councilmember Patterson issued a press release summarizing the findings of an internal review of the MPD related to these mass arrests that stated, “Not only were arrests preemptive and wrongful, not only was the detention inhumane, but officers in the field were directed to sign arrest forms that were inaccurate on their face.”¹³⁵ The statement also provided a summary listing of the findings made in the report:

- Police arrested bystanders who had not participated in the demonstrations.
- Before the arrests, police refused to allow those who wanted to leave Pershing Park to do so.
- Those arrested were charged with “failure to obey a police order,” but witnesses, including law-enforcement officials, did not hear any orders being given to those who were subsequently arrested.
- Arresting officers signed field-arrest forms affirming that in each case they saw the person arrested engage in unlawful activity and subsequently gave an order warning the person to cease to engage in that activity. In fact, not a single arresting officer gave or observed a police warning.
- Following arrest and transport to the police academy, those arrested were held for up to an additional 18 hours due to computer-caused processing delays. The department failed to implement a manual backup system.
- Detainees were restrained with plastic “flexicuffs” with one wrist tethered to the opposite ankle so that detainees could not stand up or lie prone. The report claims that this does not constitute “hog tying,” although the department’s own definition, which prohibits the practice, states that hog tying is a restraint that forces the legs and hands to be close to one another.
- There were procedural errors in the arrests, the choice of charges, and the manner of arrest documentation.

Women have been singled out for particularly harsh treatment; for example, at the 2002 World Economic Forum (WEF) demonstrations in New York City, many women were held on a bus for as many as nine hours, apparently without access to water, bathrooms, food, medical treatment, or attorneys.

Police questioned people detained at the 2002 WEF protests and then put them through the system for low-level violations and misdemeanors. According to Marina Sitrin, a Guild member who is also a member of the People's Law Collective, "[s]uch detention is strictly punitive and illustrates the state's attitude toward dissent in the post-9/11 climate. Questioning about political views is unconstitutional and shows that people are being singled out for their viewpoints."¹³⁶ While local police may have worked with the federal government prior to the September 11 terrorist attacks, now police are often telling protesters of such cooperative efforts in order to intimidate them into revealing personal information. "While [they were] in detention, police tried to forcibly remove them to be taken away individually and interrogated by the FBI," said Marina Sitrin. "Since 9/11, more activists have been stopped on the street and visited in their homes by FBI agents wanting to question them about their political views and affiliations."¹³⁷

During antiwar demonstrations in New York City on February 15, 2003, police kept many people off the street by arresting them and detaining them for extended periods of time, and in many cases mistreated them as well. Police delayed the release of 215 arrested demonstrators and held arrestees for up to ten hours on buses with no heat in temperatures below 20 degrees, without providing access to medical treatment, bathrooms, food, or water. Some of those arrested were forced to stand shackled outside the police precinct for hours without gloves or proper jackets. Attorneys were denied access into the jails and onto the buses. Some injured activists smeared their blood on the windows of the buses to signal that they needed medical attention, but such attention was not provided. Protesters detailed how police asked them questions about their political beliefs and pushed them for answers by threatening them with all-night detention.¹³⁸

Mass arrests with no lawful basis also were carried out in staggering numbers in San Francisco during spring 2003 protests against the war in Iraq. The Bay Area chapter of the National Lawyers Guild joined forces with Legal Support to Stop the War and successfully

halted the prosecution of approximately 2,300 people who had been arrested at antiwar demonstrations in San Francisco in March 2003. Those individuals were originally charged with misdemeanors but were later notified that their cases had been transferred to the traffic division for prosecution as infractions. The sheer number of cases created logistical and administrative nightmares for both the Guild office and the San Francisco traffic clerk's office.¹³⁹ District Attorney Terence Hallinan and Guild members Mark Vermuelen and Bobbie Stein met just after the war began to discuss the possibility of his office not prosecuting the vast number of cases. Hallinan's compromise position seemed to be that the infraction prosecutions would stand but his office would not devote any resources to the prosecutions.

After the Guild's infraction litigation committee filed a successful demurrer to the charges that would have resulted in the dismissal of all the cases, Hallinan scrambled to amend the charging documents to conform to statutory requirements. The enormous cost, in both dollars and human resources, proved too much in the end, however. Hallinan realized that his office could not sustain efforts to amend 2,300 complaints, particularly since the prosecution lacked sufficient proof to substantiate the charges in the overwhelming majority of the cases.

On June 27, 2003, the Guild's hard work paid off and victory was declared when representatives of the District Attorney's Office announced the dismissal of the 407 cases then on the calendar. The official reason given at the court hearing was that after speaking to the police department, the District Attorney's Office believed that insufficient evidence existed to prove the charges against the demonstrators.

On November 20, 2003, the first day of the FTAA meetings, the AFL-CIO had a permit to hold a rally, with a march scheduled to follow. The Amphitheater is located between Bayfront Park and the Hotel Intercontinental, where that morning, as protesters began walking, police impeded their passage at nearly every turn. Squads of police officers lined the streets and blocked intersections, effectively herding the demonstrators into one location, and then surrounded them. Police herded a group of 100 demonstrators to the police station, where they completely surrounded and detained protesters for over an hour, even after informing them that they were not under arrest. Police informed the protesters that they could not

walk on public sidewalks together but had to break into small groups.¹⁴⁰

Even as the demonstrators complied with police, bicycle police immediately accosted one group on the sidewalk. The activists attempted to avoid the bicycle officers and continue walking, but the officers persisted in their deliberate physical and verbal provocation, ultimately forcing the demonstrators off the sidewalk and into the street. The police then herded the demonstrators into a waiting line of officers where, once the demonstrators had been trapped, the officers repeatedly assaulted them with their bicycles. Several protesters were knocked to the ground and then handcuffed and arrested.¹⁴¹ While anti-FTAA protesters were held in Miami jails and police precincts, they were also questioned by local and federal law-enforcement agents about their political activities and by the Immigration and Naturalization Service about their citizenship and nationality.

On June 26, the National Lawyers Guild filed a lawsuit with the ACLU against the City of Oakland for the unwarranted firing of rubber bullets at antiwar demonstrations on April 7, 2003. Two days before, the Oakland District Attorney filed misdemeanor charges against 25 people arrested at the demonstration, even though no complaints had been filed against any of the arrestees when they appeared for arraignments six weeks earlier. The defendants included two legal observers who were arrested while taking notes, as well as a business agent of Local 10 of the ILWU who was pulled out of his car and arrested as he attempted to warn union workers that others had been shot with rubber bullets.

Snatch Squads

Snatch squads are routinely used in the United Kingdom, Australia, and Canada, and seem to be making their way into the lexicon of U.S. law enforcement. A snatch squad is a group of police officers, often in plainclothes, who identify a particular person or persons for arrest, then isolate the person(s), surround them, and make an arrest, often whisking the person(s) from the scene immediately.

According to Dan Spalding of the Midnight Special Law Collective, “Snatch squads were first used against protest in North America during the June 2000 FTAA demonstrations in Quebec City.

Although this happened in Canada, there was already a high degree of coordination and cross-training between U.S. and Canadian intelligence and security forces. Snatch squads targeted individuals and small groups as they were leaving large demonstrations. In this manner they arrested over a hundred activists, including organizers, high profile activists, and individuals who looked like they were in the ‘black bloc.’ Since these were not mass arrests, protesters were also subject to a higher level of intimidation by the police.”

At the World Economic Forum protests in New York in 2002, police reportedly sent snatch squads to specifically pick out of the crowd members of the “black bloc.” (A black bloc is a collection of anarchists and affinity groups that organize around a specific protest action. It is a tactic, rather than an organization, that is intended to provide solidarity in a visible fashion while also presenting or representing an idea or set of goals.)

The police snatch squads were more visible at the 2003 FTAA protests in Miami, often many blocks away from the rallies in unmarked vehicles. Guild member Andrea Costello, co-counsel in one of the lawsuits against the Miami Police Department and other local, state, and federal law-enforcement agencies, described “[undercover] police in full body armor, wearing ski masks, with no identifying tags, jumping out of vans and dragging protesters off.”¹⁴² One of the Guild’s legal observers, Miles Swanson from Washington, D.C., was extracted by a team of ski-masked police officers in an unmarked van as he walked on a side street near the Miami protests. Swanson reported that the officers called him a profane name, threatened his life, and beat him while taking him away in the van and arresting him, without cause. Weeks earlier, a photo showing Swanson wearing a Guild legal observer hat was featured in a PowerPoint presentation that police showed to local businesses in preparation for the FTAA protests.

On November 21, 2003, Guild student organizer Laura Raymond sent an e-mail report on this new police tactic:

Random people are being pulled behind police lines that may be three rows thick and legal observers (LOs) can’t access them for names and descriptions [of arrestees], nor can medics access people who are hurt in the process. Also, undercovers are snatching random people in the crowds and pulling them away.

A huge thing is the tactic of unmarked “snatch squads” patrolling the city and grabbing people off the streets. We have three LOs that have been picked off this way in separate incidents, and for these we have witnesses reporting that the LOs were beaten by the police. It is really eerie and frightening. Many arrest reports we receive include brutality, beatings and such—tasers, wooden and rubber bullets, many cops beating one person, concussion grenades, electrical shields, etc.—so it seems as though arrest numbers are down but the intensity of the arrests and the complexity of defending all these cases is high. This seems like a good media tactic on the part of the police—the small arrest numbers won’t put the actions in much mainstream media.¹⁴³

On April 20, 2003, as a day of lawful demonstrations against the United States war in the Iraq was winding down in Washington, D.C., eight Metropolitan Police Department (MPD) officers and two federal officers targeted a group of protestors wearing black and carrying political literature. The protestors were eating food in a parking garage for which a member of their group possessed a swipe card for weekend access, where a vehicle they were using was parked. Current D.C. MPD training materials on mass demonstrations describe how law enforcement “target anybody dressed in black.”¹⁴⁴

Singling people out for arrest based on their perceived political ideology, in this instance targeting person perceived by their manner of dress to be, or to associate with, anarchists, violates the Constitution of the United States.

The law-enforcement officers approached the black-clad individuals with their guns drawn and ordered them to sit against a wall and to place their belongings in front of them. Police searched their possessions and persons and reviewed their political material. They asked questions about the protestors’ political activities, their associations, what demonstrations they had been to in the past, and with whom they were staying.¹⁴⁵ Two agents, believed to be from the Federal Bureau of Investigation, selected protestors and one-by-one questioned them on video. Officers took images of political patches and slogans on the protestors’ clothing. They arrested the protestors and, in the process, took even more information, including

fingerprints. One officer told the activists that he did not believe they were informed about the issues they were protesting and that they probably did not even know what the International Monetary Fund or World Bank did.¹⁴⁶ When a female arrestee spoke in substantive response, the officer told her to shut up and explained that women are beaten by their boyfriends because “women run their mouths and then their boyfriends have to shut them up.”¹⁴⁷

After arresting and detaining them in jail, the District of Columbia released them, charging each with unlawful entry into the garage within which their vehicle was parked and for which they possessed an electronic swipe card. The prosecutor declined to pursue the charges. The D.C. Superior Court ruled that there was clear and convincing evidence that each did not commit the crime for which he/she was arrested and has expunged the arrests.

The Partnership for Civil Justice filed a lawsuit, *Bolger, et al. v. Ramsey, et al.*,¹⁴⁸ to hold accountable the District of Columbia and federal law-enforcement authorities and each of the individual officers who committed unlawful and unconstitutional warrantless arrests in the absence of probable cause.

Pop-Up Lines

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

Deployment of pop-up police lines occurred on April 17, 2000 at the World Bank/IMF demonstrations in Washington, D.C. The Metropolitan Police Department (MPD) closed streets and sidewalks without lawful authority and arrested demonstrators who were within the newly closed areas, which “popped up” without notice or justification. Demonstrators had assembled and walked throughout the downtown area, outside the vast no-protest area encompassing many blocks around the IMF, the World Bank, the White House, and downtown Washington, D.C. Beginning at approximately 8:30 a.m., MPD members repeatedly deployed pop-up police lines throughout

the downtown area. Many MPD officers in these mobile police lines failed to display badges or identification nameplate bars. Some of these police lines converged, trapping dozens of demonstrators between lines of police officers. MPD members then arrested demonstrators without probable cause and in violation of their First and Fourth Amendment rights. One such arrest occurred some five blocks from the IMF and the World Bank, well outside the no-protest zone. The group of demonstrators had been nonviolent and lawful. One of the individuals arrested was a second-year law student at George Washington University who was volunteering as a legal observer with the National Lawyers Guild.¹⁴⁹

Other police lines throughout downtown Washington sealed off sidewalks and other traditional public fora in violation of the First Amendment. Without cause, the MPD directed police lines to move forward against gatherings of nonviolent demonstrators. MPD officers struck forward with their batons in a violent gesture and otherwise threatened bodily harm, apparently as part of an unconstitutional effort to clear some vague and undefined portion of the sidewalk.¹⁵⁰ The use of police lines, arbitrarily established and at times mobile, capriciously created unconstitutional no-protest zones on public sidewalks.¹⁵¹ These zones were unconstitutional restraints on speech and assembly and were unconstitutionally vague. In some cases demonstrators would flee from a mobile pop-up police line, only to be trapped by another pop-up police line at the opposite end of the block, followed by unlawful detention, seizure, and arrest.¹⁵² A line of MPD officers near Farragut Square Park displayed large canisters of pepper spray. In a number of cases those demonstrators who asked police where they could disperse to were threatened with pepper spray and batons. Such detainment between mobile police lines violated the demonstrators' First and Fourth Amendment rights.¹⁵³

Pop-up lines also occurred in Washington, D.C., on September 27, 2002. The Anti-Capitalist Convergence called for a "people's strike" in conjunction with World Bank/IMF meetings. Soon afterward the demonstration left its starting point. The march was completely surrounded within three blocks, and police began making arrests. Meanwhile a different organization had called for a peace demonstration and drum circle at Freedom Plaza. Approximately 60 to 70 individuals met at Union Station to lawfully ride their bicycles to show support for alternatives to fossil fuel usage as they rode to Freedom Plaza, where a demonstration was taking place.¹⁵⁴ Police

knew of the well-publicized event and did not instruct the bike riders to not ride their bikes. As soon as the bike ride started, however, mobile police lines popped up. They consisted of officers on bicycles and on motorcycles and in motor vehicles, and they surrounded the bicyclists on all sides. By virtue of their police lines, the police controlled the movement of the bicyclists. Those who sought to leave the bike ride by exiting through the side mobile police lines were prevented from doing so. The police forced the bicyclists into Pershing Park, located across from Freedom Plaza, which held about 300 demonstrators at that time. Protesters began to realize that “unyielding police lines in every direction, with many officers in intimidating, black, full riot gear,” had popped up on all sides of protesters.¹⁵⁵ Among those surrounded were Noah Falk, a National Lawyers Guild legal observer, and Mac Scott, the membership coordinator of the National Lawyers Guild.¹⁵⁶ Mr. Scott went to each side of the pop-up line boundaries and asked if he was free to leave; at each side the police said no. After surrounding the individuals, the police, without probable cause or lawful justification, arrested each of them along with hundreds of others.

National Lawyers Guild legal observer Suzanne Smither described one police pop-up line that she witnessed on November 20, 2003 at the FTAA demonstrations in Miami, partly in response to a misrepresentation of the events contained in a letter from police chief Timoney that appeared in the *Miami Herald* on November 30, entitled “The AFL-CIO should look inward.”¹⁵⁷ In response to allegations that hundreds of protesters “began to attack police officers located at Second Street and Biscayne Boulevard” and that “[a]ssorted debris, projectiles and tear gas were thrown at police....A separate group of police officers began dispersing the violent group,” Ms. Smither described what she saw from her position directly in front of police lines on Biscayne Boulevard at the time:

At 3:50 p.m., after most of the union demonstrators had left the area, rows of fully armored and helmeted police moved in formation from a line north of First Street into a crowd of demonstrators who were chanting anti-FTAA slogans. Demonstrators were pushed back by police into crowds behind them. Those who became trapped having nowhere to go were knocked to the ground or beaten by club-wielding officers. At the same time, volleys of tear gas canisters were launched by police stationed

behind the lines into the crowd of panicked demonstrators while they were moving away from the advancing officers. When demonstrators fell back, the police began firing shotgun projectiles into the crowd. Hundreds of rounds were fired and dozens of demonstrators were hit and injured. Demonstrators were shot in the head and face by rubber bullets and hard red plastic chemical filled balls. As the crowd of demonstrators dispersed north on Biscayne towards Third Street, the police advance stopped but the shooting continued and more tear gas canisters were fired into the diminishing group. Some of the gas canisters were picked up by demonstrators and thrown back at the police.

In response to allegations that “[n]umerous warnings and orders to disperse were issued by police with little compliance,” Ms. Smithers said, “At no point in time were protesters warned to leave or given orders to disperse. The police lines moved directly into the group of demonstrators without notice or provocation. Those unable to escape were beaten with police batons.”

Containment Pens and Trap and Detain/Trap and Arrest

Police may erect containment “pens” out of wood or metal barriers at demonstrations as a means of containing protesters within a narrowly confined area with no freedom to move about. The establishment of barricaded pens makes it easier to accomplish mass arrests. In addition, there is the possibility of panic on the part of demonstrators who wish to leave the scene quickly but are trapped within the often tightly packed confines of the metal barricades. The National Lawyers Guild has witnessed several instances in which police surround protesters and then conduct an unconstitutional sweep of false arrests.

At the February 15, 2003 antiwar protests in New York City, Guild legal observers noted, “Demonstrators were often penned in on the sidewalk, in many cases over a dozen blocks away from the rally site, and told they would be arrested if they tried to exit.”¹⁵⁸ They witnessed an incident in which Ann Stauber, who attended the

protest in an electric wheelchair, tried to leave a barricaded pen to use a bathroom. A police officer grabbed the wheelchair's steering handle, swinging and breaking it, leaving Ms. Stauber immobilized in the cold and unable to leave for an hour.¹⁵⁹ Legal observers also noted that "the police used pepper spray and batons on the crowd and in some cases actually picked up the metal barricades and used them to push people."

The use of pens not only raises safety issues but also sends a message of intimidation. In an analysis of the New York Police Department's use of demonstration pens, Brooklyn College sociology professor Alex Vitale notes that "the use of heavily policed choke points at the entrances to the pens creates the clear impression that the police are in control of access to what is supposed to be a public event. Visual inspections and questioning by officers enhances the appearance of police intimidation." He also writes that "[one] of the effects of using pens in this way is to make the demonstration appear dangerous to those who feel vulnerable to police action."¹⁶⁰

In a letter to New York City mayor Michael Bloomberg, a group of litigators called for the elimination of the use of barricades to pen in demonstrators and expressed concern about the then-upcoming March 2004 antiwar demonstration:

The City should allow demonstrators to assemble, move along their route, and disperse in an ordinary fashion, because allowing the crowd to flow in a natural way is the safest form of crowd control. The purposeful creation of bottlenecks by penning in groups of protesters is an ill-conceived policy that has proven to be dangerous in the past.

Tension, anxiety and fears are heightened for the protesters who are contained by the pens and unable to move along the route normally. Protesters with disabilities, medical needs, small children, or special needs will not be accommodated. Bathrooms will not be accessible. Families, friends, and associates will be separated. Verbal exchanges with police officers controlling the pens are often unpleasant, exacerbating the tensions of being held in a pen. The use of pens heightens both the perception and the

reality that people may be emotionally or physically hurt.

Not only is this practice unsafe, but dividing the demonstrators also interferes with the right of free expression....

Barricades used as pens necessarily divide the protesters into discrete groups, and space them out in sections separated by large gaps. This breaks up the flow of the demonstration, affects the tenor and spirit of the message and demonstration, and makes the demonstration appear to be smaller and less unified than it is. Pens do not allow for leafleting or collecting signatures. Pens do not allow protesters to associate freely with whomever they choose to interact or speak with during the demonstration. For instance, a demonstrator who disagrees with the messages being delivered by others nearby—as occurs in diverse groups—is effectively arrested in the pen, and not allowed to even move to another pen or another part of the route.¹⁶¹

In Washington, D.C., according to witnesses who testified before the District of Columbia City Council's Judiciary Committee, the Metropolitan Police Department has employed police lines as a method of crowd control over the past four years.¹⁶² This tactic is used to surround and detain protesters, not to avoid possible violence or to conduct arrest but just to exercise control over the group. In D.C. the method has been employed for long periods of time and against the will of protesters.¹⁶³

Rush Tactic, Flanking, and Using Vehicles as Weapons

The rush tactic involves police officers, usually on horseback, motorcycles, or bicycles, charging and assaulting a group of demonstrators. At the FTAA demonstrations in Miami on the morning of November 15, 2003, police used their bicycles to form a circle and entrap a group of about 50 people for approximately two hours—a tactic known as flanking.¹⁶⁴ Whenever demonstrators asked whether they were being detained, the police said no. When

demonstrators asked whether they were then free to leave, they were also told no.¹⁶⁵ This entrapment prevented the group from joining a large, nonviolent march through downtown Miami. When the group finally received permission to walk, the police flanked them, walking their bikes in lines on all sides of the group. The police used their bicycles to push demonstrators off the sidewalk and into the street. After an hour herding the demonstrators in this fashion, the police formed a line in front of them with their bicycles and proceeded to shoot them with Tasers. About five people were arrested, and many more were Tasered. One demonstrator was arrested after being knocked to the ground when a police officer rammed his bicycle into the demonstrator's back.¹⁶⁶

The rush tactic was employed at the large antiwar rally on February 15, 2003 in New York. All over the city, people were prohibited from moving—not just from marching in the street but from crossing the street. Police penned demonstrators onto the sidewalk, in many cases more than a dozen blocks from the rally site, and informed protesters that they would be subject to arrest if they tried to exit. Nadya Rosen, a student at CUNY School of Law, saw “people sitting peacefully on the sidewalk and having policemen ride straight into them, then be compelled to run down the sidewalk because horses are chasing them.”¹⁶⁷ Bharati Narumanchi, another CUNY law student volunteering as a legal observer, noted that “the hardest thing about Saturday was that police misconduct was completely crazy—stopping demonstrators, targeting people from the crowd, using excessive force—when many of the demonstrators were very peaceful. When people on the sidewalk tried to move, police on horseback arrived as a form of crowd control, riding and backing the horses into the crowds on both the streets and the sidewalks. Many people were injured and a few hospitalized from the use of horses alone. Additionally, the police used pepper spray and batons on the crowd and in some cases actually picked up the metal barricades and used them to push people.”¹⁶⁸

On April 7, 2003, in Oakland antiwar demonstrations, the Oakland Police Department used vehicles as weapons. They ran into numerous people with their motorcycles as they herded the crowd down a series of egress-less roads for over an hour, firing barrages at their backs. According to Dan Spalding of the Midnight Special Law Collective, “[t]he police also used bean bag rounds and wooden bullets to chase protesters into moving traffic. This is a case of the police using civilians' vehicles as weapons against protesters.” The

Guild and the ACLU filed a lawsuit against the City of Oakland on behalf of several demonstrators, dockworkers, and videographers who were literally run over by police rush tactics in this especially violent attack by police.

On April 12, 2003, police in Washington, D.C. also used the rush tactic—riding motorcycles or bicycles or on foot—at a legal and permitted protest against the occupation of Iraq. Police used their vehicles as weapons, driving against, into, and through the march. Officers also used their motorcycles and bicycles to flank protesters and prevent them from leaving the march, and prevented others from joining the permitted marches and assemblies in progress. On April 13, 2004, the Partnership for Civil Justice filed a lawsuit in Federal District Court for the District of Columbia on behalf of the demonstrators who were assaulted by the police on motorcycles. In addition to damages, the lawsuit seeks an injunction against the MPD's use of motorcycles and bicycles as weapons to drive into and against demonstrators, the MPD's use of police and cycle lines to flank marchers and prohibit persons from leaving or joining demonstration activities, and the MPD's use of the rush tactic.

Crowd Control Using “Less Lethal” Weapons

In the United States, collective punishment of protesters has also taken the form of firing so-called “less lethal” weapons into crowds. In part this may be the result of a blurring by police between First Amendment protected demonstrations and civil disturbances. In testimony before the District of Columbia City Council's Committee on the Judiciary, Robert Klotz (the deputy chief of police of the special operations and traffic division after May Day litigation in 1971, when 100,000 demonstrators converged on D.C.) noted that police departments have come to confuse the need to protect protesters' rights with managing civil disturbances. Klotz cautioned against a show of force by police at demonstrations—which establishes a certain tone—and said that this blurring results in overreaction by police and an increase in tension.¹⁶⁹ In its final report, the Committee on the Judiciary noted that Mr. Klotz's observation was indeed supported by the shift in titles of the manual defining the MPD's policy on handling mass demonstrations. In 1978 the manual was titled the *MPD Handbook for the Management of Mass Demonstrations*. In 2003, it was titled the *MPD Standard*

*Operating Procedures for Mass Demonstrations, Response to Civil Disturbances & Prisoner Processing.*¹⁷⁰

Law-enforcement agencies describe as less lethal a range of often high tech weapons that have in fact been associated with fatalities in the United States. These include Tasers, projectile weapons, and chemical weapons like CS2, or tear gas, and oleoresin capsicum, or pepper spray.¹⁷¹ The United Nations Commission on Human Rights has condemned such violent methods as those used by the Oakland Police Department,¹⁷² as has an independent review commission investigating excessive police force at the FTAA demonstrations in Miami.¹⁷³

Guild members recently settled a class-action civil-rights lawsuit against the Los Angeles Police Department (LAPD) for \$1.2 million. The suit was brought on behalf of protesters, members of the media, and bystanders injured by the LAPD at the Democratic National Convention in August 2000. The LAPD launched an assault on approximately 8,000 protesters, legal observers, students, journalists, medical personnel, and bystanders at a rally and lawfully organized rock concert on August 14, 2000. The massive and indiscriminate use of rubber bullets and beanbags to disperse a crowd of overwhelmingly nonviolent protesters and bystanders needlessly injured many innocent people and had a chilling effect on both demonstrators and the media. With this settlement, the City of Los Angeles will have paid DNC victims more than \$4.1 million in total. The magnitude of these settlements demonstrates the magnitude of the LAPD's misconduct and mistakes and hopefully will dissuade other law-enforcement departments from repeating them. Attorneys James Muller, Cynthia Anderson-Barker, and Robert Mann noted in a press release that "[t]he grossly unreasonable and unconstitutional use of less lethal munitions is an ongoing national problem, as evidenced most recently by the scores of labor union and other demonstrators injured by Miami police during the November 2003 FTAA conference."¹⁷⁴ To date the city has paid approximately \$5 million in settlements to participants of the convention demonstrations, including a payment of more than \$1 million to a woman who lost sight in one eye after being hit by a rubber projectile, and \$875,000 to several bicycle demonstrators who were arrested without probable cause.

The use of excessive force violates not only state and federal law but also international human-rights law as contained in treaties to which

the U.S. is a party. Once ratified, treaties are the law of the land and are binding on all levels of government. Excessive police force is prohibited by the International Covenant on Civil and Political Rights (ICCPR), ratified by the U.S. in 1992. Similar protections exist in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the U.S. ratified in 1994.

Among the most frequently used weapons are the following:

Tasers: These high-powered stun guns deliver 50,000 temporarily disabling volts of electricity, usually lasting from three to four seconds. Many individuals who have died due to the use of Tasers had been subjected to multiple and successive Taserings. The Taser is intended to paralyze the muscle system, which interferes with breathing. Repeated Taserings would appear to place the target at increased risk of death by positional asphyxia.

Tasers can work from 20 feet away from the intended subject. Tasers are growing in popularity among law enforcement nationwide because unlike pepper spray, they only affect the person aimed at. Tasers are equipped with a microchip that records all firings and can be analyzed to determine if they are being misused or if a person is truthful about the number of times he or she was stunned. Some municipalities have passed ordinances banning the sale and possession of Tasers (with exceptions made for law-enforcement personnel). The Macon, Georgia police department suspended the use of Tasers indefinitely following the death of two individuals who received Taser shocks.

A 2004 CBS News investigation revealed that in the United States 40 people have died after being shocked by Tasers. The company that manufactures the guns, Taser International, claims that these individuals would have died anyway and attributes their deaths to drugs, altercations with the police, or a state of delirium. Amnesty International has urged federal and local law enforcement to halt the production and use of all electro-shock weapons

pending an independent investigation into their use and effects.¹⁷⁵

Rubber, Wooden, or Plastic Bullets (or Batons): Rubber bullets, 8- to 9-inch cylindrical rounds fired from special shoulder-held rifles, were widely used in Great Britain and Northern Ireland and have been tried by the U.S. military. By the 1980s more accurate polyvinyl-chloride (PVC) cylinders measuring approximately four inches in length and 1.5 inches in width were used in Great Britain.¹⁷⁶ The United States first used rubber bullets in the 1960s, against civil-rights and antiwar protesters. In 1971, after causing a fatality, their use was stopped until reintroduction in the late 1980s. Frequently used kinds include “beanbag” bullets, cloth pouches containing about 40 grams of lead shot, and a plastic cylinder like those used in Northern Ireland.¹⁷⁷

The bullets are supposed to be shot at the lower half of the body. Several groups, including Human Rights Watch, have called for their ban. At point-blank range these projectiles can be fatal.

Beanbag Rounds: According to *Police Magazine*, beanbag rounds launched from 12-gauge shotguns are the most popular “less lethal” projectiles currently being used by law enforcement in this country. They are the same size as 12-gauge rounds but do not cycle in a semi-automatic shotgun and are usually fired from a modified pump-action model. Some police departments, however, do fire them from semi-automatics and cycle them manually. The actual bag is rectangular in shape and usually is made of a cotton or nylon blend containing from 26 to 56 grams of lead shot. Some bags are effective from a range of 60 feet. Velocity can range from 230 to 300 feet per second and 71 to 120 foot-pounds. According to police, newer, oblong-shaped bags are more accurate and safer than the square bags used for many years.

Concussion Grenades (Canisters): Frequently referred to as concussion grenades, MK3A2 offensive hand grenades are used to cause casualties in close combat while keeping danger to non-targets to a minimum. Also known as stun grenades or flash-bangs, these diversionary devices are used in police intervention. After police break down a door or break a window, they throw in an explosive device to disorient their targets.¹⁷⁸ These weapons are also used for concussion effects—to stun—in enclosed areas. The shock waves (overpressure) produced by this grenade when used in enclosed areas are greater than those produced by the fragmentation grenade.¹⁷⁹ Their body of pressed-fiber sides and sheet-metal ends contains an explosive charge filler of flaked TNT.

Pepper Spray: Oleoresin capsicum (OC), or “pepper spray,” is a chemical weapon made with an oil derived from cayenne peppers. It was introduced in this country by the U.S. Postal Service for use as a dog repellent in the 1980s, and in 1987 the FBI called it the Bureau’s “official chemical agent.”¹⁸⁰ Research shows that OC can cause serious health problems, despite manufacturers’ claims to the contrary. Amnesty International reports that since the early 1990s more than 60 people in police custody have died from exposure to OC.

Tear Gas: The *Journal of the American Medical Association*¹⁸¹ raised the issue of whether continued use of tear gas could under any conditions be condoned, given information about its toxicology. The toxicology includes chemical pneumonitis and fatal pulmonary edema; severe gastroenteritis with perforation; absorbed CS is metabolized to cyanide in peripheral tissues; contact burns and the development of skin sensitization; the development of reactive airways disease syndrome; and allergic reactions. In 1969, at the United Nations General Assembly, 80 countries voted to ban the use of any chemical, including tear gas, in war.

Electric Shields: Electric shields, or stun shields, are similar in appearance to police riot shields but have electrodes that allows users to apply an electric shock. A report by the Association of the Bar of the City of New York found that use of electric shields by the New York City Department of Corrections to control inmates at Rikers Island constituted a serious health threat.¹⁸² The report found that long-term studies of the effects of electric shields have not been conducted and that few procedures exist to conduct internal investigations into the use of force by corrections officers, including the use of electric shields. Scarce analysis exists by city medical personnel and administrators into the dangers of electric shields to counter the claims of manufacturers. The report urged the establishment of safeguards to avoid using stun technology on inmates with potentially serious conditions such as heart problems. Electric shields were used by Miami police against protesters during the FTAA demonstrations.

In a November 20, 2003, letter to Miami mayor Manuel A. Diaz, the Guild condemned the use of lethal force and wrote that the Miami Police Department's actions that week violated the fundamental due-process and First Amendment rights of thousands of nonviolent protesters gathered to protest the FTAA meetings. The letter called on Mayor Diaz and city attorney Alejandro Vilarello to respect the constitutional rights of these defendants and demanded a full-scale, independent investigation into the police officers' alarming behavior, with the results to be made public. The letter also explained that Guild members were on-site observing numerous illegal practices that Miami leaders have referred to as a "blueprint for homeland security," including the following:

- indiscriminate, excessive force against hundreds of nonviolent protesters with weapons including pepper spray, tear gas and concussion grenades, rubber bullets, and electric shields;
- singling out of NLG legal observers wearing highly visible neon-green caps. We have confirmed reports that five legal observers were arrested, and four of those were assaulted by police officers;

- police stopping and snatching protesters, seemingly at random, into unmarked vehicles; and
- police shooting protesters with rubber bullets and trapping them by police lines, resulting in major injuries. Police repeatedly refused to allow medics into these areas to treat the injured.

On April 7, 2003, in what the U.N. Commission on Human Rights later condemned as unjustified use of excessive force, Oakland police broke up a nonviolent antiwar picket at the Oakland docks using a panoply of “less lethal” weapons, including large wooden bullets, “sting ball” grenades filled with rubber bullets and tear gas, and shot-filled beanbag projectiles. The Oakland Police Department fired directly at people’s heads and upper bodies, despite the warning printed prominently on each wooden bullet shell casing: “Do not fire directly at persons as serious injury or death may result.” The police thus used lethal force when nothing had occurred to justify *any* force and demonstrators were attempting to comply with police orders. Three people suffered broken bones, and one woman had such a severe crush injury to her leg that she had to receive a large skin graft.¹⁸³

Police in Portland used pepper spray and rubber bullets to move hundreds of protesters who were jammed together to make way for President Bush and other attendees of an August 22, 2002 fundraiser for Senator Gordon Smith’s campaign. The party was held at the downtown Hilton, and the police surrounded the hotel and erected barricades to keep protesters within a half block of the Hilton in all directions. Thousands of protesters were present. The police issued a warning through a small, scarcely audible loudspeaker and then proceeded to “push and spray, push and spray,” driving people down onto the sidewalk, trampling over them, and pepper-spraying them directly in their eyes and faces. Then police fired rubber bullets into the crowd. Several National Lawyers Guild members subsequently filed a lawsuit on behalf of nine plaintiffs, three of whom were young children ranging in age from seven months to six years old.¹⁸⁴

The Portland chapter of the Guild hoped that the filing of the lawsuit would slow down such violent police activity. In fact, for several months it did appear to have that effect, until the war with Iraq broke out. Like in other cities around the country, there were continual protests in the streets of Portland during the war. On the first day of protests, at the direction of the mayor, police showed restraint initially, but later that day they assaulted demonstrators with pepper

spray, smashed protesters' heads against the pavement, and hit at least one protester over the head with a pepper-spray can and then sprayed him in the face as he was half-conscious, according to Guild members who witnessed the event. Police also used tactics of intimidation such as riding into the crowd with a black truck manned by police in riot gear wearing black bandanas and holding guns and billy clubs in readied position.¹⁸⁵

On April 16 and April 17, 2000 at the World Bank/IMF protests in Washington, D.C., officers and agents of the District of Columbia, as well as federal officers, subjected individuals to excessive force and attempts to use excessive force, including by knocking, tripping, or throwing to the ground; beating with batons; spraying and dousing with tear gas and pepper spray; running over with motorcycles; driving a van rapidly into demonstrators; donning gas masks and pointing gas-canister guns; and using motorcycles, vans, cars, and horses as weapons.¹⁸⁶

District and federal policymakers also fostered the belief by officers that excessive force against demonstrators would be tolerated and would not be investigated by approving of the officers' widespread practice of removing or obscuring their badges and name tags. Policymakers further fostered this belief by failing on April 16, 2000 to investigate or take other appropriate corrective action in response to reports of police excessive force, thus encouraging additional brutality the next day. Chief Ramsey ratified the use of excessive force including by stating, after the demonstrations, that he would make "no apologies" for any conduct of his officers.¹⁸⁷

At the 1999 World Trade Organization (WTO) protests in Seattle, the Guild documented indiscriminate use of excessive force including pain-compliance holds, the use of pepper spray, tear gas, and concussion grenades, and the firing of rubber bullets against hundreds of nonviolent protesters. More recently police have used Tasers and electric shields as part of their arsenal.

Street Medics and Political Health Collectives

After the 1999 WTO protests, several groups of health-care workers came together to address the needs of individuals injured by law enforcement at demonstrations. Medics in Portland, Oregon founded

the Black Cross Health Collective, which conducts first-aid trainings around the country and provides medical support at demonstrations, both locally and nationally. Other groups include Boston's BALM (Boston Area Liberation Medics) Squad, Colorado Street Medics, Medical Activists of New York, the D.C. Action Medical Network, Three Rivers Action Medics in Pittsburgh, and the Bay Area Radical Health Collective in San Francisco.

Fire and rescue services frequently do not respond to the needs of protesters injured by police, as they are instructed not to enter areas until the police have declared them secured.¹⁸⁸ Street medics—volunteers with varying levels of health-care and medical experience—are able to meet many of the needs of those injured, often with the cooperation of the police. Response from police varies—some are highly receptive to the medics, others are not. Sometimes medics are permitted to cross police lines or even enter jail cells to treat wounded activists. However, at the FTAA protests in Miami, police appeared to target medics for arrest, subjecting them to the same excessive force as protesters. In particular, dozens of officers in riot gear attacked the “Wellness Center” and discharged pepper spray into the free clinic where protesters were receiving treatment.

Punishing Political Expression After Demonstrations

Unprecedented and Unconstitutional Bails

The Eighth Amendment to the U.S. Constitution provides that bail shall not be excessive. The purpose of bail is to allow an arrested individual to be free until he or she has been convicted. Theoretically the amount of bail should not exceed what is reasonably necessary to prevent that individual from leaving the jurisdiction until the case has concluded. Standard bail schedules specify bail amounts for common offenses, but judges frequently set extremely high bail in the case of certain offenses—such as rape—in order to ensure that the defendant remains in detention until the trial has concluded. Although this practice of preventative detention is inconsistent with the Constitution, the Supreme Court has yet to rule on the issue.

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

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

The federal authorities showed Sellers a lengthy dossier that police had on him, including quotes from newspaper interviews in which he had cited high levels of violence committed by the Philadelphia police. The Philadelphia District Attorney requested that the court set an unusually high bail specifically to keep Sellers out of Los Angeles for the then-upcoming Democratic Convention. Assistant District Attorney Cindy Martelli argued that Mr. Sellers was a central leader in a street demonstration at which more than 200 people were arrested. Larry Krasner, Sellers' attorney, pointed out that the District Attorney had noted repeatedly that the Democratic National Convention was right around the corner. After spending five and a half days in lockdown without visitors or phone calls, Sellers had his bail reduced to \$100,000.

Kathleen Sorensen, who was charged with ten RNC-related felonies and ten misdemeanors, was held on \$1 million bail for ten days. Prosecutors said that Sorensen helped to organize an incident in which trash cans were overturned and fires were started. Ultimately she was acquitted of 19 of those charges after a three-day jury trial. Sorensen was found guilty of one misdemeanor, criminal mischief. After being followed by the police for two hours on August 1, Sorensen was arrested while walking through Love Park talking on a cell phone. Evidence turned over by the prosecution showed that the FBI had been following Sorensen since April 2000. In the week before trial, the Philadelphia Department of Licenses and Inspections showed up at Sorensen's house three times.¹⁸⁹

In a statement to the press, Danielle Redden of the R2K Legal Collective, who is also a legal worker vice president of the National Lawyers Guild, said, "The city was willing to hold Kate for ten days on \$1 million bail and then put her in jail for more than 20 years for damages that ended up amounting to a fender-bender. It's time to move on."

At the FTAA protests in Miami, bail for misdemeanor charges was set from \$1,000 to \$20,000. Several activists charged with felonies that were later dismissed were charged with \$10,000 bail. Attorneys with the Miami Public Defender's Office, which provided assistance during the mass arrests, expressed concern at the excessive bails especially when compared with the standard bails in cases involving the same charges.

Trumped-Up Charges and Penalty Enhancements

Charges for low-level offenses have been trumped up by law enforcement. In what seemed an enhanced penalty based on a content-based offense, four protesters in San Francisco were arrested on felony charges for “wheat-pasting” dumpsters with posters of the Twin Towers with a plane flying into them, captioned “The Evil Empire.” Two of the offenders were each held on \$5,000 bail. In the rare instances in which anti-flyering ordinances are enforced, wheat-pasters typically are charged with a violation or misdemeanor, receive a citation, and are released, since the property damage, if any (usually a lamppost or wall), is not significant enough for a felony.¹⁹⁰

In another instance of ramped-up charges, 18 people were arrested at an antiwar rally in Hartford, Connecticut on October 25, 2001. Bonds were set up to \$450,000 and prompted great community outrage. Several of the “Hartford 18,” as they were called, were charged with conspiracy to incite a riot, even though protesters claimed that they were targeted and were merely mediating a discussion after initial arrests were made. At the rally the police sprayed pepper spray into the crowd while police on bicycles drove into individuals’ legs. The media reported that Hartford residents who had attended a larger rally in April 2001, also without a permit, noted that police reactions were noticeably different in the wake of September 11.

One of the Hartford 18, peace activist Adam Hurter, was charged with inciting a riot and faces a ten-year sentence if the Hartford prosecutor has his way. The media reported that the police report called him a “ringleader” who was trying to recruit “radicals” to join him in his “violent plot” to attack an officer. Hurter and witnesses claimed that he sat in the middle of a circle of demonstrators on a sidewalk and led a discussion about what to do after the police started arresting people.

On June 7, 2001, in Cincinnati, very high bonds were set for more than 70 people arrested during the uprising in April 2001 in Cincinnati. Two months later, three activists were arrested, one for chalking on the sidewalk after a police officer said that he was free to do so. Protesters in the Mt. Adams neighborhood were assaulted by the police, handcuffed, and then maced and beaten. One of the two who are being held on \$25,000 bond—essentially for jaywalking—

was reported to have been beaten and tortured while in police custody. Prisoners report that David Mitchell, a journalist who wrote an incisive article on police misconduct during the uprisings for *Street Vibes*, a Cincinnati newspaper produced by and for the homeless, was Tasered to the point of losing consciousness while in restraints. He was left alone, handcuffed and passed out in his own vomit, for two hours. During this time his lawyer was denied permission to see him. An outside physician sent to examine him was denied access as well.

In relation to the trumped-up arrests at the 2000 Republican National Convention in Philadelphia, the City was ultimately unable to prove its case. Several charges were dropped for lack of evidence, and others failed to impress judges or juries. Two alleged ringleaders filed suit in federal court. John Sellers, director of the Ruckus Society, was held in prison for six days on \$1 million bail before charges were dropped. Terrence McGuckin, held on \$500,000 bail, was acquitted of misdemeanor charges. A lawsuit was filed on behalf of 70 people arrested in the so-called “puppet warehouse” in West Philadelphia when it was raided by police. These 70 individuals spent the rest of the convention week in jail.

At the FTAA protests in 2003, bail was set at \$20,000 for a New Jersey teenager who police claimed was riding a bicycle at 2:45 a.m. and refused to say what he was up to.¹⁹¹ The Public Defender argued that the reason for such a high bail for a minor crime was that he was a protester; the standard bond for such an infraction is \$500. Arrests of this kind with high bails receive significant media attention at the time, and usually end weeks or months later with dismissals that receive scant media attention.

Twelve activists were sentenced in New York to high penalties and fines on May 12, 2004 for their participation in a demonstration in April against the invasion of Iraq and protesting the Israeli military’s killing of Rachel Corrie, a peace activist from the U.S. They received 90 days of community service and fines exceeding \$2,000; no comparable protest case has received such heavy penalties in New York City in recent decades. The District Attorney refused to plea-bargain in this case. Judge Robert Stolz denied the District Attorney’s request for jail time for any defendant with a past arrest record—an unprecedented recommendation—but singled out two activists for \$500 fines and longer community service because they

had also protested against federal registration of Muslim, Arab, and South Asian immigrants in May. The New York State Supreme Court granted the District Attorney's unusual request to unseal some defendants' sealed records.

On May 26, 2004, Joe Previtera, a 21-year-old Boston College student, was arrested and charged with two felonies after he stood, dressed as a hooded Iraqi prisoner, in front of an Armed Forces Career Center on Tremont Street in downtown Boston. Although the Suffolk County District Attorney asked that bail be set at \$10,000, National Lawyers Guild attorney Jeff Feuer and Mr. Previtera's mother, also an attorney, persuaded the judge to free Mr. Previtera on personal recognizance. Mr. Previtera said that he had hoped "the image of an abused Iraqi prisoner might make people think twice about joining the military," asking, "Is it reasonable that I face greater punishment for my free speech than do the soldiers who actually commit abuses?"¹⁹²

Four friends accompanied Previtera to take photographs and to protect him while hooded. They reported that someone from the recruitment office came out and asked Previtera to get down. When Previtera remained standing, the person went back inside, and the police arrived soon afterward. The Boston Police bomb squad followed, and police taped off the area. When Previtera stepped down, police took him into custody for disturbing the peace. In addition to being charged with a misdemeanor, Previtera was charged with two felonies, for making a false bomb threat and for possession of a "hoax device," even though Previtera never used the words "bomb" or "explosive." The *Boston Phoenix* reported that officer Michael McCarthy of the Boston Police Department said that the bomb threat was implied by the fingers and wires.¹⁹³

Post-Event Intimidation by FBI Questioning or Grand Jury Subpoena

In October 2003, the Guild's national office received word from a member in Des Moines, Iowa that local authorities had notified her that her e-mail was likely being monitored. Four months later, on February 3, that same member, Sally Frank, a law professor and an advisor to the Guild chapter at Drake University, called to say that the authorities had issued subpoenas to appear before grand juries to

four antiwar protesters in Des Moines. Federal forces also subpoenaed Drake University for records of its National Lawyers Guild chapter, including names of officers, information relating to an antiwar training in November 2003 entitled “Stop the Occupation! Bring the Iowa Guard Home,” and reports dating back two years. The government also issued a gag order on employees of the University. These actions puzzled the locals, mobilized the Guild, and quickly attracted national attention because they seemed to target individuals based on their political activity. Former national president Bruce Nestor quickly filed a motion on behalf of the Guild, as an interested party, to quash the Drake subpoena. The national press devoted significant coverage to the issuance of the subpoenas. In a comment in *The Nation*, David Cole noted that this was not just an isolated incident of prosecutorial discretion but rather was part of Attorney General Ashcroft’s view that monitoring political dissent is a central component in the war on terrorism. Under Ashcroft, Cole reminds us, those who engage in dissent “erode our national unity and diminish our resolve. They give ammunition to America’s enemies, and pause to America’s friends.”¹⁹⁴

Likely in response to the media attention and the outpouring of public condemnation, the U.S. Attorney’s Office first took the unusual step of issuing a statement confirming its investigation, and then the next day abruptly withdrew its subpoenas. However, if the government was only looking into the actions of one person, one must ask why it also subpoenaed National Lawyers Guild records dating back two years. And why force a gag order on Drake University?

The Des Moines subpoena incident is not the first time that grand juries have been improperly used to badger political dissenters, especially during wartime. In response to this subversion of process, in the late 1960s and early 1970s Guild members represented Vietnam War draft resisters and antiwar protesters subpoenaed to appear before grand juries.¹⁹⁵

Survey of Demonstrations and Pending National Lawyers Guild Litigation Against Police Departments

A survey of recent demonstrations and related police-misconduct litigation is useful in contextualizing the new police tactics. Especially striking is the similarity of tactics being utilized by state and local governments to silence speech on a wide array of issues. Vigorous attacks on free speech have resulted in lawsuits in Washington, D.C., Philadelphia, Oakland, Chicago, Los Angeles, Miami, and Portland, targeting everything from mass demonstrations to small, spontaneous gatherings. The uniformity of approach and the zealous and relentless application of such tactics suggest a much more serious and organized threat to civil liberties than many may realize.¹⁹⁶

World Trade Organization Protests (Seattle, 1999)

After a single, inaudible order to disperse was uttered through what looked like a toy megaphone, and without leaving the few protesters who could hear them time to comply, Seattle Police Department unleashed a dozen canisters of tear gas...peopled by two lines of Buddhists chanting "om," countless middle aged, Volvo-driving middle-class ladies and gentlemen...regular working folks and homeless...and high school kids and smaller children.¹⁹⁷

From November 29 to December 3, 1999, between 50,000 and 75,000 demonstrators went to Seattle to protest the meeting of the World Trade Organization. In what became known as "the Battle in Seattle," police using "less lethal" weapons unleashed a level of violence previously unseen in this country. Downtown Seattle was declared off-limits to protesters. Possession of a gas mask became punishable by a \$500 fine and 180 days in jail. The police pepper-sprayed a crowd of steelworkers marching outside the no-protest zone despite the fact that they had a permit from the City to march.

A National Lawyers Guild legal observer watched as black-clad police officers without identifying marks flipped young people face-down onto flagstones, put knees onto their necks and backs, applied pain-holds on non-resisting children, and trussed them up with plastic handcuffs, dragging them into busses.¹⁹⁸

Press coverage of protesters focused on the few who broke windows at a Starbucks store. The media ignored the 75,000 others who peacefully filled the streets.

World Bank/International Monetary Fund Spring Meetings (Washington, D.C., April 2000)

In April 2000, thousands converged in the nation's capitol to protest the policies of the World Bank and the International Monetary Fund at their spring meetings. At the demonstrations, police arrested hundreds of lawful protesters (including more than 600 in a mass false arrest), raided and seized activists' meeting hall, confiscated political literature, and brutally beat nonviolent activists.

A CNN report described the response by law enforcement: "Police in riot gear used batons and pepper spray on Sunday against protesters gathered in Washington....Police hit protesters with batons and sprayed others in the eyes with pepper spray....Mounted park police used horses to push back others rallying near the White House." Before the weekend's protests, nearly 700 protesters, journalists, tourists, and bystanders were trapped on all sides by police and then unlawfully arrested in an unconstitutional sweep of the streets during a demonstration against the "prison industrial complex."¹⁹⁹ Many arrestees were detained overnight and tied ankle to wrist, in harsh conditions.

The Partnership for Civil Justice, also litigating on behalf of the National Lawyers Guild, and civil-rights attorney Leonard Weinglass challenged the unconstitutional trap-and-arrest tactics of D.C. law enforcement in *Alliance for Global Justice, et al. v. District of Columbia, et al.*²⁰⁰ Other claims in this litigation relate to the unconstitutional raid and closure of activists' convergence center, as well as incidents of brutal beatings and the use of undercover *agents provocateurs*. This is a class-action claim.

Organization of American States Meeting (Detroit, June 2000)

In preparation for anticipated protests at the June 2000 meeting of the OAS, the Detroit City Council met on the eve of Memorial Day weekend to consider four emergency ordinances at the behest of the Police Department. The ordinances prohibited wearing masks, carrying flammable liquids, carrying squirt bottles, and using tents and sleeping bags on City property. The proposed emergency ordinances were deemed necessary by the Police Department to avoid “another Seattle.” The ordinances were to be in effect only for the time period of the OAS meeting in Windsor, Ontario, in early June. Lawyers who attended the City Council meeting realized that the mask ordinance could be used as a pretext by police to arrest anyone wearing any type of mask.

On June 2, 2000, at a nonviolent protest in Detroit against the OAS meeting, 20 protesters were riding bicycles lawfully on an avenue when police ordered their mass arrest, in accordance with a previously formulated policy to arrest demonstrators en masse whether or not they had committed any offenses. Thirteen were charged with violating the statute against wearing a mask in public. The police used unnecessary, excessive, and unreasonable force against individuals who did not resist. The National Lawyers Guild and the ACLU filed *Jones et al. v. Benny Napoleon, City of Detroit, et al.*,²⁰¹ and the state legislature revised the law.

Republican National Convention (Philadelphia, July 31-August 2, 2000)

Thousands of people came to Philadelphia for the Republican National Convention. Police arrested 391 individuals, mostly on misdemeanor charges such as possession of instruments of a crime (e.g., cell phones). Before, during, and after the convention, police monitored, photographed, and detained activists.²⁰² Police questioned activists about their participation in earlier demonstrations in Washington, D.C. and Seattle.²⁰³ Seventy were arrested in an illegal raid of a puppet factory. About 100 of those arrested accepted plea bargains and paid \$335 in restitution and court fees in exchange for six months probation.

Once activists were arrested they faced mistreatment. Police detained hundreds of protesters on police buses, some for up to nine hours in extreme heat and without any water. People were then taken to one of five holding facilities.²⁰⁴ Reports of abuse by prison guards were corroborated by scores of arrestees. Abuses included beatings, hog-tying, sexual abuse, and widespread cuffing of individuals' wrists to their ankles to the point of circulation loss. Police forced them, in this condition, to crawl to and from cells or to sit on cement floors.²⁰⁵ Additional claims included the denial of medication, including HIV medication.

Democratic National Convention (Los Angeles, August 14, 2000)

At a press conference on August 9, 2001 announcing the filing of a lawsuit in federal court by attorneys from the National Lawyers Guild and the American Civil Liberties Union of Southern California, Jim Lafferty, executive director of the Los Angeles chapter of the National Lawyers Guild, described police actions at the Democratic Party Convention:

The Los Angeles Police Department criminally, intentionally, and brutally, violated the rights of tens-of-thousands of people who were attempting to exercise their constitutional right to engage in peaceful political protest. Throughout the convention, the police prevented people from joining demonstrations; issued illegal orders prohibiting or terminating legally authorized marches and rallies; flew police helicopters so low over rallies that speakers could not be heard; prevented people from using public sidewalks; and arrested demonstrators without just cause. Worse, yet, people who were demonstrating lawfully and peacefully were, without provocation or excuse, shot by the police with rubber bullets, bean-bag guns and pepper spray and subjected to other so-called 'non-lethal' force, which the LAPD administered in a potentially lethal manner. Indeed, dozens were shot in the back even as they were complying with the LAPD's illegal order to disperse. They were also clubbed by police

officers and trampled by police on horseback. Hundreds of people were injured, some seriously. The LAPD did these things in full view of the media under the apparent, and arrogant, belief that they could do so with impunity. Indeed, it was clear to the legal observers from the National Lawyers Guild that the police made a point of targeting legal observers and members of the press, both of whom were documenting the LAPD's all-out assault on the constitution. In the course of these attacks, many legal observers and journalists were also shot, clubbed and otherwise brutalized by the LAPD.

In addition, the police prevented ingress and egress from permitted rallies and disallowed or terminated lawful demonstrations. In August 2001 the lawsuit *National Lawyers Guild v. City of Los Angeles* was filed against the LAPD concerning police abuses during the Democratic National Convention. The lawsuit challenged the LAPD policies and practices of (1) improperly terminating or prohibiting lawfully permitted political demonstrations without good reason; (2) using excessive force against people engaged in protected expression who pose no threat of harm, including, but not limited to, the use of rubber bullets, beanbag guns, pepper spray, baton strikes, and other so-called "less lethal" force, which were used by Defendants in a potentially lethal manner; (3) preventing people from entering or exiting permitted marches and rallies; and (4) preventing those engaged in political demonstrations from being heard by circling immediately above them with low-flying helicopters.

Plaintiffs in the lawsuit are the National Lawyers Guild, Los Angeles chapter; the Los Angeles Coalition to Stop the Execution of Mumia Abu-Jamal; the Los Angeles chapter of the October 22nd Coalition; and the D2K Convention Planning Coalition.

Mumia Abu-Jamal Vigil (Philadelphia, May 2001)

The City of Philadelphia denied a permit application filed by activists organizing a two-day vigil in support of death-row inmate Mumia Abu-Jamal at City Hall in spring 2001. In response to a

lawsuit to strike down Philadelphia's unconstitutional permitting scheme, *International Action Center v. City of Philadelphia*, an emergency hearing resulted in a court order directing the City to grant the permit and allow the demonstration go forward. The litigators went forward to strike down the entire Philadelphia permitting scheme as unconstitutional. The matter was litigated in Federal District Court for the Eastern District of Pennsylvania.

The case settled on July 6, 2003 with a consent order. The City of Philadelphia agreed to no longer use the discretionary protest-permitting scheme. Philadelphia police were also barred from using a "youth curfew" to arrest or threaten to arrest youth engaging in First Amendment activities. The suit was litigated by the Partnership for Civil Justice, also litigating on behalf of the National Lawyers Guild.

President Bush Inauguration (Washington, D.C., January 20, 2001)

Tens of thousands of people converged in Washington, D.C. on January 20, 2001 on a cold, rainy day to demonstrate against the controversial election and subsequent inauguration of George W. Bush. More demonstrators attended the Bush inauguration than any since Richard M. Nixon's second inauguration.

*International Action Center, et al. v. United States, et al.*²⁰⁶ challenged the disruption of free speech and assembly, including the deployment and use of Civil Disturbance Units by the D.C. Metropolitan Police Department (MPD), acting in conjunction with federal law-enforcement authorities, against nonviolent protesters. Tactics included unconstitutional use of police lines to surround activists and detain and arrest them; violent assaults by police *agents provocateurs*; detentions of protesters and the splintering of groups and assemblies; infiltration and domestic spying by police posing as activists; and joint unconstitutional actions with the Bush-Cheney presidential inaugural team.

Government *agents provocateurs* were captured on videotape beating and pepper-spraying protesters without provocation along the parade route. Stationed at one of the main entry points to the parade route and a permitted protest area, the Bush-Cheney Presidential Inaugural Committee, in cooperation with the D.C.

police and federal law enforcement, prevented activists from reaching their permitted protest area for hours. This action was filed by the Partnership for Civil Justice, also litigating on behalf of the National Lawyers Guild.

Bush Fundraising Event (Portland, Oregon, August 2002)

“It was clear to me that the police could see that there were young children in strollers within the crowd, yet the police ignored that fact and continued to spray pepper spray indiscriminately so that the spray hit the children and their mothers. Members of the press were also indiscriminately sprayed.”²⁰⁷

On August 22, 2002, President Bush attended a fundraising event at the Hilton Hotel in downtown Portland, Oregon. A large group of demonstrators were present to protest the policies of the Bush administration. The Portland Police Bureau had established a perimeter around the Hilton that ran less than one block in all directions and right before the event claimed that the protesters were interfering with the ability of fundraiser attendees to enter the Hilton. The police claimed that they had used a loudspeaker to order protesters to move back approximately 120 feet. “The announcement was barely audible and was only heard by a few of us at the front of the barricades.... Although the police ordered the crowd to move back, the people at the front of the crowd could not move without knocking over people behind them and trampling them.” The police then used pepper spray against the protesters and applied force in order to move them. Later in the day, the police fired multiple rounds of rubber bullets at members of the protest.

Videotapes, especially that of local television station Channel 12, do not show anyone in the crowd threatening the police or taking any action that could be perceived as threatening, provocative, or dangerous.²⁰⁸

Members of the National Lawyers Guild filed a lawsuit, *Lloyd Marbet, et al. v. City of Portland, et al.*,²⁰⁹ asserting that it is the custom, policy, and practice of the Portland Police to use excessive force against lawful protesters and that the municipality’s training

and supervision of police officers is inadequate. The suit cites violations of the First, Fourth, and Fourteenth Amendments through 42 U.S.C. Sec. 1983, as well as various common law claims.

On September 8, 2003, the court ruled that pepper-spraying nonviolent protesters violates the Fourth Amendment.

Antiwar Demonstrations (Washington, D.C., September 27, 2002)

Hundreds of political activists, legal observers, and passers-by were unlawfully arrested and detained in Washington, D.C., on September 27, 2002, the first of several days of planned protests against the war in Iraq and the fall World Bank/IMF meetings. A lawsuit, *Barham et al. v. Ramsey, et al.*,²¹⁰ filed by the Partnership for Civil Justice, also litigating on behalf of the National Lawyers Guild, seeks a permanent injunction barring the use of illegal tactics by D.C. law-enforcement officials to disrupt and infringe upon constitutionally protected speech and assembly. Specifically, it challenges the illegal roundup and mass arrest of hundreds of activists, as well as National Lawyers Guild legal observers, tourists, and bystanders. The court granted class certification.

World Economic Forum (New York City, January and February 2002)

At the World Economic Forum meeting in New York, some 3,000 political, academic, cultural, and financial leaders from around the world met at the Waldorf-Astoria Hotel from January 31 to February 4, 2002. More than 24 hours before the meeting, police implemented traffic restrictions and deployed thousands of officers, at 5 a.m. on Wednesday, January 29.²¹¹ During the protests that day, “[police] surrounded the demonstrators, bracketing marches in the streets, at one point with city buses and at another with police motorcycles, and monitored the protests with television cameras mounted high above the Waldorf and on police helicopters.”²¹² Police arrested approximately 200 individuals.

Antiwar Demonstration (New York City, February 15, 2003)

More than 100,000 people attended an antiwar demonstration in New York City on February 15, 2003. Police erected a system of barricades that prevented many from leaving the site and that made it impossible for tens of thousands of protesters to access the demonstration site. Due to a last-minute denial of a permit to march, organizers, protesters, and police were not exactly sure what to expect. As the morning progressed, people lined up on city blocks in midtown trying to get to the rally while others took part in dozens of smaller sidewalk marches across the city, winding toward the rally site. But the flow of people was severely stifled and redirected by police, who began blocking access to cross-streets, tightly packing crowds onto street corners and sidewalks up and down First, Second, and Third avenues. Police tactics soon became violent as police rode their horses onto sidewalks and into people, pushed and hit people with batons, grabbed and crushed signs, and used pepper spray. Media reports diverged on the number of protesters arrested: The *New York Daily News* said 71 people were arrested, *Newsday* reported 125 arrests, the *New York Post* reported 50, and the *New York Times* wrote that at least 295 people were taken into custody. *Indymedia* heard from multiple sources that over 300 people were arrested. The Guild legal team tracked arrests and reported, "People are being steadily released from custody on minor charges (mainly disorderly conduct). Legal support estimates 350-400 arrests, mainly violations such as above."²¹³

Antiwar Protests (Albuquerque, New Mexico, March 20, 2003)

On the evening of March 20, 2003, several hundred people gathered in front of the University of New Mexico bookstore to protest President Bush's decision to invade Iraq. Albuquerque Police Department (APD) officers dressed in riot gear and in some cases mounted on draft horses closed off the intersection of Central and Girard and Central and University avenues and then formed "skirmish lines" in front of the demonstrators. The officers then escorted the protesters in a loop that ran west to University Avenue,

went north on University, and eventually continued west to Cedar Avenue before returning to Central Avenue.

As the crowd returned to the original gathering spot and crossed University and Central avenues, officers struck people with batons and used horses to force stragglers to move more quickly. As protesters crossed Harvard Avenue, police launched tear-gas canisters into the crowd. The officers eventually maced protesters and shot them with beanbag and pepper rounds, dispersing the crowd. In one incident an APD officer fired 15 pepper-gun rounds at a protester who was lying in a submissive posture in the street. Other protesters reported being hit with tear-gas canisters that were fired into the crowd. Police made several arrests.

Peter Simonson, executive director of the ACLU of New Mexico, said, “We are deeply concerned by the police department’s policy of managing peaceful protests with the same techniques that are used to control violent mobs. These protesters were a threat to no one. They were students, senior citizens, and parents with their children and dogs. Despite their peaceful behavior, the protesters were gassed, beaten with batons, and shot with stun weapons.”

The ACLU of New Mexico and the New Mexico chapter of the National Lawyers Guild filed a civil-rights lawsuit against the Albuquerque Police Department for its handling of the protest.²¹⁴ Fourteen plaintiffs—including two minors—have accused the Albuquerque police of violating their right to free speech and subjecting them to false imprisonment, wrongful arrest, malicious abuse of process, and excessive use of force. Albuquerque mayor Martin Chavez, Department of Public Safety chief Nick Bakas, chief of police Gilbert Gallegos, and twelve APD officers have been named as defendants in the suit. ACLU cooperating attorney Cammie Nichols said that “the actions that prompted this lawsuit are not a few minor instances of officers accidentally stepping over the line. This lawsuit responds to a distinct pattern of grossly negligent and over-aggressive behavior that subjected law-abiding citizens to unnecessary danger and intimidation.”

On November 20, 2003, after interviewing 47 police officers and 23 citizens, Albuquerque’s Independent Review Office (IRO) found that some police officers used excessive force during the March protest. The IRO also found that some officers failed to render or to request

first aid for injured people, failed to follow standard operating procedures, and used weapons that were not authorized or are not recommended for crowd control. The IRO concluded that a series of bad decisions made by high-ranking police officials created a dangerous situation for everyone at the march, including police and demonstrators. Chief of police Gilbert Gallegos is not required to act on the findings of the IRO or to follow its recommendations.

Attorneys for the ACLU of New Mexico and the National Lawyers Guild include Cammie Nichols, Mary Lou Boelcke, Marc Lowry, Larry Kronen, Cindy Marrs, and David Stotz. The suit seeks declaratory and injunctive relief, including improvements in City and APD training and in policies for the management of nonviolent demonstrations.

Antiwar Demonstrations (Washington, D.C., April 12, 2003)

On April 12, 2003, hundreds of thousands of protesters around the world voiced their opposition to the occupation of Iraq. Thousands converged in Washington, D.C. to participate in a permitted demonstration and march. Police used their motorcycles and bicycles as weapons and drove recklessly against, into, and through the march.²¹⁵ Blocs of officers unjustifiably charged into the crowd as it marched along its permitted route, clubbing with batons and punching with fists without reason.

NBC affiliate station Channel 4 aired a videotape of the MPD repeatedly clubbing Marc Frucht in the head as he lay passive on the ground, having been thrown there by police when he was taking photographs of police misconduct. The police carried out multiple unprovoked assaults against the marchers, clubbing, punching, and using motorcycles and bicycles as weapons. Sean Taft-Morales was injured when the police attacked the crowd with clubs and fists as it marched on its permitted route.²¹⁶

The Partnership for Civil Justice, also litigating for the National Lawyers Guild, filed *Frucht et Morales v. District of Columbia* in Federal District Court for the District of Columbia on April 13, 2004. In addition to damages, the lawsuit seeks an injunction against the police's use of motorcycles and bicycles as weapons against

demonstrators, the use of police and cycle lines to flank marchers and prohibit persons from leaving or joining demonstration activities, and the use of the rush tactic, in which police officers charged and assaulted assembled demonstrators.

Free Trade Area of the Americas (FTAA) Meeting (Miami, November 2003)

The *Washington Post* reported on November 21, 2003 that police officers in riot gear “fired rubber bullets and canisters of chemical spray Thursday to disperse thousands of demonstrators gathered in the shadow of downtown skyscrapers to protest the proposed formation of a Western Hemisphere free-trade zone.”²¹⁷ Lori Wallach, director of Public Citizen’s Global Trade Watch, described police reaction to FTAA protests from November 17 to November 23, 2003 thus:

Columns of Robocop riot-gear-clad police randomly attacked bystanders, beat up protesters and swooped up reporters, residents and others in random arrest sprees as they became increasingly desperate to use the new torture toys that \$8 million in federal funds tucked into the \$87 billion Iraq appropriation had provided. Reports now coming in include a severe post-arrest beating that has left one protester in serious condition in the hospital and allegations of sexual abuse of arrestees in the Miami jail. The arrestees include journalists from such outlets as Democracy Now! and the *Miami New Times*. The City of Miami certainly will face millions in liability from abused protesters and residents. The image Miami’s leaders broadcast to the rest of the hemisphere was equal parts revealing and embarrassing and may result in Miami being rejected as a venue for an FTAA Secretariat, if an agreement is even completed.²¹⁸

Thirty-five different law-enforcement agencies launched a coordinated effort at the 2003 FTAA demonstrations at an approximate cost of over \$24 million, or nearly three times the \$8.5 million in federal funds available for reimbursement from money

earmarked for the “war on terrorism.”²¹⁹ Police used Tasers, concussion grenades, and electrical shields on nonviolent protesters. Police conducted mass false arrests and used ski-masked officers in unmarked vans to pluck Guild legal observers off side streets, subjecting them to violence and arrest for no reason.

A civil lawsuit filed in federal court on March 25, 2004 challenged the “Miami model” as a deliberate and coordinated effort by local, state, and federal authorities to disrupt political speech through an unwarranted use of force. A legal team was assembled of NLG attorneys from around the country to file the lawsuit to prevent the “model” from being used to restrict mass protests nationwide.

The defendants named in the lawsuit, accused of violating the First, Fourth, and Fifth Amendments, include the City of Miami, mayors Manny Diaz and Alex Penelas, police chief John Timoney, State Attorney Katherine Fernandez-Rundle, Secretary of Homeland Defense Tom Ridge, and Attorney General Ashcroft.

Despite the use of millions of dollars in federal funds to implement a coordinated campaign by law enforcement to physically suppress dissent (illustrated in the lawsuit) and the continuing expenditure to try cases, the State Attorney’s efforts failed to result in more than one misdemeanor conviction. (The person convicted did not consider himself to be part of the protest; he was a bystander. The Miami Activist Defense (MAD) legal collective contends that there were no convictions of people arrested while participating in the FTAA protests.)

The plaintiff group currently consists of 21 people and is growing. Plaintiffs are seeking injunctive relief as well as financial damages.²²⁰

Just weeks prior to the FTAA conference, the City of Miami enacted a law restricting what individuals could carry in the streets and requiring a permit for public gatherings of seven or more people if they lasted more than 30 minutes.

A lawsuit filed on February 4, 2004 alleged that the City of Miami’s rally-permit scheme was so broad, vague, and arbitrary that it constituted unlawful prior restraint, vested public officials with unbridled discretion, and invited content-based decisions on who is

permitted to demonstrate. The suit, *Lake Worth for Global Justice, Inc. v. City of Miami et al.*, asked the court for a temporary restraining order followed by a permanent injunction against enforcement of the permit ordinances.

At a hearing for a temporary restraining order, Judge Graham expressed concern about the constitutionality of the ordinances. On February 5, 2004 and March 3, 2004, the judge ordered the City to issue a permit to Lake Worth for Global Justice and any other organizations or individuals wishing to engage in similar activities. She also ordered the City to give notice to the court of any permit denials so that the court could hold a hearing to review the City's reasons for the denial. In response to the lawsuit, the City repealed the controversial "Parade and Assembly Ordinance," enacted in anticipation of the FTAA protests, and substantially revised its permit scheme. At the time of Judge Graham's rulings, approximately 75 criminal cases arising from the FTAA protests were pending. The ordinance had required permits for public gatherings of more than seven people that lasted over 30 minutes. It was used during the protests as a pretext to unlawfully arrest demonstrators.

This suit was filed by National Lawyers Guild members Carol Sobel, Robert Ross, and Andrea Costello (and also on behalf of the legal collective Southern Legal Counsel, based in Gainesville, Florida).

Antiwar Demonstration (Chicago, March 20, 2003)

At an antiwar march attended by approximately 10,000 people in Chicago on March 20, 2003, the Chicago Police Department unlawfully detained and imprisoned protesters by herding, sweeping, and then pinning demonstrators and bystanders on the corner of Chicago and Michigan avenues for hours and forcefully preventing them from either assembling peacefully and speaking freely or leaving the area of a peace rally and march. Protesters and bystanders were also subjected to excessive and unnecessary force that caused injuries. There were 543 arrests; attorneys for the National Lawyers Guild represented all arrestees pro bono. Many were detained in police vehicles and subsequently in jail cells for periods of four to 36 hours. While imprisoned, the arrestees were subjected to conditions

of arbitrary, unreasonable, and unduly punitive confinement. There were no convictions because all charges were eventually dropped.

Attorneys from the National Lawyers Guild filed a lawsuit on April 10, 2003 as a class action against the City of Chicago and the Chicago Police Department as a result of these unlawful mass arrests. *Kevin Vodak, et al v. City of Chicago, Superintendent Terry G. Hillard, Commander John R. Risley, Defendants Doe 1-50, Defendants Doe 51-100, and Defendants Roe 1-40*²²¹ is a civil-rights class action for money damages and injunctive relief, authorized arising under 42 U.S.C. Sec. 1983, for violations of the U.S. Constitution and the constitution and laws of the State of Illinois. The defendants are the City of Chicago, Superintendent Hillard, Commander Risley, and other policymakers and supervisory personnel and officers of the Chicago Police Department accused of unlawful detentions, arrests, and imprisonment and of causing injury to approximately 800 class members at the March 20, 2003 rally in Chicago.

In June 2004, the City of Chicago filed a counterclaim seeking costs and reimbursement based on a rarely used city ordinance authorizing civil actions for costs when a federal, state, or local law is violated. Among other assertions, the lawsuit alleges that the failure to secure a permit for the march justifies reimbursement for costs for vaguely claimed police services, as well as processing and detention costs. Even the fact of filing this counterclaim seems calculated to have a chilling effect on putative class members' access to the courts, as well as future First Amendment activities.

Antiwar Demonstrations (Portland, Oregon, March 20 and March 25, 2003)

On March 20, the KATU-TV news team was covering a demonstration against the attacks on Iraq. Without provocation and for no apparent reason, two police officers struck a KATU engineer in the head and shoved him into the news van. On March 25, at another antiwar rally, two protesters were, without provocation, detained, seized, arrested, battered, and pepper-sprayed. A lawsuit, *Ellis, et al. v. City of Portland*,²²² was filed in May 2004, alleging that the Portland Police Bureau has demonstrated a pattern and practice of flagrantly violating nonviolent demonstrators' First

Amendment rights, violating the rights of the press, and using excessive force in demonstrations on a continuing and regular basis. The suit seeks injunctive relief in the form of court-ordered and court-appointed civilian review boards and a court-ordered ban on the use of chemical weapons and batons to control crowds at nonviolent demonstrations. It also seeks compensatory and punitive damages under 42 U.S.C. Section 1983.

Dockworkers Strike (Oakland, April 7, 2003)

On April 7, 2003, in what the U.N. Commission on Human Rights characterized as unjustified use of excessive force, police fired wooden dowels, beanbag projectiles, and rubber bullets into a crowd of more than 100 antiwar protesters blocking maritime terminals at the Port of Oakland. Some fired at protesters who were trying to run away, causing them serious back wounds.

On June 26, 2003, the Guild and the ACLU of Northern California filed a federal civil-rights lawsuit against Oakland on behalf of Local 10 of the International Longshore and Warehouse Union (ILWU) and nine dockworkers who were shot with “less lethal” weapons such as sting balls and shot-filled beanbags while awaiting a labor arbitrator’s determination of whether they should go to work; four Guild legal observers; three videographers; and 30 demonstrators, all of whom were shot and/or run over or otherwise brutally arrested at the April 7 Oakland antiwar demonstrations. *Local 10, International Longshore and Warehouse Union et al v. City of Oakland et al.*,²²³ seeks injunctive relief in the form of new crowd-control and use-of-force policies and training, as well as monetary damages for medical expenses, lost wages, interference with school, damage to career, and numerous civil-rights abuses.

In late April 2004, the Oakland District Attorney’s office dropped criminal charges against all demonstrators arrested. The dismissals of charges will not affect the Guild/ACLU lawsuit but may pressure the City and the Police Department to settle. The protesters whose criminal charges were dropped now have the option of joining the civil suit. The proposed class action includes more than 500 individuals who attended the demonstration and who may attend future rallies in Oakland.

The Guild/ACLU civil legal team includes attorneys Jim Chanin and John Burris, Guild lawyers Rachel Lederman, Bobbie Stein, and Osha Neumann, ACLU-NC legal director Alan Schlosser, and ILWU attorney Rob Remar.

Conclusion and Recommendations

Following the attacks of September 11, 2001 and the subsequent United States invasion of Iraq, the Bush administration has advanced a policy of “preemptive” warfare. The consequences of this approach resonate around the world. In the United States, one of the fallouts has been an aggressive and well-orchestrated campaign of unlawful regulation by local and federal law enforcement of free speech, assembly, and dissent. Although the beginnings of such regulation were seen at the 1999 World Trade Organization meeting in Seattle, the Bush administration has used the threat of terrorist attacks to ratchet up a concerted drive to silence individuals who wish to voice opposition to policies of the administration.

The National Lawyers Guild urges members of the legal profession to challenge unlawful police practices that infringe on constitutional protections. It also calls on members of the press to be responsible when reporting on mass demonstrations and the interactions between police and lawful protesters. Finally, and most important, the National Lawyers Guild strongly urges local and federal law-enforcement agencies to respect the constitutional rights of individuals wishing to express their viewpoints, and to refrain from engaging in unlawful conduct.

The Media

- Given its significant role in reinforcing negative stereotypes that may contribute to the escalation of police use of force, the press should not engage in sensational or one-sided journalism when covering mass demonstrations.
- When quoting government officials who describe protesters in negative and stereotypical terms, members of the press should cite specific examples rather than print inflammatory quotations without illustrations, and/or include counterexamples and offer a variety of viewpoints that include alternatives to the official government view.

Members of the Legal Profession

- Lawyers should bring pattern and practice suits under 42 USC Section 1983 when police departments engage in unlawful behavior and abuse of authority that deprives individuals of their constitutional rights.
- Litigation should also cite violations of international human-rights law.

Local Police Departments and Federal Law-Enforcement Agencies

- Local police and federal law-enforcement agencies should not conduct aggressive actions in anticipation of potential violence, including pretextual and unlawful raids of protesters' meeting places before, during, or after demonstrations; checkpoints at demonstrations; use of "less lethal" weapons; pop-up lines; rush tactics; and mass arrests and false arrests. Demonstrators should not be arrested for failure to disperse or failure to obey an order without first receiving at least three clearly audible warnings and an opportunity to comply with such orders.
- Local police and federal law-enforcement agencies should adhere to the U.S. Constitution and make every possible effort to allow individuals to engage in First Amendment activities.

The U.S. Department of Justice

- The Department of Justice should respect international human-rights laws as contained in treaties to which the US is a party and which are binding on all levels of government. The treaties are the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the Universal Declaration of Human Rights. The DOJ should investigate local instances of aggressive and unconstitutional police conduct nationwide.
- The Department of Justice should intervene when local police departments systematically violate the constitutional rights of individuals engaging in lawful First Amendment activity by investigating patterns and practices of police abuse of authority

and by bringing lawsuits, when appropriate, under 42 USC Section 1983.

- The Department of Justice should enter into consent decrees, rather than memoranda of agreements, with local police departments engaged in unconstitutional practices. Consent decrees have more weight in compelling high level police officials to commit to reform.

About the National Lawyers Guild

By Professor Peter Erlinder, NLG President, 1993-97, with Bruce Nestor, NLG President, 2000-2003

The National Lawyers Guild was founded in 1937 as a progressive bar association and an alternative to the American Bar Association (ABA), which at that time barred African Americans and Jews from becoming members. Although many members of the National Lawyers Guild originally served in the executive, legislative, and judicial branches of government, by the 1950s the National Lawyers Guild was under attack from the Department of Justice and congressional committees due to its advocacy of civil rights, economic justice, and international law. Many members of the National Lawyers Guild suffered as a result of their public association with the Guild, and many members felt compelled to resign.

Throughout the period from the 1960s to the present, the National Lawyers Guild has continued to oppose many of the U.S. government's international and domestic policies and has worked vigorously to defend the rights of persons in the United States to engage in protest, dissent, and opposition to those policies. Particularly since the terrorist attacks of September 11, 2001, the National Lawyers Guild has vocally condemned the illegality of U.S. military action abroad and the threats to civil liberties and human rights at home.

The National Lawyers Guild also frequently sponsors or supports litigation that challenges illegal and unconstitutional government surveillance and repression directed at protected associational and expressive activity. The National Lawyers Guild or its attorney members are currently involved in litigation in Philadelphia, Miami, Los Angeles, San Francisco, Oakland, Washington, D.C., and other localities, challenging law-enforcement policies that involve the use of excessive force, infiltration, surveillance, and disruption of constitutionally protected expressive activity.

A Brief History

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

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

In the 1960s, the Guild set up offices in the South and organized thousands of volunteer lawyers and law students to support the civil-rights movement long before the federal government or other bar associations were involved. Guild members represented the families of murdered civil-rights activists Schwerner, Chaney, and Goodman, who had heeded the Guild's call to join the civil-rights struggle and

were assassinated by local law enforcement/Ku Klux Klan members, events that inspired the film *Mississippi Burning*. Lawsuits initiated by the National Lawyers Guild brought the Kennedy Justice Department directly into the civil-rights struggle in Mississippi and challenged the seating of the all-white Mississippi delegation at the 1964 Democratic Convention. Guild lawyers defended thousands of civil-rights activists who were arrested for exercising basic rights and established new federal constitutional protections in ground-breaking Supreme Court cases such as *Dombrowski v. Pfister*, which enjoined thousands of racially motivated state court criminal prosecutions; *Goldberg v. Kelly*, the case that established the concept of “entitlements” to social benefits that require due-process protections; and *Monell v. Department of Public Services*, which held municipalities liable for police brutality.

In the late 1960s and early 1970s, Guild members represented Vietnam War draft resisters, antiwar activists, and the Chicago Seven after the 1968 Chicago Democratic Convention. Guild offices in Asia represented GIs who opposed the war. Guild members argued *U.S. v. U.S. District Court*, the Supreme Court case that established that Nixon could not ignore the Bill of Rights in the name of “national security” and led to the Watergate hearings and Nixon’s resignation. Guild members defended FBI-targeted members of the Black Panther Party, the American Indian Movement, and the Puerto Rican independence movement and helped expose illegal FBI and CIA surveillance, infiltration, and disruption tactics that the U.S. Senate Church Commission detailed in the 1975-76 COINTELPRO hearings and that led to enactment of the Freedom of Information Act and other specific limitations on federal investigative power. The National Lawyers Guild supported self-determination for Palestinians, opposed apartheid in South Africa at a time when the U.S. government still called Nelson Mandela a “terrorist,” and began the ongoing fight against the blockade of Cuba. During this period, members founded other important civil-rights and human-rights institutions, such as the Center for Constitutional Rights, the National Conference of Black Lawyers, the Meiklejohn Civil Liberties Institute in Berkeley, San Francisco’s New College School of Law, and the Peoples Law School in Los Angeles.

In the 1980s, the Guild pioneered the “necessity defense” and used international law in support of the antinuclear movement and began challenging the use of nuclear weapons under international law. This

eventually resulted in a World Court declaration that nuclear weapons violate international law in a case argued by Guild lawyers more than a decade later. The Guild's National Immigration Project began working systematically on immigration issues, spurred by the need to represent Central American refugees and asylum activists fleeing U.S. sponsored "terror" in Nicaragua and El Salvador. Legal theories for holding foreign human-rights violators accountable in U.S. courts, based on early-19th-century federal statutes, were pioneered by Guild lawyers. The Guild organized "People's Tribunals" to expose the illegality of U.S. intervention in Central America that became even more widely known as the "Iran-Contra" scandal. The Guild prevailed in a lawsuit against the FBI for illegal political surveillance of activist legal organizations including the Guild. The NLG Center for Social and Economic Justice was established in Detroit, and the Guild published the first major work on sexual orientation and the law, as well as the first legal-practice manual on the HIV/AIDS crisis.

In the 1990s, Guild members mobilized opposition to the Gulf War, defended the rights of Haitian refugees escaping from a U.S.-sponsored dictatorship, opposed the U.S. embargo of Cuba, and began to define a new civil-rights agenda that includes the right to employment, education, housing, and health care. As a founding UN NGO, the Guild participated in the 50th anniversary of the UN, and Guild members authored the first reports that detailed U.S. violations of international human-rights standards regarding the death penalty, racism, police brutality, AIDS discrimination, and economic rights. The Guild initiated the National Coalition to Protect Political Freedom (NCPFF) to focus opposition to "secret evidence" deportations and attacks on First Amendment rights after passage of the 1996 Anti-Terrorism Act and established the NLG National Police Accountability Project to address the issue of widespread police violence. Guild lawyers won the first case in the World Court that declared the use of nuclear weapons a violation of international law.

The Guild began analyzing the impact of globalization on human rights and the environment long before the Seattle demonstrations, and played an active role in opposing NAFTA and in facilitating and supporting the growing movement for globalization of justice. As the 20th century came to a close, the Guild was defending environmental and labor-rights activists and critics of globalization from Seattle to

D.C. to L.A. Guild members were playing an active role in encouraging cross-border labor organizing and in exposing the abuses in the *maquiladoras* on the U.S.-Mexico border. The Project for Human, Economic and Environmental Defense (HEED) and the Committee on Corporations, the Constitution and Human Rights focus specifically on “globalization” issues.

Today and Tomorrow

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

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

Guild members lobbied Congress and worked with the House Judiciary Committee in an effort to turn back the worst aspects of the 2001 USA PATRIOT Act. Guild members also filed the first challenges to the detention of prisoners from Afghanistan and the use

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

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

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

Endnotes

¹ “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” US Const, Amend I.

² During the first session of the 84th Congress, in 1955, First Amendment scholar Alexander Meiklejohn was summoned before the U.S. Senate Subcommittee on Constitutional Rights to summarize his interpretation of the First Amendment. Alexander Meiklejohn, “Meiklejohn on Freedom of Speech,” 21 October 1997, <http://fact.trib.com/1st.meikle.html> (31 July 2004).

³ National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report Executive Summary* (Washington, D.C.: W.W. Norton & Company, 2004), 24; Kate Martin, *Statement of Kate Martin, Director, Center for National Security Studies, Before the Permanent Select Committee on Intelligence of the House of Representatives on Securing Freedom and the Nation: Collecting Intelligence Under the Law*, 9 April 2003,

<http://intelligence.house.gov/Media/PDFS/martin040903v2.pdf> (31 July 2004).

⁴ First Amendment Center, *State of the First Amendment 2003*, 10,

<http://www.firstamendmentcenter.org/PDF/SOFA.2003.pdf> (31 July 2004).

⁵ *USA PATRIOT Act*, sec. 802, amending *US Code*, vol. 18, sec. 2331(5) (2001).

⁶ *Collins v. Jordan*, 110 F3d 1363, 1372 (9th Cir 1996).

⁷ Seattle City Council Preparations and Planning Panel, *Report to the Seattle City Council WTO Accountability Review Committee*, 5, 24 August 2000,

<http://www.cityofseattle.net/wtocommittee/panel2final.pdf>.

⁸ US Department of Justice, *The Attorney General’s Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations*, 30 May 2002,

<http://www.usdoj.gov/olp/generalcrimes2.pdf> (31 July 2004).

⁹ James Bovard, “Quarantining Dissent: How the Secret Service Protects Bush from Free Speech,” *San Francisco Chronicle*, 4 January 2004, sec. D, p. 1.

¹⁰ Eric Lichtblau, “F.B.I. Scrutinizes Antiwar Rallies,” *New York Times*, 23 November 2003, sec. A, p. 1.

¹¹ *Ibid.*

¹² *Tinker v. Des Moines Independent Community School District*, 393 US 503 (1969).

¹³ *Hague v. CIO*, 307 US 496 (1939); *Shuttlesworth v. Birmingham*, 394 US 147 (1969); *Coates v. City of Cincinnati*, 402 US 611 (1971); *Grayned v. City of Rockford*, 408 US 104 (1972).

¹⁴ *Hague v. CIO*, 307 US 496, 515 (1971).

¹⁵ *Terminiello v. Chicago*, 337 U.S. 1 (1949).

¹⁶ *Ibid.*, 4-5.

¹⁷ 372 US 229 (1963).

¹⁸ 394 US 147 (1969).

¹⁹ *Ibid.*, 150-151.

²⁰ *US Code*, vol. 41, sec. 14141.

²¹ Alexis Agathocleous and Heather Ward, “Prosecuting Police Misconduct: Reflections on the Role of the U.S. Civil Rights Division,” *Vera Institute of Justice*, 1998, http://www.vera.org/publication_pdf/misconduct.pdf (31 July 2004).

²² *Ibid.*

²³ Torsten Ove, "Judge Lifts U.S. Oversight of City of Pittsburgh Police," *Pittsburgh Post-Gazette*, 14 September 2002.

²⁴ *Remarks of Attorney General John Ashcroft, Fraternal Order of Police, 55th Biennial National Conference, Phoenix, Arizona*, 3, 14 August 2001, <http://www.grandlodggefop.org/archives/speeches/agspeech.pdf> (31 July 2004).

²⁵ Alexis Agathocleous and Heather Ward, "Prosecuting Police Misconduct: Reflections on the Role of the U.S. Civil Rights Division," *Vera Institute of Justice*, 1998, http://www.vera.org/publication_pdf/misconduct.pdf (31 July 2004).

²⁶ *Ibid.*, 20.

²⁷ D.C. City Council, Committee on the Judiciary, *Report on Investigation of the Metropolitan Police Department's Policy and Practice in Handling Demonstrations in the District of Columbia*, 11 March 2004, <http://www.dwatch.com/police/040311.htm> (31 July 2004).

²⁸ *Monroe v. Pape*, 365 U.S. 167 (1961).

²⁹ "Group Seeks Legal Observers to Monitor Protestors, Law Enforcement," *Savannah Morning News*, 3 June 2004; Thomas Adcock, "Training to Observe at National Convention," *New York Law Journal*, 5 March 2004, p. 16; Thomas Adcock, "Legal Observers Gear Up for Saturday Rally," *New York Law Journal*, 14 February 2003, p. 16.

³⁰ The legal observer program was established in 1968 in New York City in response to protests at Columbia University and city-wide antiwar and civil rights demonstrations. That same year, Guild students organized for the defense of people swept up in mass arrests at the Democratic Convention in Chicago.

³¹ For a comprehensive booklet on how to serve as a neutral observer and what kinds of unconstitutional activities to look for, see National Lawyers Guild, *Legal Observer Training Manual*, 2003, http://www.nlg.org/resources/LO_Manual.pdf (31 July 2004).

³² See *Cerrone v. Brown*, 246 F.3d 194 (2d Cir 2001) (probable cause required in arrest of police officer in framework of criminal investigation arising out of performance of official duties); *Thornton v. City of Macon*, 132 F3d 1395 (11th Cir 1998) (police officer had no probable cause of arrest on "obstruction of law enforcement officer" as he was not in lawful discharge of his duties); *Rivera v. Murphy*, 979 F.2d 259 (1st Cir 1992) (no probable cause where police officer conducted arrest based on his "observations, training and experience," but offered no specific and articulable facts).

³³ Miami Dade County, *Draft Executive Summary of the Independent Review Panel (IRP) Findings and Recommendations from the FTAA Demonstration Complaints Inquiry*, 3, 19 May 2004, http://www.miamidade.gov/irp/Library/5-19-04_FTAA_Exec_sum.pdf (1 August 2004) (quoting Major Battle, the Metro Dade Police Department incident commander for the FTAA event).

³⁴ *Ibid.*

³⁵ D.C. City Council, Committee on the Judiciary, *Report on Investigation of the Metropolitan Police Department's Policy and Practice in Handling Demonstrations in the District of Columbia*, 11 March 2004, <http://www.dwatch.com/police/040311.htm> (31 July 2004).

³⁶ Abby Scher, "The Crackdown on Dissent," *The Nation*, Jan. 19, 2001.

³⁷ *Ibid.*

³⁸ Steven Stycos, "Defying Convention," *Boston Phoenix*, 26 May 2004.

³⁹ *Ibid.*

⁴⁰ Manny Fernandez and David A. Fahrenthold, "Police Consider Legal Action in Effort to Disrupt Protestors," *Washington Post*, 21 September 2002, sec. B, p. 1.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ National Lawyers Guild, *National Lawyers Guild Condemns Georgia's Declaration of State of Emergency for G-8 Summit Meeting*, 24 May 2004, <http://www.nlg.org/news/statements/georgiaG8.htm> (1 August 2004).

⁴⁴ Craig Horowitz, "How to Care for an Angry Mob," *New York Magazine*, 17 May 2004.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ See *New York v. Burger*, 482 US 691 (1987); *Scott v. US*, 436 US 128 (1978).

⁴⁹ Human Rights Watch, *HRW Letter to Police Chief Charles H. Ramsey*, 25 April 2000, <http://www.hrw.org/press/2000/04/ramsey425.htm> (1 August 2004).

⁵⁰ D.C. City Council, Committee on the Judiciary, *Report on Investigation of the Metropolitan Police Department's Policy and Practice in Handling Demonstrations in the District of Columbia*, 11 March 2004, <http://www.dcwatch.com/police/040311.htm> (31 July 2004).

⁵¹ Jon Kifner, "Police Move Against Trade Demonstrators," *New York Times*, 16 April 2000, sec. 1, p. 6.

⁵² American Civil Liberties Union, *ACLU Warns Los Angeles Police Department: Stop Harassing Protestors*, 7 August 2000, <http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=8061&c=86> (1 August 2004) (citing *Alexander v. City and County of San Francisco*, 29 F.3d 1355, 1361 (9th Cir 1994)).

⁵³ See National Lawyers Guild, Los Angeles Chapter, "Complaint for Injunctive Relief, Declaratory Relief and Damages," 9 August 2001, <http://www.nlg-la.org/lapdlawsuit/complaint.htm> (1 August 2004).

⁵⁴ Heather Ratcliffe, "Police Look Into Activist Complaints; Protestors Accuse Officers of Damaging Property, Acting Improperly in Raids," *St. Louis Post-Dispatch*, 1 June 2003, sec. A, p. 1.

⁵⁵ *Florida Statutes Annotated* (West 2004), sec. 933.20.

⁵⁶ *Ibid.*

⁵⁷ The Bl(A)ck Tea Society is a coalition whose purpose is to support protestors exercising their First Amendment rights at the Democratic National Convention. Bl(A)ck Tea Society, 2004, <http://www.blackteasociety.org> (1 August 2004).

⁵⁸ Communication from members of the Bl(A)ck Tea Society, 7 May 2004.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ Senate, *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities*, 94th Cong., 2d sess., 1976, S. Rept. 755.

⁶² The Levi guidelines adopted in 1976 were amended in 1983.

⁶³ In Chicago, *Alliance to End Repression v. City of Chicago*, 91 FRD 182 (ND Ill 1981) and 561 F Supp 537 (ND Ill 1982); in New York, *Handschu v. Special Services Division*, 605 F Supp 1384 (SDNY 1985). Other lawsuits were brought against the Michigan State Police and Los Angeles Police departments.

⁶⁴ The array of lawsuits and municipal ordinances seeking to regulate local police surveillance were surveyed in Paul G. Chevigny, "Politics and Law in the Control of Local Surveillance," *Cornell Law Review* 69 (1984): 735.

⁶⁵ *Laird v. Tatum*, 408 US 1 (1972).

⁶⁶ *Alliance to End Repression v. City of Chicago*, 237 F3d 799 (7th Cir 2001).

⁶⁷ On May 30, 2002, Attorney General Ashcroft significantly changed guidelines governing FBI political surveillance. US Department of Justice, *The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations*, 30 May 2002, <http://www.usdoj.gov/olp/generalcrimes2.pdf> (31 July 2004).

⁶⁸ Michael Moss and Ford Fessenden, "Privacy and Security: New Tools for Domestic Spying, and Qualms," *New York Times*, 10 December 2002 sec. A, p. 1. Ford Fessenden with Michael Moss, "Privacy: Going Electronic, Denver Reveals Long-Term Surveillance," *New York Times*, 21 December 2002, sec. A, p. 12. In New York City, the police department won significant expansion of its surveillance powers, but the court refused to eliminate all rules. The judge required the police department to adopt less restrictive guidelines modeled on the new Attorney General's guidelines adopted in 2002, but freed the police of court oversight and the penalty of punishment for contempt of court for not following the rules. *Handschu v. Special Services Division*, 273 F Supp. 2d 327 (SDNY 2003). Following press disclosures that police used a "Demonstration Debriefing Form" to conduct custodial interrogations of the political views of antiwar protestors arrested in February and March 2003, the court reincorporated the new relaxed political surveillance rules into the original consent decree, making police violations punishable by the court. *Handschu v. Special Services Division*, 288 F Supp 2d 411 (SDNY 2003).

⁶⁹ The new *Handschu* guidelines in New York City, patterned on the new FBI guidelines, allow a "checking out of initial leads," a standard that allows investigation of political activity based on a "possibility of unlawful activity." *Ibid.*, 422. They also authorize the police "to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the public generally" for the purpose of preventing terrorist activities. *Ibid.*, 430. New York Police have been using this provision to conduct undercover surveillance of lawful planning meetings for protests at the national political conventions, and to videotape lawful political marches and rallies. Letter of Gail Donoghue, Special Counsel to the Corporation Counsel of the City of New York, to *Handschu* counsel 20 July 2004.

⁷⁰ See *Riggs v. City of Albuquerque*, 916 F2d 582 (10th Cir 1990); *Ghandi v. Police Department of City of Detroit*, 747 F2d 338 (6th Cir 1984); *Handschu v. Special Services Division*, 349 F Supp 766 (SDNY 1982).

⁷¹ Communication from Carol Sobel, 30 April 2003.

⁷² David Montgomery, "Stirring a Cause," *Washington Post*, 12 May 2003, sec. C, p. 1.

⁷³ D.C. City Council, Committee on the Judiciary, *Report on Investigation of the Metropolitan Police Department's Policy and Practice in Handling Demonstrations in the District of Columbia*, 11 March 2004, <http://www.dewatch.com/police/040311.htm> (31 July 2004).

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

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⁸⁰ The appellate court that allowed the Chicago Police Department to cast off the political surveillance rules it had agreed to follow beginning in the 1980 noted, "[t]he City in any event is asking only that the decree be modified, not that it be abrogated." *Alliance to End Repression v. City of Chicago*, 237 F.3d 799, 802 (7th Cir 2001). However, the "modification" eliminated most of the detailed rules governing operational police political surveillance. What was left forbade interference in the exercise of the First Amendment, which of course is forbidden anyway, and the requirement that the City commission independent periodic audits of the City's compliance with what remains of the decree. *Ibid.*, 800.

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