NATIONAL LAWYERS GUILD

New York City News

NATIONAL LAWYERS GUILD – NYC CHAPTER

SUMMER 2008

Juggling Law and Art: Portraits of Artists as Lawyers

BY RENATE LUNN

As a circus performer and public defender, I occasionally have trouble reconciling my two pursuits, though that may come as a surprise to those who view New York's criminal courts as a three-ring circus. At circus rehearsals, I feel left of out the solidarity that develops between people as they complain about unrewarding day jobs, so I tend to play down my day job, lest I be thought of as a square. Conversely, I'd be mortified if any of my clients discovered how many of my evenings I spend clowning. This was brought to light one day as I bonded with a client over our recent shoulder injuries. He dislocated his throwing a duffle bag of cocaine out of a car window during a high-speed police chase. I dislocated mine while writhing on the floor pretending to be a turd during a circus rehearsal. As far as my client knows, though, it occurred during a modern dance class.

I began to wonder whether I was alone. Were there other lawyers out there who changed out of business suits and into leotards, or painters' smocks with the same furtiveness that Clark Kent dons his cape and tights? Was being a lawyer just a day job? Did creative outlets make them better lawyers?

Once I started nosing around, I found a whole troupe of artsy lawyers. Not surprisingly, many lawyers who perform tend to be litigators. **Bill Carney** of the Jug Addicts, Les Sans Culotes and the Legal Aid Society (hint: two of those are band names), confesses that knowing he performs with his bands in front of large crowds, gives him a boost of confidence before he has to make an oral argument before a judicial panel. **Paul Mills**, a spoken word artist and civil rights attorney, on the other hand, experiences neither stage fright nor courtroom fright.

There wasn't much consensus among the nine people I interviewed regarding the idea of dual identities. On one extreme, Carney admitted to feeling like a bit like Dr. Jeckyl and Mr. Hyde (without any of the negative connotations). When she first meets the actors that she stage manages, **Emily Compton** tells them that she "works in an office in midtown." She downplays her position as a staff attorney in a firm to avoid being considered a sell-out by artists who are still struggling financially working in the theater world. **Eileen Weitzman** also wears three hats - or perhaps one multi-faceted hat of her own creation: lawyer, part-time substitute teacher and sculptor – and has a fluid notion of her identity and is open about her

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INSIDE THIS ISSUE:

& more!

Brutal Summer: As seen by millions on YouTube, Officer Patrick Pogan attacks cyclist Christopher Long at the July 25, 2008 Critical Mass. See http://www.youtube.com/watch?v=oUkiyBVytRQ

Caging the First Amendment

BY PAUL L. MILLS

You can probably print the word "fuck" in a publication like this without too much trouble, and you can publish a mountain of evidence in support of impeaching the president for all to see on the Internet, no problem. But what about the physical world, the great outdoors, the streets and parks, the so-called "public spaces"? What's left of the First Amendment there? Fertile ground, or burial ground?

Beginning around the turn of the 6th Century B.C., a drained marsh was established as the center of public speech in Rome: the Forum. Near great temples, and triumphal arches much like the one we've got in Washington Square, above the din and babble of the public markets, orators in a language now dead debated the issues of the day. It is easy to picture the jugglers, storytellers and magicians who were undoubtedly practicing their arts in the nearby open markets. This is where Shakespeare's Antony called upon his friends and countrymen to lend him their ears.

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PRESIDENT'S COLUMN

BY DANIEL MEYERS

Dear Editor:

I wish to share with our readers – comrades – an excerpt of the last speech of Abraham Lincoln Brigade Veteran Abe Osheroff. When asked why struggle, why sacrifice the answer for me lies in the fullness of his remarks during his last public appearance on March 30, 2008, one week before his death at the age of 92, at the dedication, in San Francisco, of the National Monument honoring the Abraham Lincoln Brigade. The Lincoln Brigade is the name for the 3,000 volunteers from the United States who risked their lives defending the Spanish Republic against the combined fascist forces of Franco, Hitler and Mussolini during the Spanish Civil War. Nine hundred of the brigade were killed and scores seriously injured, including Abe who, in battle in 1937, had his knee shattered by enemy machine-gun fire. Abe was a courageous life-long activist who was on the front-lines in all the progressive battles for civil and human rights.(For more, see the Lincoln Brigade website http://www.alba-valb.org/, and Abe's NY Times obituary, published April 11, 2008.)

To me, being an activist has always been a special privilege.

EXCERPT OF ABE OSHEROFF'S DEDICATION SPEECH:

"Many people consider going to Spain as simply a sacrifice. I'm not one of those. To me, being an activist has always been a special privilege. And it's a wonderful job. You never run out of work. You meet some of the nicest people. The pay is very high. Yes, it is! If you value the love and respect of the people you work with ... And that's why I'm able to say, at the ripe old age of pushing-93, that I've had a glorious life, in many ways. Now, let's see what we are dealing with. At this moment, there are, what, as of last week 39 people who remain out of the Struggle, which is on the surface a rather small percentage. And yet, there is this incredible feeling that the stuff we are made of never goes away. With or without monuments. Because the bastards will never cease their evil, and the decent human beings will never stop their struggle. This has been a very difficult thing for me to do, not only because I'm getting a little frail (finally!), but because I approached it with very mixed emotions. Going down to the very basics: what the hell are monuments all about, beside places for birds to deliver bird shit. And I'll share that feeling with you. I'll tell you what it's all about for me. Some day in the not too distant future, some guy will be walking through here with a couple of his adolescent kids, and one of the kids will say, "Dad, what's that?" And this Dad may know the answer. And giving that answer is like putting another spark plug into the vehicle of progress that we're all engaged in. I'm very happy to see you guys here... So I salute you, all you San Franciscans, and I thank you on behalf of the Veterans of the Abraham Lincoln Brigade for making us immortal."

Abe Osheroff in Spain, 1938

ROC-NY Victory

BY URSULA LEVELT

Good news for restaurant workers! Restaurant mogul Shelly Fireman agreed to a $3.9 million settlement for unpaid wages and tips as well as unprecedented commitments to introduce grievance procedures, management training, lunches, new tipping practices and sexual harassment and promotion policies. Credit goes to Restaurant Opportunities Center of New York (ROC-NY), the workers center organizing restaurant workers, and many progressive lawyers including Guild members **Dan Clifton** and **Beth Margolis**. ROC-NY reports that the settlement benefits not only Fireman's workers. Many restaurants, especially in the midtown area, have been improving their tipping policies out of fear of similar protests at their doorsteps. The struggle has also resulted in new law establishing that workers centers are not unions (which, in the current climate, is a benefit), and that undocumented workers may not be retaliated against. It has led to greater solidarity between front of the house (white or U.S. born or European) waiters, and back of the house (immigrant or of color) bussers and dishwashers. And it has spurred the growth of many new ROCs all over the country. It took two and a half years but it worked! **Emily Compton**, **Julia Tomasetti**, and **Paul Keefe** from our **Mass Defense Committee** provided countless hours as Legal Observers for the many protests at the restaurants owned by Fireman.

Guild Battles Fed Grand Jury Repression of *Independentistas*

BY JAN SUSLER

Two young Puerto Rican residents of New York, graphic artist Tania Frontera and social worker Christopher Torres, were among several Puerto Rican independence activists around the country served with grand jury subpoenas by the FBI and Joint Terrorist Task Force in December of 2007.

Frontera and Torres, summoned to appear the following month before a federal grand jury in Brooklyn investigating the Puerto Rican independence movement, are both *Independentistas* who were active in New York in the successful effort to oust the U.S. Navy from the small Puerto Rican island of Vieques.

Tania Frontera and Elliot Monteverde Torres speak out against subpoenas issued to them. Photo Courtesy NLG International Committee

Seeking legal support in following the *Independentista* tradition of non-collaboration with such efforts to suppress the movement (see companion piece, Critical Context), they immediately sought out Guild lawyers Marty Stolar and Susan Tipograph. Another Guild member, David Rankin, soon joined the team.

The initial term of the grand jury expired without fanfare but Frontera and Torres were subsequently issued new subpoenas. Ironically, Frontera received this news as she sat waiting to testify at the United Nations Decolonization Committee hearings on the colonial case of Puerto Rico. As the Committee passed its 27th annual resolution affirming that international law requiring decolonization applied to the continuing U.S. presence in Puerto Rico, and urged the U.S. president to release Puerto Rican political prisoners, the irony was not lost on the Puerto Rican people. The coalition of human rights, labor, and civic organizations known as *Mesa de Solidaridad* (Table of Solidarity) decried, "Not one more political prisoner!" referring to the threat of incarceration posed by the grand jury subpoena for non-collaborators Frontera and Torres.

Following several months of postponements, the government insisted that Frontera and Torres appear before the grand jury in June 2008. Stolar, Tipograph and Rankin filed a motion to quash, based primarily on the First Amendment. The motion also demanded the government disclose whether the subpoenas or grand jury questions were founded on illegal electronic surveillance. Guild lawyers Alan Levine and Jeffrey Rothman stepped up to represent U.S.-based National Boricua Human Rights Network and Puerto Rico-based Comité Pro Derechos Humanos, which sought to intervene in the support of the motion to quash, asserting that the subpoenas adversely affected their own First Amendment rights.

The motions, which unbeknownst to defense counsel were placed under seal, were assigned to Judge Carol Amon, and noticed for June 27. On that date, as on previous dates when Frontera and Torres were scheduled to appear, the Hostos One Eleven Grand Jury Resistance Coalition convened a demonstration on the courthouse steps, and then entered the courtroom to watch the proceedings. The government, asserting grand jury secrecy, asked the judge to clear the courtroom – a move opposed by Tipograph and Stolar, who argued that in their vast experience with grand juries the public had never been excluded from hearings on motions to quash, and such motions had never been filed under seal. The court ordered briefs on the secrecy issue and on the motion to intervene, and ordered the government to reveal whether the subpoenas or grand jury questions were premised upon illegal electronic surveillance.

On July 28 Judge Amon ruled on the various applications, with mixed results for the *Independentistas*. While the court rejected the government's efforts to exclude the public from the hearings on the pending motions, it denied the motions to intervene and to quash, finding the allegations of First Amendment infringement insufficient. Judge Amon did, however, further press the government on electronic surveillance, ordering that an affidavit be filed on the issue from an FBI agent with knowledge of the investigation within 10 days.

No date has been set for Frontera and Torres to appear before the grand jury, though that day is inevitable. If they refuse to collaborate, as they have publicly stated is their intention, the ranks of Puerto Rican political prisoners will undoubtedly grow by two – and yet another United Nations Decolonization Committee resolution will have fallen on the deaf ears of the U.S. legal system.

CRITICAL CONTEXT: GRAND JURY REPRESSION AND INDEPENDENCE MOVEMENT

BY JAN SUSLER

The Puerto Rican independence movement is no stranger to the government's abuse of the grand jury as a tool of repression.[1] Consequently, immediately after the issuance of grand jury subpoenas to New York *Independentistas* Tania Frontera and Christopher Torres in December 2007 (see companion piece, Guild Battles Repression), the movement mobilized support with simultaneous demonstrations in many cities, including New York, San Juan and Chicago. U.S. Congressman José Serrano [D-Bronx] telephoned FBI director Mueller to voice his concern that the U.S. government was once again using grand juries and law enforcement surveillance to intimidate Puerto Ricans engaged in legitimate dissent. "It certainly appears to be a fishing expedition,"[2] Serrano stated, harkening back to the days when, according to FBI director Freeh, the agency engaged in "egregious illegal action, maybe criminal action."[3] A New York Daily News headline read, "FBI on Fishy Fishing Expedition,"[4] and the New York Spanish language daily El Diario/La Prensa published an editorial ringing the alarm bell: "In the context of secret prisons, torture, detention without trial, and warrantless wiretapping, the FBI's fishing should be a concern for anyone interested in rescuing this country from a rising police state."[5]

The New York City chapter of the Guild, in synch with other civic and religious organizations, passed a resolution in January condemning the repressive use of the grand jury, asserting:

The subpoenas served on the three young Puerto Rican artists and community workers to appeal before a federal grand jury in Brooklyn must be viewed in light of

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BY MIKE FAHEY

Warrens Vindicated! All Charges Dismissed! *July 2, 2008*: In a courtroom filled with supporters, as has been the case since the Warrens were initially assaulted, arrested and brought to court a year ago, the District Attorney found inadequate basis for proceeding with the case against **Tarif** and **Evelyn Warren**. All charges were thus dropped. Cheers, hugs, kisses and even some tears of joy followed as the courtroom emptied into the street for a brief rally. Both Tarif and Evelyn thanked everyone for being so steadfast in their support, and particularly expressed deep gratitude and love for their NLG lawyers — **Soffiyah Elijah**, **Susan Tipograph** and **Roger Wareham**.

Above: Michael Tarif and Evelyn Warren leave 77th Precinct with supporters. Courtesy nyu.indymedia.org

Left: Beth Baltimore

Congratulations to **Beth Baltimore**, Brooklyn Law School '08! Beth has been chosen to receive the **2008 C.B. King Award** at this year's National Convention in Detroit. The award, named for the Albany, Georgia civil rights attorney, is given annually to a law student whose commitment to the struggle for justice is an example for others. While at Brooklyn Law, Beth interned at the HIV Law Project, the National Advocates for Pregnant Women and with Brooklyn Housing Court Judge Maria Milin. She also worked with the Legal Aid Society's Prisoners' Rights Project at Rikers Island advocating for prisoners who had been assaulted by corrections officers. She operated **NLG's Green Scare Hotline (888-NLG-ECOL)** for the past year. The hotline was created by **Heidi Boghosian and Gráinne O'Neill** in 2006 to provide legal support to animal and environmental rights activists. Beth is a member of the NYC Chapter EC, and will begin working as a staff attorney at Legal Services NYC - Bronx in the fall.

Big congratulations also to our intrepid colleagues at the **Center for Constitutional Rights!** On June 12, the U.S. Supreme Court ruled in a stinging rebuke to the Bush administration (*Boumediene v. Bush/Al Odah v. United States*) that detainees at Guantánamo Bay have a constitutional right to habeas corpus. CCR has been fighting this battle since 2002, when the first prisoners were brought to Gitmo. In 2004, in *Rasul v. Bush*, the Supreme Court upheld the detainees' statutory right to habeas corpus; and in 2006, in *Hamdan v. Rumsfeld*, the high court rejected the Bush administration's framework for military commissions and upheld the rights of the detainees under the Geneva Conventions. Hopefully the lower courts will move quickly to hold hearings in the over 200 pending individual habeas corpus cases where detainees are challenging their indefinite detention.

Always-active chapter member **Michael Smith** spoke about the growing protest movement in the military at the June 11th Brecht Forum program, Anti-War GIs. Increasing numbers of servicemen and women are resisting their second, third and fourth "stop loss" redeployments to Iraq, where the mission has been misrepresented (can you spell **O I L**?), and appears to be never-ending.

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various interests. **Peter Dizozza** (another litigating performer and current chair of the City Bar Entertainment Committee) finds "compartmentalizing is more effort than it's worth." He has represented clients he knows from the theater world and some clients have seen him perform. As a personal injury lawyer, his legal skills are useful to actors and singers who've been walloped by one too many rotten tomatoes.

Shuddering at the thought of one of my clients seeing me perform in a circus, I asked everyone I interviewed whether their clients had ever seen their creative work. The answers were more a reflection of client bases than the self-image of attorneys. Lawyers who represent clients who may question their appointed counsel's commitment to their case are more likely to experience discomfort at the thought of clients seeing their work. Both Carney and **Sarah Kunstler**, a documentary filmmaker, worried that their clients would think they were less dedicated if they discovered their non-lawyerly pursuits. **Deborah Diamant**, a Brooklyn Law 2L and painter, said it would be "wonderful" to bridge the divide between high art and the general public, when asked how she would feel if a former client wandered into a gallery and saw her drawings displayed.

Artistic pursuits hone lawyers' ability to create arguments and present information. When Weitzman talks about "experimenting and finding different ways of putting things together and coming up with new ideas," she could be talking about the fabric and papermache sculptures that she creates or the legal briefs she crafts. Kunstler, whose last name is German for artist, notes that presenting ideas in a documentary format has helped her in legal settings to write and present ideas clearly and simply. She confronts, however, a tension between how lawyers and filmmakers present information. Lawyers state the main idea upfront, and filmmakers reveal information slowly by drawing people into a story gradually. Kunstler sighs and says that any ways being a lawyer have affected her filmmaking are probably bad. Mills fears that his experiences as a poet hurt him as a lawyer as they made him "in love with dreams and unrealistic expectations," –love affairs that are sure to break any civil rights attorney's heart. However, he believes that he's probably more patient with crazy people as a consequence.

Photo: Cara Buckley

Attorney Renate Lunn flies during a performance.

On a more practical *note*, Dizozza's piano

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BY MIKE FAHEY

Chapter President **Danny Meyers** issued a statement condemning the April 25th verdict in the **Sean Bell** case. "The unjust non-jury verdict is consistent with the continuing cover-up of police responsibility for the barbarity which began on the day of the killing. It is a travesty of justice to acquit on all charges the police who fired a fuselage of 50 bullets killing Sean Bell and shattering the lives of Joseph Guzman and Trent Benefield, all three of whom were unarmed." Meyers said that we face an ongoing critical problem of police brutality, which is sometimes racially motivated, as in the Bell tragedy and the assault on lawyers **Evelyn** and **Tarif Warren**, and sometimes the product of pure malice or unprofessionalism. Meyers pointed to the unprovoked attack on cyclist Christopher Long by police officer Patrick Pogan at the July 25 Critical Mass rally. (See cover photos.) Chapter Members **David Rankin** and **Mark Taylor** represent Mr. Long.

RNC Subpoena Litigation Continues. The Chapter gives its profound thanks to **Robert Boyle** for his amazing work in support of the NLG-NYC's motion to quash a subpoena served on the Chapter and to intervene in a separate subpoena served on I-Witness Video. The City of New York is behind both subpoenas; it seeks privileged notes and records from Guild legal observers from the 2004 Republican National Convention. In reply papers filed August 5, Boyle argued that the Chapter has standing to assert the attorney work product privilege over its legal observers' notes because the Chapter "has been a representative of virtually all the plaintiffs in the RNC litigation" through its work on *The People of the State of New York, ex rel National Lawyers Guild on behalf of Carol Dudek, Paul Royal, Connie Steensma, parent of Richard Prins, et al., and unknown numbers John and Jane Doe, Nos 1-1541 against Raymond Kelly, et al., N.Y. Co.*, and through its preparation and filing of notices of claim for ongoing litigation. Boyle, who was ably aided by **Paul Keefe** and **Brenna Sharp**, pointed out that "Corporation Counsel has waited until the eleventh hour of discovery to subpoena attorney work product from a non-party, volunteer legal organization even though plaintiffs have identified hundreds of non-party fact witnesses available for deposition." Boyle properly quotes Justice Jackson's observation: "Discovery was hardly intended to enable a learned profession to perform its functions… on the wits borrowed from an adversary."

The Detainee Working Group at the **NYU Law School Chapter** announced on May 12 the release of *Broken Justice: A Report on the Failure of the Court System for Immigration Detainees in New York City.* **Tim Warden-Hertz**, co-author of *Broken Justice* reveals, "We documented the observations that law students made over a year, attending hundreds of immigration court hearings. The data provides important insights into the major problems with the immigration and detention system. We also try to share some of the detainees' powerful stories that we witnessed. We hope that exposing the realities of a morally and constitutionally bankrupt system will spur further efforts and demands for reform." The report can be accessed at the NYC chapter website http://www.nlgnyc.org.

Margaret Ratner Kunstler and Yetta Kurland at a July 10 fundraiser for Kurland's 2009 City Council Bid held at Kunstler's house.

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playing improved as he learned to type, a benefit that perhaps inspired him to pen the song, "I Love the Law." As an associate in a personal injury firm, Dizozza sees law as a "limitless environment for inspiration," and he sees each case as its own drama or play, a sentiment echoed by many people I interviewed. In his current work as a mediator and facilitator, writer **Roger Ziman** has to be aware of people and their relationship, which has helped in creating believable fictional relationships.

Perhaps it's not so surprising that there are many artsy lawyers. Though Diamant was at first surprised at how many other artists she encountered in law school, she now believes it makes sense as a lot of artists are politically motivated. For example, Weitzman uses art to tackle political issues such as militarism, feminism, racism and capitalism, as many NLG lawyers tackle them with a laptop and Keycites. Diamant's strong background in women's health issues is reflected in her art, her activism and her career plans.

While a legal career may suck time away from rehearsals, sketching and writing, there are still ways to incorporate creativity into an attorney's life. **Carol Lipton**, who put herself though law school playing as a professional musician, channels creativity into her home office: "My filing system is very lovely, with blue and purple pendaflexes, labels and interior folders. I can't bear the thought of regulation green!"

So perhaps it's time to stop thinking of oneself as either a lawyer or an artist. A litigator or a performer. Maybe it's time for me to toss my files and briefs in the ole' clown car and set off to explore a more cohesive identity merging order and creativity, justice and …Hey! Patches! Man, your cream pie got all over my motion for tomorrow morning!

Eileen Weitzman:
http://www.eileenweitzman.com/

Peter Dizozza:
http://www.youtube.com/dizozza

Paul Mills:
http://www.poezthepoet.com/

Sarah Kunstler:
http://www.off-center.com/

Carol Lipton:
http://www.bws.org/gallery_pages/lipton_gallery.html

Bill Carney:
http://www.lessansculotte.com/

Renate Lunn:
http://www.cirquethis.com

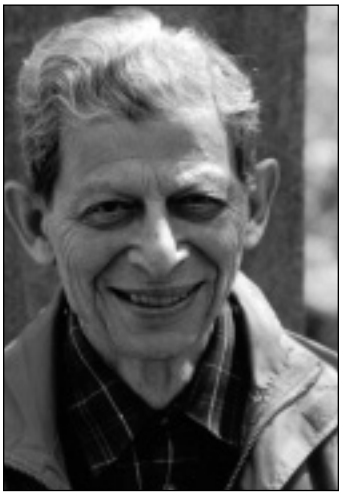
In Memoriam: Ira Gollobin

The Chapter notes with great sadness the passing of long-time chapter member **Ira Gollobin**, *activist until the end at age 96! We reprint here a remembrance by LA chapter member* **Peter Schey**:

Ira Gollobin, a renowned civil rights and immigration lawyer, who practiced law in New York City for over 70 years, acting as attorney in many high profile immigration and extradition cases from the 1950s to the 1980s, passed away this morning [May 7, 2008] in New York. Ira was 96 years old. Ira passed away peacefully following several days of hospitalization for a staph infection.

Ira served on the Board of Directors of the Center for Human Rights and Constitutional Law for 25 years. He was a long-time active member of the National Lawyers Guild. He will be deeply missed by those who were honored to meet and learn from him along his 96-year life journey.

Ira wrote numerous periodical articles on immigration policy, dialectics, East Asia and Marxist theory. He is the author of *Dialectical Materialism: Its Laws, Categories, and Practice* (1986), and *Winds of Change: An Immigration Lawyer's Perspective of Fifty Years* (1987). Ira served as general counsel to the American Committee for the Protection of the Foreign Born throughout the McCarthy period. During the Cold War witch-hunt to identify and deport immigrant "communist sympathizers," Ira and the American Committee coordinated the legal defense of immigrant workers, labor leaders, authors and others for their real or perceived communist beliefs or associations.



In 1980 Ira put together a team of lawyers including Ira Kurzban, Rick Swartz, and me to work on the *Haitian Refugee Center v. Smith* case. Under his guidance, and with the help of many others, we won a major class-wide injunction that blocked an "expedited deportation program" of over 5,000 Haitian refugees deemed a "threat" to South Florida.

Ira was a unique intellectual adventurer and a lawyer whose passion for justice was easily matched by his clients' love and affection for him. We will miss him, and his guidance, very deeply. We will always treasure what he brought to each of us and to humanity's struggle for emancipation.

Peter A. Schey is the President and Executive Director of the Center for Human Rights and Constitutional Law. He originally posted this remembrance at the ImmigrationProf Blog http://lawprofessors.typepad.com/immigration/ 2008/04/passing-of-ira.html.)

BOOK REVIEW

BY EMILY JANE GOODMAN

Until Proven Innocent: Political Correctness and the Shameful Injustices of the Duke Lacrosse Rape Case
By Stuart Taylor Jr. and K.C. Johnson,
Thomas Dunne Books, New York, N.Y.
432 pages, $26.95

Two million people are in prison in the United States. This year, following sensational rape accusations and indictments, three Duke University athletes came dangerously close to joining them.

Why they faced this scenario and how it was averted is reported by Stuart Taylor Jr. and K.C. Johnson in *Until Proven Innocent*, an exhaustive, startling anatomy of charges and countercharges of racism, sexism, class privilege, political correctness and "the most egregious prosecutorial misconduct of our era." Unlike the hundreds of other recently exonerated prisoners around the country, here, innocence had to be established before the risks of trial and before they were locked up for, say, 30 years.

When the idolized Duke LaCrosse team paid $400 cash for the popular pastime of being entertained at their house by a young black "dancer," stripper, probable prostitute, they got more than the performance they bargained for, because when the show was over, the woman claimed to have been raped. No one dared to use the historical, but discredited, defense that a woman experienced in such activities could not cry rape. Rather the unequivocal position of all team members was that no rape or sexual assault had taken place. Therefore, these men, who apparently do not watch TVs Law & Order, agreed — volunteered — before they had counsel, to make statements, stand in line-ups and give DNA samples. After all, they were innocent.

But this would be the dream case that would insure the election of Durham's temporary District Attorney, Mike Nifong. With a poor, black woman, attacked by a gang of "privileged hooligans," Nifong, who is white, saw the way to win black votes — the only way he could win election. Never mind that it would involve the use of scandalously illegal and unethical procedures such as not interviewing the complainant, making inflammatory statements to the media, illegal line-ups and photo arrays consisting of the LaCrosse team players only, arresting an alibi witness, searches without warrants, ignoring exculpatory evidence and finally, lying to a judge and lawyers about DNA results. Nifong quickly consolidated the support of the black community, including, ironically, the local NAACP, whose constituency would always be most at risk of prosecutorial misconduct, and the university, including the president.

It is difficult to know whether the authors' deep bitterness toward "politically correct" leftists and liberals was brought to the subject or resulted from it. Taylor, trained as a lawyer, and Johnson, a history professor, describe the Duke hostility as "reverse racism...white guilt," "academic McCarthyism." Liberal whites just could not, they write, support accused whites against a black "victim." Meantime from the black community came, "whether it happened or not, prosecution would be justice for things that happened in the past."

Without any evidence or cites, the authors also include on the list of bad actors, "some feminists," who, according to Taylor and Johnson, are opposed to the use of DNA to exonerate rapists. Perhaps they reach this conclusion because those working to prevent violence against women often say that fraternities (read: male housing) are dangerous to women's health, but they overlook the fact that cases like this hurt not only the wrongfully accused, but the credibility of women who are raped.

The story goes beyond the Duke LaCrosse players who were fully exonerated, while Nifong was disbarred and still faces other legal consequences, to the question one of the defendants asked, about the criminal justice system and the other institutions that changed their lives forever: "What would they do to people who do not have the resources to defend themselves?" The danger, of course, is that they would be presumed guilty until proven innocent.

Emily Jane Goodman is a judge in New York County Supreme Court.

Grand Jury

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the documented history of grand jury abuse. It is not a crime to demand that the United States government withdraw from Vieques, to advocate for Puerto Rican independence, or just to be active in your community. The National Lawyers Guild, New York City Chapter, calls upon the United States Justice Department to withdraw the subpoenas and to cease all activities, including grand jury investigations, that repress and/or intimidate lawful political movements.

The government, for its part, claims that it is investigating the pro-independence, clandestine organization Boricua Popular Army–Macheteros, whose leader, Filiberto Ojeda Ríos, was assassinated by the FBI in September of 2005.[6] The assassination, in which Ríos was shot and left to bleed to death, outraged the entire nation of Puerto Rico, and the FBI became a pariah. Hoping to distract public attention from their own criminal conduct and justify their presence on the island, the FBI turned to a familiar post-911 tactic and initiated a so-called "anti terrorist" offensive, raiding the homes and businesses of several independence activists – and in the process pepper spraying the Puerto Rican journalists who were covering the FBI's paramilitary incursions. Since then, activists have been stopped, searched and harassed, and the homes and offices of attorneys and movement leaders and supporters have been mysteriously broken into and robbed of computers, digital cameras and cell phones – but no other valuables - in events reminiscent of the infamous black bag COINTELPRO jobs.

In the context of this history of coordinated intimidation and repression, the Brooklyn grand jury subpoenas are simply the latest salvo in the government's attack on the entire independence movement. Julio Muriente, a leader of the island's National Hostos Independence Movement, called the subpoenas "an attack which is not against any particular organization, but against a political, social, patriotic movement, and against a people," and reflected, "The legal facade of this repressive operation is directed against The Macheteros, but the real intention is against the entire independentist movement, including against the people of Puerto Rico."[6]

NOTES

1 See, e.g., Guild member Michael Deutsch's article, The Improper Use of the Federal Grand Jury: an Instrument for the Internment of Political Activists, 75 Journal of Criminal Law & Criminology 1159 (1984).

2 José Delgado, Habla con el jefe del FBI: José Serrano le expresó a Robert Mueller el malestar que existe entre los boricuas en Nueva York por la citación de tres jóvenes, El Nuevo Día, January 9, 2008, available at http://www.elnuevodia.com/diario/noticia/politica/noticias/habla_con_el_jefe_del_fbi/343316.

3 Matthew Hay Brown, Puerto Rico Files Show FBI's Zeal; For Decades, Secret U.S. Dossiers Targeted Suspected, Orlando Sentinel, November 06, 2003, available at http://www.pr-secretfiles.net/news_details.html?article=73. Documents declassified thereafter reveal a massive campaign by the agency to disrupt and persecute independence groups from the 1930s to the late 1970s. The disclosed documents are being catalogued at the Center for Puerto Rican Studies of the City University of New York at Hunter College, and are available at http://www.pr-secretfiles.net/.

4 Juan González, FBI on Fishy Fishing Expedition, New York Daily News, January 9, 2008, available at http://www.nydailynews.com/news/ny_crime/2008/01/09/2008-01-09_fbi_on_fishy_fishing_expedition.html.

5 Editorial, Constructing an Enemy, El Diario/La Prensa, January 17, 2008, available at http://www.eldiariony.com/noticias/detail.aspx?section=25&desc=Editorial&id=1794932.

6 Repudio independentista a citaciones a Gran Jurado, El Vocero, January 7, 2008.

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Some 14 centuries later, in 1939, the U.S. Supreme Court recognized the doctrine of First Amendment protection for free speech activity in a "traditional public forum": "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the 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." *Hague v. Committee for Industrial Organization*, 307 U.S. 496 (1939). This opinion's author was Justice Owen Josephus Roberts, who later dissented in *Korematsu*. What would Justice Roberts think of the current trend of corralling public artistic and political expression behind physical and red-tape barricades?

As of this moment, Summer 2008, with the two parties' national conventions set to take place in August (Democratic, in Denver) and September (Republican, in Minneapolis-St. Paul), the tradition of free speech and protest in the public square struggles to survive. In Denver, for example, authorities initially promised activists that they would be allowed to parade, or, if they preferred, to spend the day herded together inside "protest zones," "within sight and sound" of the DNC. Now, new police plans keep protestors blocks away from the Pepsi Center (where the convention will unfold) and prohibit marching after the daily DNC activities commence.

Some assume such tactics were triggered by 9/11. Yet similar demonstration areas, enclosed by wire fencing or barricades, were used at the pre-9/11, August 2000 DNC in Los Angeles, as well as at the party conventions in 2004. Bruce Bentley, New York RNC 2004 Mass Defense Coordinator recently explained, "At most demonstrations the police use metal barriers. The police will say it's in order to keep people from spilling out into the street, interfering with traffic."

The impact of the barricades extends beyond protecting traffic. There are some who have decided they're "not gonna go protest in a fenced-off area," according to Mark Silverstein, ACLU lead attorney in litigation on behalf of activists in Denver this year. It's not clear, though, what the alternative might be, other than staying home, where angry comments at a TV screen provide a perfect example of stifled protest, for anyone around to hear them. An August 6, 2008 ruling in that action by the U.S. District Court for the District of Colorado upheld the government's restrictions.

Beyond mass protest, the muting of First Amendment voices is happening to artistic expression, too. In New York, street musicians have mostly been driven underground. To perform at the Port Authority bus station street musicians must first apply for a "free speech permit," governed by four single-spaced pages of regulations. (Example: "Upon the issuance of any permit, a badge indicating the area and time period in which the activity will take place will be issued for each area. Such badge must be worn on the upper left breast of the outermost garment and be clearly visible at all times during which the area is used.")

Photo by Paul Mills

Department of Free Speech, Port Authority.

And then there is Washington Square Park. The classic arch now oversees the deconstruction of a former public speaker's paradise. Following a bitter and unsuccessful two-year challenge in the courts, the Greenwich Village

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landmark, where Phillip Petit used to walk a tightrope stretched between two trees, Bob Dylan sang, and Allen Ginsberg (not to mention Cassius Clay/ Muhammad Ali) recited poetry, is being needlessly redesigned. The new park plans were finally approved on the basis of the Parks Department's guarantees to New York State Supreme Court Judge Joan Madden that the new plaza lawns "will be open and accessible for use by the public, including use for artistic and political expression and assembly." Yet we must question the reliability of those guarantees. Just as Denver authorities initially described a 50,000 square-foot demonstration zone that later turned out to be 27,000 square feet, the NYC Parks Department offered assurances that the Washington Square Park plaza area would be reduced by only 5%, when in fact the reduction will be more like one-third.

The dehumanizing effect of "boxing" demonstrators in – and the tenuous link to genuine security concerns – is illustrated by its recent use even against individual speakers. At California's Venice Beach, the West Coast equivalent of Washington Square Park, artistic and political expression has, in recent years, been confined to RNC/DNC-style numbered "performance zones," available by permit and lottery distribution only.

On a broader level, Human Rights Watch researcher Nicholas Bequelin has been monitoring Beijing restrictions on mass protest at the 2008 Olympics, whose geographic and permit rules make meaningful political protest virtually impossible. For those who suggest that these trends do not matter because public space is no longer necessary in the Internet age, Mr. Bequelin provides a compelling answer: "Protest has to be visible and have some sort of impact. The Internet may facilitate mobilization, but nothing matches the actual, real, demonstration. It not only shows something, it builds solidarity within the protesters. You cannot build a trade union, an environmental group, without people actually showing up in the street and working together. I am pessimistic that Martin Luther King would have achieved much without using demonstrations."

Unfortunately, it currently seems as if Justice Owen Roberts' "immemorial" trust is changing into something less recognizable to him or Marcus Antonius, but a lot more amenable to government control. If we remain silent for too long, the forum of the past may become the kennel of the future.

SAVE THE DATES!

NLG NYC Annual Meeting

Thursday, October 2, 2008
6pm - 9pm
Benjamin N. Cardozo
School of Law
Moot Court Room
55 5th Avenue @ 12th Street,
Manhattan

COINTELPRO / Anti Repression Panel

Wednesday, September 17, 2008
6pm - 9pm
Brooklyn Law School
Subotnick Center
250 Joralemon Street, Bklyn

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