



**DC
NATIONAL
LAWYERS
GUILD
NEWSLETTER
JANUARY 2010**

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- 1. NLG Attorneys Challenge DC Court of Appeals' Assault on 1st and 4th Amendment Rights**

Attorneys working for the DC National Lawyers Guild and American Civil Liberties Union of the National Capital Area have filed a Petition for Panel Rehearing and Rehearing En Banc in the case of *Carr v. District of Columbia*. The case involves five plaintiffs allegedly illegally arrested during a protest in Northwest Washington, DC. Most recently, the D.C. Circuit Court of Appeals has ordered the District to respond to the plaintiffs' Petition.

On the night of George W. Bush's second inauguration, January 20, 2005, the five plaintiffs were part of a group of around 300 who took part in a protest march, starting around 16th Street and Columbia Road, NW, and winding its way down into the heart of Adams Morgan. During this march, different forms of destruction of property occurred and were observed by trailing police officers. The march was herded into an alley and around 75 people were arrested for parading without a permit. The five plaintiffs involved in *Carr v. District of Columbia* sued, alleging violations of their First and Fourth Amendment rights. Their attorneys are Dan

Schember and Susan Dunham, arguing on behalf of the DC National Lawyers Guild, and Fritz Mulhauser and Arthur Spitzer from the American Civil Liberties Union of the National Capital Area.

After the trial court granted summary judgment in favor of the protesters, and the DC Circuit Court of Appeals reversed and remanded on the issue of probable cause to arrest for rioting, the plaintiffs' legal team has filed a Petition for Panel Rehearing and Rehearing En Banc.

The trial court originally granted summary judgment to the protesters on Fourth Amendment grounds. The trial court's decision was largely based on the holding that the arresting officer lacked "particularized grounds" to know whether each protester arrested had taken part in the illegal vandalizing or rioting activities. Furthermore, the court found that as for the Parading without a Permit charge, the District could not prove that the protesters were aware that the march lacked a permit, or even that the people arrested had been part of the protest.



Photo taken by Michael Temchine for the Washington Post shows arrestees from the night of Jan. 20, 2005.

However, a three judge panel of the D.C. Circuit Court of Appeals reversed and remanded the trial court's decision on the issue of probable cause to arrest for rioting. In their decision, they gave great weight to the statement of one MPD Officer Keller, who claimed that from his squad car at the back of the march of 300 people he witnessed the protesters, as a unit, cheer and raise their fists every time an act of vandalism occurred, thereby implicating each march participant in the act of rioting. The Court of Appeals was not worried whether Keller had indeed seen every protester support this activity. "Police witnesses must only be able to form a reasonable belief that the entire crowd is acting as a unit and therefore all members of the crowd violated the law," p.12 of the D.C. Circuit Court of Appeals' Opinion.

**Check
www.dcnlg.org/litigation
for a copy of Appellees'
Petition for Rehearing
and Rehearing en Banc in
the Carr case and other
related documents**

As to whether police could be sure that everyone arrested in the alley had been part of the march, the Court asserted that police only had to have reasonable grounds to believe that everyone arrested had participated in the march. Looking to the material facts, the Court acknowledged the police's and plaintiffs' accounts of how the protesters were pushed into the alley, and whether the alley was cleared beforehand, differed greatly, but that it had to credit the police officers' account.

The Court of Appeals also found that it was not necessary to give a dispersal order to the crowd before commencing arrests, though such an announcement would have alerted the marchers to the fact that they were participating in an un-permitted march.

Finally, the Court of Appeals did find that police could not have reasonably assumed that all those participating in the march were aware that it was an un-permitted march.

Plaintiffs' Petition for Rehearing and Rehearing En Banc responds to the DC Circuit Court of Appeals decision with several clarifying points, arguing that, as Judge Griffith's separate opinion in the Court of Appeals' decision shows, the majority opinion allows for the arrest of a protester without any evidence of illegal activity – directly violating one's Fourth Amendment rights. They also argue that specific intent is a necessary requirement of the First Amendment, and must be proven before members of a group can be associated with other illegally acting members of that group. The petition raises the Doctrine of Inherent Incredibility in the face of Officer Keller's testimony that he could see the entire crowd cheer-on the acts of vandalism, and finally asserts that the District has no evidence to show that the alley had been cleared before pushing the protesters into it for arrest.

The implications of a Court of Appeals decision that allows MPD to arrest an entire crowd for the illegal activities of a few individuals are clear. As counsel points out in their Petition, "This issue is exceptionally important here in the Nation's Capital, where large demonstrations occur with regularity, and often involve small elements of lawless behavior that are beyond the control of the peaceful participants in the event." Considering that the Court of Appeals has made the unusual move of ordering the District to respond to the Plaintiffs' Petition for Rehearing and Rehearing En Banc, one can only hope the Court has also realized the implications of this decision and will eventually rule in favor of protecting our First and Fourth Amendment Rights.
-Rachael Moshman

2. Another Fabulous Annual Holiday Latke Party

Thank you to Judy Galat and Geoff Thale for hosting the 2009 Annual Holiday Latke Party!



While it poured rain outside, a hardcore group of NLG merry-makers, along with their friends and family, huddled around a hot griddle, sipping strong coffee and waiting for their turn at golden, crispy latkes. Attendees included Jim Drew, Bill Montross, Jamie Davis Smith, Dan Smith, Rachael Moshman and Stephanie Joseph.

Pictured is Ben Smith, 2 year old son of Jamie Davis Smith and Dan Smith, obviously enjoying his latke.

3. Google Launches Free Legal Research Website

Google recently launched a new online research tool, called Google Scholar. You can find it at <http://scholar.google.com>. Google Scholar is a free legal research search engine, including federal district court cases, bankruptcy and state and federal appellate decisions, going back at least sixty years.

A review by Carolyn Elefant at Myshingle.com (<http://www.myshingle.com/2009/11/articles/legal-research-and-writing/free-legal-research-by-google-what-it-means/>) applauds the direction towards accessible, free legal research that Google Scholar moves us closer to, and highlights some of its features – such as the ability to search state by state and search through documents in which a case has been previously cited. Elefant, however, predicts that leading search engines Westlaw and Lexis will continue to reign in the legal research field, offering extra, desirable features Google does not.

Personally, the free Lexis and Westlaw services offered in law school got me addicted to top of the line legal research early in my legal career. Enough so that I will drive twenty-five minutes across town and wait in line for half an hour just to get a shot at some sweet, free Westlaw. The few attempts at legal research I've made with the new Google Scholar tool have saved me several of those across-town trips – specifically when I have the name of a specific case to begin with. Starting off with a few keywords and a jurisdiction, however, has not allowed me to produce the fruitful results that Westlaw or Lexis will provide. I'm sure, though, with more practice, I will be able to get even more out of this new tool.

Though there are certainly valid criticisms out there about the mass media conglomerate that is Google and their control over information – which is similar to criticisms levied at Westlaw and Lexis - overall, Google Scholar will make legal research more available not only to low-budget attorneys and legal workers, but to the public at large – a principle we should support wholeheartedly.

-Rachael Moshman

4. Taking Submissions for DC NLG Directory of Lawyers and Legal Workers

The DC NLG will publish an updated directory of lawyers and legal workers for local members. The referral directory will be a useful resource for you as well as advertise to other members the areas of law in which you practice. Entry forms were recently mailed out to the membership, but if we missed you, go to www.dcnlg.org and look in the left announcement column for the section about the local directory. Click there to download the form, print, and mail to 2000 P St., NW, Ste. 415, Washington, DC, 20036 or simply email all the necessary information from the form to [rmoshman \[at\] hotmail.com](mailto:rmoshman@hotmail.com).

Your entry in the local directory is free, but the catch is your membership dues must be up to date. You can pay your dues at <http://nlg.org/membership/join.php>. Follow the links from that webpage to pay online or download a membership form. Build the Guild!

5. Events

Jan. 13 – Private Practitioners Luncheon, 12pm at Jim Klimaski's office, 1625 Massachusetts Ave., NW, #500. Bring your own lunch, drinks will be provided. All chapter members in private practice (or who are thinking about going into private practice) are invited to attend.

CIA Drone Bombing Briefing at Busboys and Poets, 14th and V Sts., 7pm – 10pm, Featuring former CIA Agent Ray McGovern and Cindy Sheehan speaking about issues regarding the US's Drone Bombing in Pakistan, as well as a performance by David Rovics.

Jan. 14 – “Human Rights and Mobile Activism in Africa,” 12:30-2pm, at IPS, 1112 16th St., NW. London based African writer and LGBTI activist Sokari Ekine will discuss her new book “SMS Uprising: Mobile Activism in Africa”

Town Hall Meeting: Medical Marijuana in DC, 7pm at All Souls Unitarian Church, 2835 16th St., NW. Info at <http://www.DCpatients.org>

Jan. 15 – “The Obama Administration, One Year Later,” 12-2pm at Busboys and Poets in the Langston Room, 14th and V Sts., NW. Katrina van den Heuvel, editor of the Nation magazine, will start the discussion at this salon series event. Please RSVP to [sena \[at\] ips-dc.org](mailto:sena@ips-dc.org) or call 202-787-5277.

“Revisiting No Logo, Ten Years Later” with Naomi Klein, author of No Logo and the Shock Doctrine, 6:30pm at Busboys and Poets in the Langston Room, 14th and V Sts., NW

Jan. 16 – Protest at CIA Headquarters to Stop Drone Bombings! 1pm – 4pm at Route 123 between Potomac School Roads and Savile Lane, featuring Cindy Sheehan, Cynthia McKinney and others

Picket: Support Sheraton Crystal City Workers, 5:30pm-6:30pm, Sheraton Crystal City Hotel, Jefferson Davis Highway, Arlington, Va (2 blocks from Crystal City Metro)

Jan. 17 – Peace of the Action Organizing Meeting, 3pm-4pm at St. Stephen’s Church – Come to the meeting regarding building Peace of the Action in DC! Get Involved!

Jan. 21 – No More Guantánamos, No More Bagrams: Direct Action Against Torture. For more information, contact organizers through the website, <http://witness torture.org/contact>

“Capitalism and Climate Change,” 7pm, La Casa Community Church, 3166 Mt. Pleasant St., NW. Understanding the threat of climate change and how it can be stopped requires an understanding of the relationship between capitalism and the environment. Join the International Socialist Organization to discuss the capitalist roots of the climate crisis and how we can fight for change.

Jan. 23 – “Days of Resistance” Break the Fast with Witness Against Torture and Gear Up for More Action with the Peaceable Assembly Campaign. 5pm at Busboys and Poets in the Langston Room, 14th and V Sts, NW. Music from Emma’s Revolution, action reportbacks from the Witness Against Torture Campaign, Gaza Freedom March, and a presentation from Rev. Hagler.

Feb. 3 – Grassroots Bill of Rights Lobby Day, 9am. Lobby members of congress on PATRIOT Act reauthorization, airport screening, and the JUSTICE Act sponsored by Sen. Feingold and Rep. Holt. This event is sponsored by the Bill of Rights Defense Committee, the DC NLG, Defending Dissent, Center for Democracy and Technology, Pak-Pac and others. Meet at Rayburn House Office Building, B-339. \$15 requested for lunch.