



DC NLG June 2009 Newsletter

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1. Meet the Board Members

Meet the newly elected DC-NLG Executive Board Members. Their term begins May 1, 2009 and will end April 30, 2011.

TURNA LEWIS – attorney, current chapter President for a second term, returning board member, longtime active guild member.

ANN WILCOX – attorney, private practice, Chairperson of chapter’s Demonstration Support committee, new board member.

LINETTE TOBIN – attorney, private practice in Mt. Rainier, immigration law specialist, new board member.

MEGINS SKOLNIK – attorney, returning board member, chapter Treasurer.

DAN SCHEMBER – attorney, private practice, lead attorney in several major guild lawsuits, returning board member.

RACHAEL MOSHMAN – attorney, private practice, member of the Justice and Solidarity Collective returning board member, chapter Organizer.

JEFF LIGHT – attorney, private practice, appellate litigation, returning board member.

MARGARET KWOKA – attorney, Public Citizen, previously with NLG in Boston and Rhode Island, new board member.

JIM KLIMASKI – attorney, private practice, returning board member, longtime local and national guild activist, past chapter president.

STEPHANIE JOSEPH – attorney, criminal defense, Public Defenders Office, Montgomery County, returning board member.

JOHN HARDENBERGH – attorney, ACLU national office, member Justice and Solidarity Collective, new board member.

ED ELDER – attorney, labor union legal dept., former NLG regional V. P. and member of national board, returning board member.

JIM DREW – attorney, private practice, longtime guild member, returning board member, past chapter president.

In addition, each guild chapter at area law schools will select a member to serve on the Board.

2. NLG Law Student Protests Justice Scalia

Student chapter member of the National Lawyers Guild at American University Washington College of Law, 3L Edmundo Saballos, wanted to send a strong message about Justice Antonin Scalia's April 24, 2009 visit to WCL. He first sent an open letter to Dean Claudio Grossman, where he wrote, "Scalia's known opposition to affirmative action, the right of a woman to make her own choices regarding her own body and to equal pay for equal work, to full and equal rights for gays and lesbians, and most recently, his tacit support for torture, represent the antithesis of the values and the ideas that we believe [WCL] stands for," and called on Dean Grossman to condemn the U.S. government's use of torture during his opening remarks for Scalia's talk. While Dean Grossman made no such comments, Saballos' silent appearance at the top of the room during Scalia's talk - hooded and wearing a bright orange jumpsuit - gave a very clear picture to the Supreme Court Justice that many of us will not forget or forgive the U.S.'s illegal and inhumane uses of torture.

3. Happy Hour Reportback – Getting Acquainted

The DC NLG hosted a happy hour on Thursday April 30th at the Beacon Grill.

Jamie Davis Smith, Margaret Kwoka, César Garcia Hernández, Jim Drew, Scott Trowbridge, and Rachael Moshman attended. Although there was some conversation about politics and Guild activities, for the most part, the attendees had not met or had not seen each other in some time and we just had nice conversation about work, family, and friends. The Beacon Grill was a nice spot - not too loud, good appetizers, and friendly service (even if they got Jim's order wrong).

Hopefully more people will attend the next one. We are lucky to have so many people of varied backgrounds interested in NLG in D.C.

-contributed by Scott Trowbridge, Staff Attorney, ABA Center on Children and the Law

4. Puerto Rican Activists Reject Colonialism, Demand Independence

On May 6th, six Puerto Rican Independence activists were arrested for interrupting Congress. Shouting slogans and holding up signs that called for the respect of Puerto Ricans' rights and the end of 111 years of colonial rule under the United States, they were removed and charged with "disruption of Congress."

The activists and their advising attorney, Manuel Rivera, Esq., gathered in St. Stephens Church in NW DC May 26th, the evening after their arraignment in DC Superior Court, to share with the DC community about their struggle for Puerto Rican independence. Introductory remarks addressed the support of Puerto Ricans for independence. The last locally-organized plebiscite on the island's status was in 1998, resulting in less than .1% voting for the status quo, 2.5% for independence, 46.7% for statehood, and 50.3% choosing "none of the above." However, the activists claimed that on the ground at least 10% of the population supports independence, though the statistics are thrown because there are so many different factions within the Puerto Rican political scene.

Mechanical designer Luis Suarez spoke to the need to mobilize Puerto Ricans for independence and raise their consciousness about the effects of colonialization on Puerto Rico. He also acknowledged that most of the six activists were not members of parties or movements. The six activists expressed a variety of viewpoints as to why they chose to do the action in Congress, how they thought their actions would impact the independence movement back home, and what was really needed in order to gain independence. One idea they all expressed in common, however, was that the Puerto Rican people would never experience authentic freedom and democracy under the yoke of U.S. colonialism. José "Tony Mapeyé" Rivera, a musician, started off his statements asserting that colonialism is a crime. All the decisions about money come from the outside. What may feel like a stomach ache to the United States feels like a cancer to Puerto Rico. Who are the politicians to ask Puerto Ricans to sacrifice? The US tried to assimilate Puerto Rico and make it a territory, but all they've done is make the problem worse.

Eugenia Pérez, a nurse, gave a striking picture of how colonialism has affected the health of the people of Puerto Rico. In the early 1950s, the U.S. wished to change Puerto Rico's embarrassing colonial status. With the help of local politicians, they revamped the Puerto Rican constitution (developed earlier by the Puerto Rican people) to prepare Puerto Rico for its territorial status. In this process, they cut from the Puerto Rican constitution every citizen's right to health care from cradle to grave. Today, the island faces increasing suicide rates, a high HIV/AIDS infection rate, and the highest level of diabetes amongst all groups of U.S. citizens except for the Pima.

Pointing to the large selection of U.S. fast food chains now in Puerto Rico as another health issue, Perez also remarked that while Puerto Rico's per capita income is half of that of Mississippi's, Puerto Rico is the U.S.'s fifth largest market – showing how the U.S. exploits poor territories to help prop up the U.S. economy. One related example that was given is pharmaceutical goods that are produced in Puerto Rico, packaged on the U.S.'s mainland, and then resold to Puerto Ricans at more expensive prices than mainland residents pay. Actor Luis Enrique Romero spoke of the unique qualities, such as language and idiosyncrasies, the Puerto Rican people hold as a nation, and their ability as a people to govern themselves. Recognizing the powerlessness of Puerto Rico's one non-voting delegate in U.S. Congress to

help with this issue, Enrique explained they had come to Congress to talk with them about independence.

Ramón Díaz, retired laborer, explained that movements for Puerto Rico's statehood were getting them nowhere. The pro-statehood party has tried to win Puerto Rican independence through bills in Congress six times so far, with no luck. How many times do Puerto Ricans have to say they'd prefer statehood, before Congress will do something about it? After seeing that he couldn't rely on Congress and that the power of the pro-territory lobbyists was so strong, Ramón decided to protest in Congress in hopes that the attention would gain them audiences with Nancy Pelosi and Joe Biden to speak with them directly about Puerto Rican independence.

Singer, María "Chabela" Rodríguez, spoke about the space for hope she has seen open up since their action in the Congress. Acknowledging various comments about the different factions inside the Puerto Rican independence movement, she noted that many different groups unified to greet the protesters at the airport when they first returned from their action. There has been an explosion of coverage in the media, and she found that even non-politically allied friends and family are supportive of their efforts. The event ended with beautiful musical performances from Chabela, Tony Mapeyé, and Luis Enrique Romero.

Thank you to Ann Wilcox for organizing this event! Please contact Ann (wilcox_ann@yahoo.com) if you are interested in helping to support the Puerto Rican activists in their ongoing trial for interrupting Congress.

-contributed by Rachael Moshman

5. NLG Members Argue for DC Voting Rights Act

The Ward 3 Democrats hosted a debate on May 20, 2009 concerning the constitutionality of HR 157, the District of Columbia House Voting Rights Act of 2009, introduced to the House in early January by Delegate Representative Eleanor Holmes Norton. The purpose of the act is to give the District of Columbia one voting representative in the House of Representatives.

Defending the constitutionality of the Act was Professor of Law, Maryland Senator, and NLG Member Jamie Raskin and Professor of Law and NLG Member Stephen Pershing. Arguing against the constitutionality of the Act was Professor of Law Jonathan Siegel and Richard Dykema, an attorney and proponent of California Representative Dana Rohrabacher's HR 665, the District of Columbia Voting Rights Restoration Act of 2009. The panel of judges included Professor of Law Amanda Frost, Executive Director of DC Appleseed Walter Smith, Attorney Lorie Masters of Jenner and Block, and Member of the Ward 3 Democratic Committee and Chair of its Ad Hoc Committee on Federal Policy Issues Michael Gold.

Raskin kicked off the debate, hosted at American University Washington College of Law, by highlighting the constitutional obligation placed on Congress by the Bill of Rights and the 14th Amendment to provide equal representation for all citizens of the United States – including those living in the District of Columbia. Raskin argued that those provisions of the U.S. Constitution that protect the individual rights of freedom must trump Article 1, Section 2, which contains, in

part, the structural stipulation that, “The House of Representatives shall be composed of members chosen ... by the people of the several states...”

Raskin also pointed to Article 1, Section 8, Clause 17 (the “District Clause”), which states that Congress has the power to, “exercise exclusive legislation in all cases whatsoever, over such District ... as may... become the seat of government of the United States...” There are over 500 instances where Congress has treated District residents as if they were residents of states, for example in the cases of military conscription and diversity jurisdiction. Congress has clearly demonstrated their power to make decisions for DC residents. Raskin concluded by calling for an interpretation of the constitution that is free from the strait jacket of structural rights and that instead interprets structural rights through the individual rights of freedom.

Dykema’s introductory statements arguing against the constitutionality of HR 157 took a much more pragmatic approach. Stating that most members of the Supreme Court are textualists, Dykema said he saw no possibility that the Supreme Court would uphold the bill. He further stated that the bill is unconstitutional because Congress does not have the power to change its own composition in the manner HR 157 contemplates because of the limitations of Art. 1, Sec. 2.

Dykema then went on to speak about HR 665 as an alternative to HR 157. The Voting Rights Restoration Act of 2009 gives back to the people of DC the right they once had – to vote in Maryland. This right existed before the District’s land was given to the federal government by Maryland. In fact, as Raskin had explained earlier, DC residents continued to vote in Maryland and Virginia for a short period of time after DC was created in 1791. As a precedent, Dykema cited the Uniformed and Overseas Citizens Absentee Voting Act, which allows overseas citizens to vote in a state where they do not have residency.

Dykema complained several times throughout the discussion that it was often the Democrats who, though they claimed they wanted voting rights for the district, were the largest critics of Rohrabacher’s bill, which has been introduced the last four sessions of Congress. He finished by emphasizing that while HR 157 would give DC representation in the House, HR 665 would provide for representation in the House and Senate.

Rebutting the argument against the constitutionality of HR157, Pershing came in “cut some things down to size”. The word “state” in Art. 1, Sec. 2 poses the greatest challenge to HR 157’s constitutionality. The main question, therefore, is does Congress have power under the District Clause to massage the word “state” in Art. 1, Sec. 2. In other instances, the word “state” has been malleable, such as in the NIH case. Pershing concluded stating that only the most wooden reading of the constitution would not allow “state” to be interpreted to provide representation for the District.

Siegel began his remarks affirming that he was a Democrat and did not believe this was a bipartisan issue, as other debaters had suggested. He agreed that the lack of representation for Congress in the District is outrageous, but the solution must be constitutional. He continued to address four arguments put forward in the debate and by proponents of the bill in general. First, though Congress has a uniquely strong power over the District through the District Clause, it is

still constrained by other constitutional limitations including Art. 1, Sec. 2's provision that says how Congress should be composed.

Second, though Congress has been permitted to treat DC as a state for other purposes, we must maintain a sense of proportion. For instance, Congress may have decided to treat DC as a state for purposes of diversity jurisdiction, but this is not something fundamental like Congress' composition. Third, the argument is false that the framers of the constitution did not mean to disenfranchise DC residents, they just forgot to take care of that part. The framers did reject at one time the idea of giving the District representation, and whatever the framers were thinking, we are bound by what they did.

Fourth, while some point to the Equal Protection Clause to argue that not giving DC residents representation is unconstitutional, the Equal Protection Clause is limited by the other provisions of the constitution. The constitution cannot be unconstitutional. Siegel's conclusion was pointed: we should put up with the problems in the constitution rather than try to ignore it – that's how we got Guantanamo Bay. DC's lack of representation is a problem but we will have to live with it.

Discussion continued with questions from the panel of judges and the audience members. NLG Member Aaron Lloyd spoke for the need to win statehood for DC and that struggle's relationship to HR 157. DC Council Member Michael Brown, Chair of the Statehood Self-Determination Committee, announced a series of meetings that will continue to discuss these issues. Raskin railed against constitutional conservatism and asserted that our concept of fair and equal changes over time. Siegel clarified that DC residents only voted in Maryland from 1791 until 1801 when DC actually became the seat of government.

No side was declared a winner.

-contributed by Rachael Moshman

6. Events

June 2 – “From Mbeki to Zuma: the Future of the South African Dream”, 6:30-9:30pm, the Forum in the Blackburn Center, 2218 6th St., NW, Howard University.

How do we assess the results of the election and what are the implications for the future of South Africa?

Featuring South African journalist Mark Gevisser, professor of African Studies and Communication Studies at the Univ. of Michigan Sean Jacobs, and professor of Government and Politics and director of the African American Leadership Institute at the Univ. of Maryland Ronald Waters

June 5 – “Celebrating Solidarity” A night of poetry, art, music, and politics at Busboys and Politics (14th and V Streets, NW).

Featuring performances by Sun of Nun, Bugs Raleigh, Slimm Goines, Doc Night, and the words of Shujaa Graham (exonerated Death Row inmate). \$10 at the door – all proceeds go to the Social Justice Scholarship Fund of the Washington Peace Center.

June 9 – DC NLG Board Meeting, 6:30pm, at the Law Office of Jim Drew, 2000 P Street, 4th Floor. All members are welcome.

June 17 - FOIA Party! 7pm at Dynasty Ethiopian Restaurant, 2210 14th St. NW

If you've always wanted to file a freedom of information request about yourself or your group, now is the time to do it! We'll have everything you need to ask your favorite agency what they know about you. FOIA expert Margaret Kwoka, from Public Citizen will be there to walk us through the application process and review your requests for you. Sponsored by the DC Bill of Rights Coalition (Washington Peace Center, Defending Dissent Foundation and the DC National Lawyers Guild)
This is a free event

For more info: sue.udry@defendingdissent.org or call 202-529-4225

June 18 – DC NLG Happy Hour, 6pm - ??, at the Beacon Bar and Grill, 1615 Rhode Island Ave., NW (1 block North of 17th and M Sts., across from the YMCA).

June 24 – Private Practitioners Luncheon, 12:15pm at the Law Offices of Jim Klimaski, 1625 Massachusetts Ave., NW, Suite 500. All private practitioners and those thinking about going into private practice are welcome.

June 28 – Submissions due for the July Newsletter – please send events, accounts of interesting events, relevant news stories, letters in response to previous newsletter items, etc. to rmoshman@hotmail.com