

THE Conspiracy

National Lawyers Guild, San Francisco Bay Area Chapter

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Nuremberg Actions Continue

By JACKIE CABASSO

“If certain acts in violation of treaties are crimes, they are crimes whether the U.S. does them or whether Germany does them, and we are not prepared to lay down a rule of criminal conduct against others which we would not be willing to have invoked against us.” Thus spoke former United States Supreme Court Justice Robert H. Jackson, acting at the time as chief U.S. prosecutor at Nuremberg.

Each day since September 1, concerned citizens, taking Justice Jackson's words to heart, have attempted to uphold their Nuremberg obligation by nonviolently blocking trains and trucks they believe to be carrying munitions bound for Central America from the Concord Naval Weapons Station. Each time peaceful protesters have sat down on the railroad tracks or in the road they have been unceremoniously hauled out of the way by members of the Concord Police, the Contra Costa County Sheriff's Department or the Marines, who are stationed at the base. Some of them have been detained temporarily and released at the site, some have been formally arrested and taken to jail, and some have been injured. While many of those arrested have not as yet been charged at all, some have been charged with resisting arrest in addition to blocking railroad tracks, trespassing, or obstructing a public thoroughfare. Although a variety of “law enforcement” strategies have been used in an apparent attempt to discourage the demonstrators, dedicated peace activists, committed to a stringent code of nonviolence, have returned day after day. At least a few of them each day have been willing to risk arrest while engaging in what they perceive to be their legally-mandated obligation to resist the commission of crimes against peace and humanity orchestrated by the United States Government against the people of El Salvador and Nicaragua.

Approximately 35 people arrested at Concord between September 1 and October 5 (when the charging policy was changed—at least temporarily) are preparing to carry their commitment to the Nuremberg Principles forward by going to trial. Since these defendants are charged with misdemeanors, they have a right to jury trials. Opportunities for nonviolent political dissenters to have their cases heard by juries have become increasingly rare in this area over the last several years, as most have been charged with minor Vehicle Code infractions or petty federal misdemeanors allowing only for Court trials.

Bork, Gay Rights and Reaganism

by MARY DUNLAP

In the closing months of 1987, a series of phenomenal events occurred: President Reagan's top choice for a Supreme Court vacancy was opposed nationwide and was resoundingly rejected; the most massive demonstrations for gay and lesbian rights in history happened; the stock market crashed, burned and rose from the dead, every other day, for weeks on end. It seemed that many of the cherished fictions of the Right—that capitalism can endlessly succeed in creating more and more profit, that law is and must be free of “politics,” that gay and lesbian people are too few, strange and out-of-touch to organize sufficiently—were challenged in dra-

his order to tear-gas the Berkeley campus and to shoot at, club, blind and in at least one case to kill anti-war protesters during this time. To me, the main difference between Reagan and the assassins of King and Kennedy was that he had more money and better luck. Of course, between 1968 and 1987, I had felt sporadic hopefulness; but it was usually a somewhat solitary, precarious feeling, normally accompanied by its twin—diehard discouragement about the cruel dispositions of the world in which I found myself.

But here I was again, after so many years, deeply feeling and remembering: We can make this world better if only-

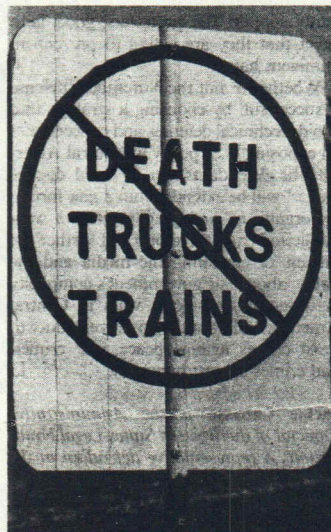


PHOTO COURTESY OF THE NUREMBERG ACTION

There has been considerable debate within the anti-nuclear and anti-intervention movements about the efficacy and morality of pleading not guilty and choosing to interact with the legal system by going to trial, as opposed to pleading no contest and getting out of the system and “back on the street” as quickly as possible. However, the nature—indeed, the very name—of the Nuremberg Actions suggests that the people involved in trying to stop the weapons shipments with their bodies believe that they are engaging in lawful activity. Although they are willing to risk arrest, they do not believe that they are guilty of committing any crimes. In this case, the possibility of getting to tell a Concord jury about the central role being

braved the weather and the doubters across the land.

On October 11, at least 600,000 people took to Pennsylvania and Constitution Avenues, and to all those other marble-fronted streets, for a National March for Lesbian and Gay Rights. (Prior marches in D.C. in 1979 and in S.F. in 1984, had drawn over 100,000 people.) On October 13, a hardy, well-organized, peaceful and angry civil disobedience action took place on the U.S. Supreme Court steps. Showing love and inspiration every step of the way and shouting “Your gloves don't match your shoes” at those cops who chose to wear rubber gloves to reach out and touch with their homophobia and AIDSphobia, over 800 brave people were arrested. On October 23, the U.S. Senate voted 58-42 to deny Robert Bork an opportunity to go to that same Court, each every day for years and years, to defy the cry of “Equal Justice

played by the Concord Naval Weapons Station in the implementation of an unpopular and illegal United States foreign policy, provides the defendants with an added incentive to take their cases to trial.

Many lawyers and legal workers have come forward—some for the first time—and volunteered their services in support of the Nuremberg Actions. Legal organizations experienced in political demonstration work, including the Western States Legal Foundation, Community Defense Incorporated, and the Guild, have provided support and guidance as legal needs have arisen. Guild attorney Linda Fullerton has been instrumental in matching up lawyers with defendants. Attorneys currently working on this case include Mary Izette, Virginia Hart, Sylvia Keita, Kim Malcheski, Steve Houghton, Stuart Hanlon, Stan Dewey, Dan Russo, John Diaz Coker, Margaret Mossman, Phyllis Loya and Lowell Richards.

In October, the defendants and their attorneys began to meet and discuss trial options and strategies. Drawing on the experiences of defendants and lawyers who had been through similar kinds of trials, and using the same group consensus decision-making process used by the Nuremberg Action organization, the defendants agreed that they wanted to utilize the courtroom as a forum for raising the Nuremberg Principles. They decided that they wanted to have a single, carefully prepared mass trial, rather than trying to “clog the system” by demanding individual jury trials. Further discussion produced a list of trial goals that will be referred to throughout the legal proceedings in order to ensure that the legal tactics chosen are consistent with the political objectives of the group.

As it turns out, Deputy District Attorney Dodie Katague shares the defendants' preference for a group trial, although he is unwilling to consider a consolidated trial

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NLG Peace and Disarmament Work

By TERRI WALLER

The NLG Bay Area Chapter's newly formed Peace and Disarmament Committee held its first meeting in November. Participants reviewed the previous peace and disarmament work done by NLG members and considered strategies to continue to broaden those efforts and to strengthen the Guild's presence in peace and disarmament work.

Guild members locally and nationally have played active roles in defending peace activists arrested for protesting the United

Nuremberg

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where each defendant would be fully involved. Negotiations are currently underway for a representative trial, in which some of the defendants would present their cases on behalf of the rest. Those attached would agree in advance to be bound by the verdict reached regarding the representatives. Arrangements would be similar to those worked out for the big Livermore Labs protest trial in 1983. The defendants would choose their own trial representatives, and the number of attorneys involved would probably be limited. It is also possible that one or two of the defendants will represent themselves. Many details, including determining the final charges against each defendant and the timeline, remain to be resolved although the case is not expected to go to trial until next spring.

Raising affirmative defenses based on international law is problematic. Municipal courts have generally been unwilling to consider what they perceive to be questions of national policy. And even when testimony on international law issues is allowed, it is often tempered by a restrictive jury instruction. In California, the appellate courts have not been persuaded by arguments presented in a couple of anti-nuclear protest cases. Nonetheless, in a growing number of trials around the country stemming from nonviolent Central America protests, Municipal Court judges have admitted international law defenses. When defendants' and experts' testimony, based on those defenses, is heard by juries, they tend to acquit. (The best known of these cases is probably last year's Amy Carter/Abbie Hoffman trial.)

Given the intense local controversy surrounding the ongoing Nuremberg Actions in the wake of the Brian Willson tragedy, the chances of raising such a defense in this case are anyone's guess. The defense was allowed to use an argument based on necessity in a 1984 trial in Concord Municipal Court involving Naval Weapons Station protesters. The July 1986 World Court condemnation of U.S. support for the Contras as a war crime certainly lends credence to the defendants' assertion of a Nuremberg obligation. And Navy contracts documenting arms shipments from Concord to El Salvador, obtained by the Bay Area Pledge of Resistance through a Freedom of Information Act request, certainly support the protesters' good faith belief that they are acting to prevent an imminent harm.

Whether or not the Nuremberg defense is successful, by choosing a strategy that avoids technical defenses and concentrates on exposing U.S. policy in Central America, the defendants' act of "civil disobedience" will be extended into a new forum. By organizing and preparing for a well-publicized trial, the group will further the process of educating the media and the public about our government's complicity in immoral and illegal wars in Central America, and about every citizen's duty to resist crimes against peace, war crimes, and crimes against humanity. □

Jackie Cabasso is the Administrative Director of the Western States Legal Foundation. A representative defendant in the 1983 Livermore trial, she is currently helping to organize the upcoming Concord trial.

NLG Work-Study

By HELEN SOPHIA

As the new year approaches, the Guild is gearing up for another semester of work-study. The aim of the NLG Work-Study Program is to further the work of the Guild by providing Guild attorneys with access to an invaluable source of inexpensive and motivated student workers with an interest in doing public interest work. Law students have the opportunity of being employed in progressive legal environments where they can participate in meaningful and interesting work.

The Guild is an authorized work-study employer, subcontracting to participating attorneys. Therefore, all arrangements for employment must be made through the Guild, and not with the school directly. The program is offered as a service to Guild members, and to this end it is the responsibility of participating students and lawyers to see that it works to the benefit of all involved.

Attorney Procedure

After deciding to employ a student referred by the Guild office, the attorney and the Guild complete a contract agree-

—All participating attorneys must be paid up in current dues.

—Attorneys must make work-study arrangements with the Guild directly, not the schools.

—The student can only perform public interest work. Basically, this means that the student's work should be performed for the national or community interest and not as a part of purely profit-making activity.

If you would like to participate in the NLG Work-Study Program, submit a brief announcement of the position, including a description of the student's duties, the rate of pay and number of hours per week. The Guild office will then forward your description on to the school and refer students to your office. A more detailed description of the work-study procedures is available at the Guild office and will be sent to you when you contact us.

Student Procedure

Students must complete all paperwork and make arrangements to work with an attorney through the Guild office. The list of positions is available in the Guild office.

Peace Work

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Conspiracy.) Guild members are actively participating in the protests that continue at the Concord Naval Weapons Station and in providing legal representation and assistance for protesters arrested at the site. Guild members are working with Brian Willson in his attempts to force the Navy to take responsibility for the injuries he suffered on the tracks at Concord.

As these efforts continue, the Peace and Disarmament Committee encourages more Guild members to get involved in this on-going work. Additionally, the Committee will actively seek to develop Guild work in connection with the broadest-based groundswell form arms control that has been seen in years. Guild members are active in the Nuclear Freeze Campaigns and have represented a moving force in several national organizations formed in response to the call for arms control—Lawyers Alliance for Nuclear Arms Control (LANAC) and The Lawyers' Committee on Nuclear Policy are just two of these organizations.

Among the projects the Committee discussed which offered opportunities for Guild members to become involved in peace and disarmament work were:

- joining with LANAC for an anti-nuclear testing vigil on "Law Day," May 1, 1988 at the Federal Building in San Francisco, demanding that the Comprehensive Test Ban Treaty be signed;
- planning future educational forums—possibly in coordination with other community or professional organizations—concerning the arms race;
- providing assistance to Bay Area cities which are seeking to establish themselves as nuclear-free zones;
- working on a Peace Law Docket being assembled by Meikeljohn Civil Liberties Institute;
- working on initiatives which are being developed to prevent arms being transported through municipalities to Central American countries;

- coordinating the efforts of lawyers and law students defending peace activists in a variety of actions in the Bay Area; and

- creating handbooks for anti-nuclear defendants, as well as producing literature detailing the location and nature of nuclear materials and arms in the Bay Area.

Locally and nationally the peace movement is gaining strength. Peace forces in San Francisco have demonstrated their effectiveness in fighting the homeporting of the *Missouri*, while activists across the country, taking the agreement on intermediate-range missiles as only a starting point, are seeking to force our government to move toward serious arms control. With all these developments and suggestions within the Committee, we want to encourage Guild members to get involved in our work. For more information about how you can get involved in the peace and disarmament work of the Guild, contact Terri Waller, 832-2583. The next Peace and Disarmament Committee meeting is scheduled for Monday, February 29, 1988, 7:30 pm, 78 Manchester, San Francisco (in Bernal Heights). □

Terri Waller is a staff member of the National Jury Project, a member of the Executive Board, and co-chair of the national Middle East Subcommittee.

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THE CONSPIRACY

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The opinions expressed in the articles published in

Agee Speaks to Guild

by JONATHAN NACK

Former CIA agent Phillip Agee, back in the U.S. after 17 years in exile, was in San Francisco to address an audience of Guild and ACLU activists on Oct. 30.

Standing in the library of the ACLU offices on Mission Street, Agee spoke frankly and personally of his experiences dodging CIA retribution since quitting in 1968 and subsequently disclosing many of the agency's illegal and terroristic interventions. This story is the subject of Agee's new book, *On the Run*.

Agee has come back to the U.S. to fight the government's revocation of his passport, which together with persistent rumors of a secret government indictment against him, have prevented his residing here with his family. Agee's presence in the Bay Area was a further challenge to the administration to "put up or shut up" on its charge that he is a threat to national security. Agee's passport case is currently on appeal to the Board of Appellate Review.

Agee has been taking full political advantage of his time in the country. He came to the Bay Area to help publicize local activists' efforts to ban CIA-linked Southern Air Transport from using Oakland International Airport. While here,