

## **July 28, 2009 Pittsburgh City Council Post-Agenda on G-20 Summit Comments by Heidi Boghosian for the National Lawyers Guild**

The National Lawyers Guild is a progressive bar association, founded in 1937. Guild members have been at the forefront of defending fundamental First Amendment rights since the civil rights movement through litigation and a national legal observer program that sends trained monitors to public assemblies when a large police presence is expected. Our goal is to help guarantee a safe atmosphere for people to express their views as fully as possible without unconstitutional disruption by law enforcement.

In recent years we have documented a resurgence of police abuse and violence aimed at protesters. Our experience at other National Special Security Events (NSSE) tells us that unless Pittsburgh can do things differently at the G-20 Summit, there will be not only suppression and disruption of cherished free speech rights but also protracted and expensive litigation for the use of excessive force, abuse of less-lethal weapons and unlawful arrests and detentions by the police. The resulting costs will be high, both financially and with regard to public perception that Pittsburgh is intolerant of free speech.

In contrast, a determination by city leaders to chart a different course will save millions of dollars and send a positive message of respect for the Constitution. Based on our extensive experience in the streets, and noting Pittsburgh's proud history of honoring labor struggles, we urge the city to adopt a zero tolerance policy toward the abuse of authority by police. If Pittsburgh proscribes unconstitutional mass arrests, disruption tactics, and violence against protesters, the G-20 Summit can be a safe and positive experience and an example for other cities to follow.

### **Most Violence at NSSEs and Large Assemblies is Police-Initiated**

The vast majority of violence seen at demonstrations in the United States is not carried out or caused by demonstrators. It is undertaken by police who are trained to treat protestors as if they are criminal, and are then deployed with dangerous weaponry and the power of arrest. We hope that the City of Pittsburgh will take seriously our belief that police overreaction is not needed to ensure the safety of event participants. We offer these specific recommendations:

**1) Less-lethal munitions are an inappropriate use of force against passive or lawfully dispersing crowds. Post-event injury-related settlements are costly.** Impact projectiles, electroshock weapons, and chemical weapons like tear gas and pepper spray represent a

disproportionate use of force, and violate state, federal and international human rights laws.<sup>1</sup> An independent review commission charged with investigating force used by police at the 2003 FTAA demonstrations in Miami deemed these weapons excessive, and the United Nations Commission on Human Rights condemned the Oakland Police Department's (OPD) use of them at the 2003 Port of Oakland protests. In 2004, the City of Oakland paid approximately \$1.5 million to settle lawsuits brought by injured Port of Oakland protesters, and agreed to implement wide reforms to stop the use of less-lethal weapons against protesters as a result of class action litigation brought by the National Lawyers Guild, the ACLU of Northern California and several civil rights attorneys.

**2) False mass arrests and detentions are unlawful and costly.** It is unlawful to trap and detain a group unless there is probable cause to believe that all within the group have broken the law. These types of illegal mass arrests have been and are the subject of multi-million dollar litigation in Washington, D.C., New York, Chicago and other cities around the country. At the 2004 Republican Convention 1,806 were arrested and detained for days. An April 12, 2005 *New York Times* article reported, “[of] the 1,670 cases that have run their full course, 91 percent ended with the charges dismissed or with a verdict of not guilty.” To-date, New York City has paid \$6.6 million in attorneys’ fees and \$1.5 million in RNC-related settlements.

The Independent Review Panel (IRP) investigating the 2003 FTAA demonstrations in Miami cited the Miami-Dade Police Department After-Action Report which substantiates claims that police conducted mass arrests and detentions with the goal of keeping protesters away from the event location. “The courts assisted by staggering bond hearings and releases so that arrestees were not able to quickly return to the conference site.”<sup>2</sup>

Police in Washington, D.C. conducted mass arrests of anti-war and anti-globalization protesters on September 27, 2002. Of a total of 647 arrested, approximately 400 were “trapped” and arrested in Pershing Park. Findings from a February 27, 2003 report 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. A class-action lawsuit filed by the Partnership for Civil Justice charged the District of Columbia and federal agencies with falsely arresting hundreds of

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<sup>1</sup> 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.

demonstrators, observers, and passers-by.<sup>3</sup> In January 2006 the D.C. Circuit ruled that the D.C. Police Chief may be held personally liable for the mass arrests. This case followed on the heels of another larger false arrest in April 2000 of nearly 700 peaceful World Bank/International Monetary Fund protestors who were illegally trapped, detained and arrested. Again, the Chief of Police and Assistant Chief of Police were found to be potentially personally liable, in addition to the City.

**3) Deployment of police in riot gear and other NSSE security enhancements—sharpshooters, road closures, horses, motorcycles, helicopters, canine units, and conspicuous military patrols—has an intimidating effect.** Such deployment sends a message that demonstrators’ lawful activities will likely meet with police violence and changes the tenor of the event, prompting the press to report on police buildups. The Report of the Commission Investigating the Death of Victoria Snelgrove by a projectile impact weapon in 2004 quoted Boston police superintendent James Claiborne as saying, “...if you come in geared up for a fight you certainly will encounter a fight, whereas if you come in with soft clothes, your regular everyday uniform, it’s just regular everyday business.”<sup>4</sup>

**4) City officials should speak responsibly to the press.** The media plays a key role in escalating perceptions of violence. More often than not, news reports portray protesters as disrupters, deviants and violent instigators—without any evidence—while discounting police violence and instigation. Already, such coverage is beginning in Pittsburgh: the Associated Press on June 24, 2009 reported that past G-20 summits attracted “thousands of sometimes violent demonstrators.” The July 15, 2009 *Post-Gazette* pictured officer drills and focused on fears of “unlawful” and “violent” protest. Misleading news coverage has helped the public buy into the police line that protest poses a threat that necessitates a repressive police response.

Independent investigations have found that the media’s unwarranted emphasis on “anarchists” has a large influence in shaping police response:

An independent review panel investigating the actions of the Miami-Dade Police Department said that the media played a large role in police response during the 2003 FTAA ministerial. In its September 2004 Inquiry Report, the panel wrote that “[m]edia coverage and police preparation

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<sup>2</sup> Jorge E. Reynardus et al., *The Free Trade Area of the Americas (FTAA) Inquiry Report*, Sept/ 20, 2004, [http://www.miamidade.gov/irp/Library/FTAA\\_Report\\_09\\_20\\_04.pdf](http://www.miamidade.gov/irp/Library/FTAA_Report_09_20_04.pdf).

<sup>3</sup> Barham et al. v. Ramsey, et al., 434 F.3d 565 (2006).

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 a reserved presence of police force.”<sup>5</sup> The report found that police were trained to anticipate 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 panel found, in fact, that there were no large disturbances.

**5) Pre-event pre-textual searches and raids of organizing spaces are unlawful and costly to the city.** Police and building inspectors have shown up where activists are known to stay or meet to: (1) conduct a warrantless search of the premises under the guise of an administrative search, or (2) find a housing violation as a pretext to close down the premises. Before the 2008 Republican National Convention in the Twin Cities, police with guns drawn raided an activist meeting space and ordered everyone to lay on the floor as they confiscated computers; no one was arrested and the only claim of wrongdoing was a fire code violation.

In another incident, police in Washington, D.C. closed a protesters’ “convergence center” under the guise that it was a fire hazard. Litigation later revealed that the police initiated the closure after they applied for, and were denied, a search warrant. There was no illegal activity or any unlawful materials in the convergence center. The Supreme Court has held that such administrative searches may not be used as a pretext for a criminal investigation.<sup>6</sup>

**6) Screening checkpoints and metal detectors have been held to be unconstitutional.** Checkpoints can create bottlenecks, slow down the process of getting to the protest site, and discourage some from attending. For two years a metal detector checkpoint at the School of the Americas (SOA) protests in Columbus, Georgia caused long lines and prevented people from getting to the assembly site on time. A Guild member served as co-counsel in challenging the detectors; in 2004 the 11<sup>th</sup> Circuit ruled unanimously that such searches were unconstitutional under the First and Fourth Amendments because they apply subtle pressure on demonstrators to surrender their rights by discouraging participation.<sup>7</sup>

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<sup>4</sup> Donald K. Stern et al., Report of the Commission Investigating the Death of Victoria Snelgrove, May 25, 2005, 26-27, <http://www.ci.boston.ma.us/police/pdfs/report.pdf>.

<sup>5</sup> Jorge E. Reynardus et al., *The Free Trade Area of the Americas (FTAA) Inquiry Report*, Sept/ 20, 2004, [http://www.miamidade.gov/irp/Library/FTAA\\_Report\\_09\\_20\\_04.pdf](http://www.miamidade.gov/irp/Library/FTAA_Report_09_20_04.pdf).

<sup>6</sup> *New York v. Burger*, 482 U.S. 691 (1987); *Scott v. United States*, 436 U.S. 128 (1978).

<sup>7</sup> *Roy L. Bourgeois, et al. v. Columbus, Georgia*, No. 03-1688 (11<sup>th</sup> Cir. 2004).

**7) Avoid the establishment of “free-speech” zones.** They place unconstitutional limits on First Amendment protected speech and will often be the subject of pre-event litigation. Activists prevailed in a lawsuit by Guild members striking a free-speech zone of more than 8 million square feet around the site before the 2000 Democratic National Convention in Los Angeles.<sup>8</sup>

**8) “Pop-up” police lines used to encircle participants engaged in First Amendment protected assembly will likely be challenged in court. While emergency police lines are lawful, the act of setting up a police line to block access to public areas solely because people are engaged in free speech activities is not.** Pop-up lines involve the rapid deployment of officers that block and misdirect, split up groups and/or detain and arrest protesters and often bystanders. Police lines alter the flow of a march and can literally trap people and prevent them from moving along or leaving. When police surround people in this fashion, illegal mass arrests often follow.

**9) Avoid the use of containment pens, which are unsafe.** The establishment of wooden pens or metal barriers within a narrowly confined area makes it easier to conduct mass arrests. These pens also present safety issues, such as the possibility of panic among demonstrators who wish to leave but are trapped within tightly packed confines.

Allowing crowds 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 ill-conceived and has proven to be dangerous in the past. Pens result in tension and anxiety among persons contained therein who cannot move along the route normally. Those with disabilities, medical needs, and children will not be accommodated.

**10) Avoid using horses, motorcycles and bicycles to “rush” and “flank” event attendees or to move crowds.** Rushing involves officers, usually on horseback, motorcycles, or bicycles, charging and assaulting a group of demonstrators. Police used their bicycles, in a tactic known as “flanking,” to encircle and trap a group of about 50 people for two hours at the 2003 FTAA demonstrations in Miami. When demonstrators asked if they were being detained, the police said no. When demonstrators asked if they were then free to leave, they were also told no. When the group finally received permission to walk, police flanked them, walking their bikes in lines on all sides and using bicycles to push people off the sidewalk and into the street. After an hour of herding people, police with bikes formed a line in front of them and shot them with tasers.

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<sup>8</sup> SEIU v. City of Los Angeles, 114 F. Supp. 2d 966 (C.D. Cal. 2000).

In November 2006 police entered into a settlement over excessive use of force and violence and police disruption against protesters at President Bush's 2001 inauguration. The District of Columbia agreed to pay \$685,000 and change the policies governing the Metropolitan Police Department's managing of demonstrations.

## **Conclusion**

The City of Pittsburgh has an opportunity to honor its long and proud history of protest by changing the tactics typically used at National Special Security Events at this upcoming G-20 Summit. The militarization of NSSEs has resulted in the costly and violent curtailing of free speech and has been detrimental on a number of fronts, from grossly exaggerated costs during hard economic times to the tarnishing of host cities' reputations. The National Lawyers Guild urges the city's leadership to avoid an over-militarized police presence that punishes First Amendment activities, and to instead practice sensible policing so that safety and free speech can co-exist on the days leading up to and including September 24 and 25. In so doing Pittsburgh will send a message to the rest of the country that those exercising their rights to free speech are not the enemy.

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Cost of Settlements (not including attorneys' fees) at Selected Events

Year	City	Event	Settlements to Date
2007	Los Angeles, CA	Immigration demonstration	\$12.8 million <sup>9</sup>
2004	New York, NY	Republican National Convention (NSSE)	\$1.5 million <sup>10</sup>
2003	Miami, FL	Free Trade Area of the Americas meeting	\$640,000 <sup>11</sup>
2003	New York, NY	Iraq War demonstrations	\$2 million <sup>12</sup>
2003	Oakland, CA	Iraq War demonstrations	\$1.5 million <sup>13</sup>
2002	Washington, D.C.	IMF/World Bank/Iraq War demonstrations	\$1.6 million <sup>14</sup>
2000	Los Angeles, CA	Democratic National Convention (NSSE)	\$4.1 million <sup>15</sup>
1999	Seattle, WA	World Trade Organization Conference (NSSE)	\$1 million <sup>16</sup>

<sup>9</sup> <http://articles.latimes.com/2009/feb/05/local/me-lapd-settlement5>

<sup>10</sup> <http://www.nytimes.com/2008/11/16/nyregion/16settle.html?pagewanted=print>

<sup>11</sup> <http://www.miaminewtimes.com/2007-10-04/news/ftaa-settlement-reached/>

<sup>12</sup> <http://www.nytimes.com/2008/08/20/nyregion/20about.html>

<sup>13</sup> <http://www.nytimes.com/2006/03/20/national/20port.html>

<sup>14</sup> <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/01/AR2007080102285.html>

<sup>15</sup> <http://articles.latimes.com/2004/may/08/local/me-demo8>

<sup>16</sup> [http://seattletimes.nwsourc.com/html/localnews/2003647761\\_webwto02m.html](http://seattletimes.nwsourc.com/html/localnews/2003647761_webwto02m.html)