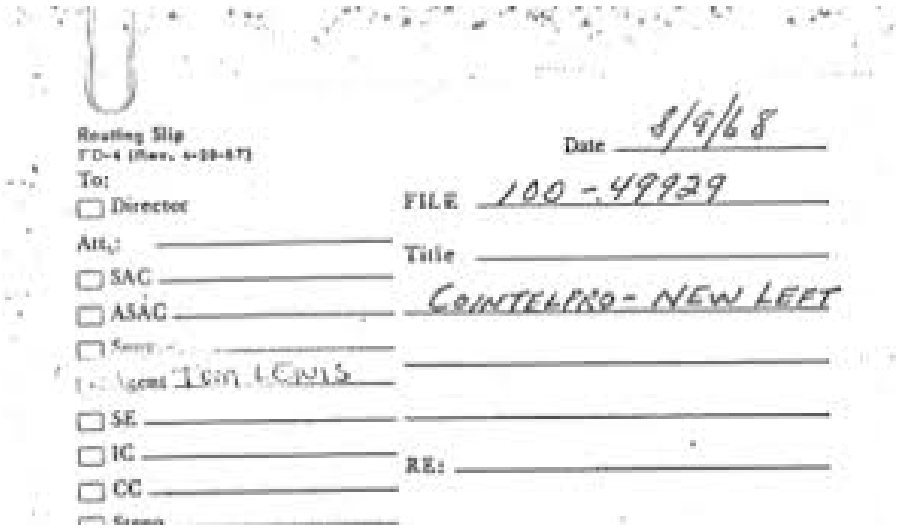
- A National Lawyers Guild Report -

BREACH OF PRIVILEGE:

Spying on Lawyers in the United States



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BY TRACI YODER

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About the Author

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About the National Lawyers Guild

The National Lawyers Guild (NLG) was founded in 1937 as the nation's first racially integrated bar association, with a mandate to advocate for the protection of rights granted by the United States Constitution and fundamental principles of human and civil rights. As one of the non-governmental organizations selected to officially represent the American people at the founding of the United Nations in 1945, its members helped draft the Universal Declaration of Human Rights.

About the NLG Archives

The NLG Archives are managed by the Tamiment Library at New York University. Over 300 boxes of documents span the Guild's history, many of which focus on the court case *National Lawyers Guild v. Attorney General* (1977-1989) revealing that the Guild had been the target of a 40-year covert Federal Bureau of Investigation campaign of surveillance, infiltration, and intimidation. To view a description of the collection, visit the Tamiment Library Guide to NLG Records online at http://dlib.nyu.edu/findingaids/html/tamwag/tam_191/. If you are interested in viewing the collection in person, please visit Elmer Holmes Bobst Library (70 Washington Square South, New York, NY 10012). For more information, contact Tamiment Library at (212) 998-2630.

Acknowledgements

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Executive Summary

In June 2013, Edward Snowden brought international attention to US government surveillance programs when he revealed that intelligence agencies are collecting, storing, and analyzing billions of emails, phone calls, and text messages. As a result, the American public learned the degree to which the US government has violated the privacy of millions of people, ostensibly in an effort to prevent terrorist attacks. Yet this is not the first time the NSA and other government agencies have engaged in illegal spying. Some of the earliest challenges to government surveillance programs came from National Lawyers Guild (NLG) members through lawsuits which established that the US government spied on the organization and its members. From the historic use of informants and wiretaps to the more recent dragnet collection of phone and electronic data, government agencies—in cooperation with private intelligence firms and local police departments—have been working to disrupt the legal support services provided by progressive law organizations for nearly a century.

Drawing on archival materials and interviews with NLG members, the following account highlights the little-publicized history of spying on legal professionals, including the monitoring of the NLG and its members who represented clients deemed a threat to state and corporate interests. A lawsuit brought by Guild lawyers in 1977 against the NSA, Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), the military, and other government bodies forced the release of over 300,000 pages of confidential documents on surveillance of the NLG. These files represent the most complete historical account available of surveillance of the legal profession and reveal the intensity of infiltration and disruption used by government intelligence agencies to interfere with the work of the Guild and other legal organizations.

The lawsuit, *National Lawyers Guild v. Attorney General,* proved that US government agencies spied on every level of the NLG, paid informants to collect information and disrupt Guild work, and used illegal wiretaps and break-ins to do so. These entities undertook covert campaigns to manipulate public opinion of the organization and cooperated with foreign governments to shut down NLG projects abroad. As a result of these campaigns, the Guild's membership decreased substantially and the organization lost public support and financial contributions from 1940-1975. While no charges were ever brought against the Guild or its members, decades of infiltration and harassment by government agencies nearly destroyed the bar association.

Although the Guild was able to recover and eventually expose the illegal activities of government intelligence agencies, the years of surveillance exhausted its resources and distracted members from their work. Significantly, the NLG was not the only legal organization under surveillance at the time—the American Civil Liberties Union (ACLU), the People's Law Office (PLO) in Chicago, and the Center for Constitutional Rights (CCR) also experienced monitoring and interference by government intelligence agencies. *NLG v. Attorney General* reveals that many surveillance methods commonly associated with the contemporary period originated decades ago, including high levels of coordination between national law enforcement agencies, private intelligence companies, military intelligence agencies, and local police departments.

Government spying on the legal profession is not a phenomenon of the past; lawyers defending political activists or people accused of terrorism regularly suspect the monitoring of their communications with clients. However, as the dismissal of numerous lawsuits against government intelligence agencies indicates, attorneys cannot usually confirm when they are under surveillance and many invasions may go undiscovered. Surveillance of the legal profession compromises the once sacrosanct attorney-client privilege—the ability to speak confidentially with a lawyer. The constitutional right to privileged attorney-client interactions is often ignored when a client's actions challenge the status quo of government and corporate power. These violations have grave consequences for individuals, the legal community, and society as a whole. Government surveillance of legal professionals creates a chilling

effect on lawyering, dissuades attorneys from taking on political clients, compromises their ability to represent people, erodes public confidence in the privacy of communications with attorneys, and requires precautions to ensure that communications between attorneys and clients are secure.

Surveillance of the progressive legal community has a chilling effect on dissent and diminishes the capabilities of attorneys, law firms, and legal nonprofits to defend social justice activists. Monitoring of individual attorneys and legal workers involved with high-profile clients can cause serious damage not only to their cases, but also to their personal lives and professional reputations. On a personal level, attorneys for controversial clients may end up targeted, harassed, and even imprisoned. Professionally, constant surveillance may compromise the confidence of clients in the privacy of their communications with their lawyers and diminish the effectiveness of legal counsel. New legal professionals, who are often already struggling with enormous debt and a competitive job market, may be less willing to take on controversial cases.

Despite the risks involved in defending clients who are the subjects of government surveillance, many legal professionals continue to do so. The NLG has been at the forefront of this resistance since 1937; its members actively oppose invasive and unconstitutional surveillance practices. Together with other progressive legal organizations such as CCR, the ACLU, and the Electronic Frontier Foundation (EFF), the NLG has also challenged the legality and constitutionality of the government's mass surveillance programs through lawsuits, public education, and advocacy. While the Obama administration's response to proposed reforms has been lukewarm at best, there are several ways to support efforts to limit the power of government intelligence agencies and their private counterparts, including supporting civil liberties organizations, educating oneself and others about the negative effects of mass surveillance, pressuring elected officials to support legislation to end bulk collection of information, and learning to employ encryption tools. Yet these steps are not enough. The Guild calls for the end of mass surveillance programs and questions the assumption that constant monitoring and collection of personal information by the government somehow makes us safer. The entire mass surveillance apparatus—public and private—must be challenged to ensure the integrity of the First, Fourth, and Sixth Amendments.

Introduction

In June 2013, Edward Snowden brought international attention to US government spying by releasing a series of internal documents that exposed the scope of National Security Agency (NSA) surveillance programs.[1] Snowden, a former CIA technical assistant and employee of defense contractor Booz Allen Hamilton, revealed that government intelligence agencies are using secret programs to collect, store, and analyze billions of emails, phone calls, and text messages.[2] In the following months, more classified documents about the NSA were published than in the entire history of the organization,[3] leading to a clearer understanding of these mass surveillance programs and prompting congressional and United Nations investigations.[4] As a result of the revelations, the American public learned the degree to which the US government has violated the privacy of millions of people, ostensibly in an effort to prevent terrorist attacks.

Yet this is not the first time the NSA and other government agencies have engaged in illegal surveillance activities. One of the earliest challenges to the NSA came in the 1970s from NLG Detroit attorney Abdeen Jabara, who sued the Federal Bureau of Investigation (FBI) for monitoring his legal activities and subsequently discovered that the NSA had him under surveillance as well. Through this lawsuit, Jabara forced the secretive NSA to acknowledge that it had been spying on him since at least 1967—the first time the agency admitted to spying on an American.[5] The FBI had also begun aggressively investigating Jabara in 1967—agents and informants trailed him, monitored his speeches, got access to his bank records, interviewed third parties, and potentially burglarized his office.[6] By 1984, however, the government acknowledged that Jabara had never engaged in criminal activity and the FBI agreed to destroy all files on him.

The surveillance and harassment of Jabara by government intelligence agencies is not an isolated incident. Many lawyers become targets of surveillance for their role in representing political clients. As NLG Executive Director Heidi Boghosian describes in *Spying on Democracy: Government Surveillance, Corporate Power, and Public Resistance* (2013), there is a long history of government agencies spying not only on political activists, but also on the attorneys who represent them.[7] From the historic use of informants and wiretaps to the more recent dragnet collection of phone and electronic data, government agencies—in cooperation with private intelligence firms and local police departments—have been working to disrupt the legal support services provided by progressive law organizations for nearly a century. As a result of the Guild's ongoing commitment to defending clients such as anarchists, Muslims, whistleblowers, and animal rights, anti-war, environmental, and information activists, the NLG and its members have been at the center of these surveillance programs.[8]

The following account highlights the little-publicized history of spying on legal professionals, including the monitoring of the NLG and its members who represent clients deemed a threat to state and corporate interests. A lawsuit brought by Guild lawyers, *NLG v. Attorney General* (1977-1986), forced the NSA, FBI, Central Intelligence Agency (CIA), the military, and other government bodies to release over 300,000 pages of confidential documents on the NLG. These files represent the most complete historical account available of surveillance of the legal profession and expose the infiltration and disruption used by government intelligence agencies to interfere with the Guild's work.[9] The lawsuit also reveals that many surveillance methods commonly associated with the contemporary period originated decades ago, including high levels of coordination between national law enforcement agencies, private intelligence companies, military intelligence agencies, and local police departments.

NLG v. Attorney General proved that US government agencies spied on every level of the NLG, paid informants to collect information and disrupt Guild work, and used illegal wiretaps and break-ins to do so. These entities undertook covert campaigns to manipulate public opinion of the organization and cooperated with foreign governments to shut down NLG projects abroad. As a result of these campaigns, the Guild's membership decreased substantially and the organization lost public support

and financial contributions from 1940-1975. While no charges were ever brought against the Guild or its members, decades of infiltration and harassment by government agencies nearly destroyed the bar association. Although the Guild was able to recover and eventually expose the illegal activities of government intelligence agencies, the years of surveillance exhausted its resources and distracted members from their work. Significantly, the NLG was not the only legal organization under surveillance at the time—the American Civil Liberties Union (ACLU), the People's Law Office (PLO) in Chicago, and the Center for Constitutional Rights (CCR) also experienced monitoring and interference by government intelligence agencies.

Surveillance of the legal profession compromises the once sacrosanct attorney-client privilege—the ability to speak confidentially with one's lawyer. Nevertheless, the right to privileged attorney-client interactions has often been ignored when a client's actions challenge governmental and corporate power. There are grave consequences to violations of this privilege for individuals, the legal community, and society as a whole. Government surveillance of legal professionals creates a chilling effect on legal work, dissuades attorneys from taking on political clients, diminishes their ability to represent people, erodes public confidence in the privacy of communications with lawyers, and requires extra precautions to ensure that communications between attorneys and clients are secure.

Surveillance of the progressive legal community also has a chilling effect on dissent and diminishes the capabilities of attorneys, law firms, and legal nonprofits to defend social justice activists. However, the history of surveillance cannot be recounted without at the same time recognizing the history of resistance. Despite the risks involved in defending clients who are the subjects of government surveillance, many legal professionals continue to do so. The NLG has been at the forefront of this resistance since 1937; its members actively oppose invasive and unconstitutional surveillance practices. Together with other progressive legal organizations such as CCR, the ACLU, and the Electronic Frontier Foundation (EFF), the NLG has challenged the legality and constitutionality of the government's mass surveillance programs through lawsuits, public education, and advocacy. The Guild calls for the end of mass surveillance programs and challenges the assumption that constant monitoring and collection of personal information by the government somehow makes us safer.

Surveillance of Political Legal Organizations

The National Lawyers Guild (NLG) was founded in 1937 as the first racially integrated voluntary bar association. The Guild is the oldest and most extensive network of public interest and human rights activists working within the legal system. It has acted as the legal arm of social movements for nearly eight decades and has defended labor organizers, civil rights activists, anti-war protestors, and global justice activists. Since its founding, the NLG has championed the First Amendment right to engage in political speech and has consistently defended individuals accused by the government of espousing dangerous ideas. The Guild maintains that human rights are more sacred than property interests,[10] and this orientation has brought the organization into conflict with transnational corporations.

Because of its commitment to challenging injustice, the NLG has also been the target of government surveillance for most of its history. Because the organization began taking controversial positions on a number of issues shortly after its founding, it quickly incurred the ire of FBI Director J. Edgar Hoover. According to a seminal lawsuit that yielded more the 300,000 pages of government files on the NLG, Hoover and the Bureau—in cooperation with other government and private entities—conducted a clandestine campaign of surveillance, investigation, and disruption of the NLG and its members between 1940 and 1975.[11] Given that the Guild has continued to work with global justice, animal rights, environmental, information activists, and other groups maligned by the government and corporations, there is every reason to believe the organization is still being monitored today.

In 1977, after decades of harassment, the National Emergency Civil Liberties Committee of the NLG filed *NLG v. Attorney General* through its counsel (Rabinowitz, Boudin, Standard, Krinsky & Lieberman). The suit was brought against high officials of the FBI, CIA, Defense Department, Army, Navy, Air Force, NSA, State Department, Treasury, Internal Revenue Service (IRS), Civil Service Commission (CSC), US Postal Service (USPS), Department of Justice (DOJ), and the New York City Police Department (NYPD).[12] Discovery materials revealed that, over the course of four decades, the Bureau employed more than 1,000 informants, broke into offices of Guild members, tapped phones, directed efforts to defeat NLG political and judicial candidates, and released negative (and consistently false) information about the organization to judges, character committees, law schools, and the media.[13]

Guild members helped expose illegal FBI and CIA tactics detailed in the 1975-76 COINTELPRO hearings.

When the lawsuit was settled in 1989, the government admitted that it did not act against the Guild because of any criminal wrongdoing, and stated that none of the information collected on the organization would be used in further investigations. The NLG received no money in the settlement, although the organization had sued for $56 million.[14] Under the settlement, copies of the documents were donated to the Tamiment Library at New York University and made available to the public in 2007. These archives, which contain the discovery materials collected from government agencies in response to a series of Freedom of Information Act requests, show the full extent of surveillance conducted upon the NLG and its members.

Protecting the Right to Dissent

As a radical legal organization, the NLG has long supported causes unpopular with government and business interests.[15] Shortly after its founding, Guild lawyers helped organize the United Auto Workers (UAW) and the Congress of Industrial Organizations (CIO). It also supported the New Deal in the face of determined American Bar Association (ABA) opposition. In the 1930s and 1940s, Guild lawyers fought against fascists during the Spanish Civil War and World War II and helped prosecute Nazis at Nuremberg. Guild members challenged racial discrimination in cases such as *Hansberry v. Lee*, the case that struck down segregationist Jim Crow laws in Chicago. In 1945, the NLG was selected by the US government to officially represent the American people at the founding of the United Nations. Members helped draft the Universal Declaration of Human Rights and went on to found one of the first UN-accredited human rights NGOs, the International Association of Democratic Lawyers (IADL) in 1948.[16] In the late 1940s and 1950s, Guild members pioneered storefront law offices for low-income clients, which became models for the community-based offices of the Legal Services Corporation.

During the McCarthy era, Guild members represented the Hollywood Ten, the Rosenbergs, and thousands of victims of anticommunist hysteria. In the 1960s, the Guild set up offices in the South and organized thousands of volunteer lawyers and law students to support the Civil Rights movement. In the late 1960s and early 1970s, Guild members represented Vietnam War draft resisters, antiwar activists, and the Chicago 8. The Guild's Military Law Office worked in Asia to represent GIs who resisted the war and US imperial ambitions. Guild members argued *US v. US District Court*, the Supreme Court case that led to the Watergate hearings and to Nixon's eventual resignation. The NLG defended FBI-targeted members of the Black Panther Party, the American Indian Movement, and the Puerto Rican independence movement. Guild members also helped expose the illegal FBI and CIA surveillance, infiltration, and disruption tactics detailed in the 1975-76 COINTELPRO hearings, which led to enactment of the Freedom of Information Act and other specific limitations on federal investigative power. During the 1970s and 1980s, the NLG defended prisoners who protested the conditions at Attica and provided legal counsel to the Wounded Knee occupation when the Oglala

Sioux asserted their sovereignty. The Guild also joined the struggle for recognition of the United Farm Workers, opposed apartheid in South Africa, and supported the movements for gay and lesbian rights and self-determination for Palestine.

More recently, the NLG has supported global justice, environmental, animal rights, and information activists, as well as whistleblowers, anarchists, Muslims, and people arrested for their participation in the Occupy movement. Currently, the Guild is working with environmental groups to oppose the Keystone XL pipeline, supporting cases against surveillance by the NSA and the US Army, and engaging in many other projects that directly challenge government and corporate practices. Because the NLG is often the first or only legal group to stand up to the government and defend those accused of being "subversives," it has been the target of constant surveillance and disruption.

FBI Surveillance of the NLG

Beginning in the 1930s, the Guild was at the forefront of initiatives to protect the right to dissent, which brought the organization to the attention of government authorities. Between 1937 and 1958, the Guild took strong positions in favor of unemployment insurance, model labor relations acts, and civil rights legislation, and in opposition to discrimination against women and African-Americans, the mandated registration of Communist organizations with the government,[17] the role of detective agencies (such as the Pinkerton National Detective Agency), and the House of Un-American Activities Committee (HUAC) subpoena of legal professionals to name their beliefs and associations.[18]

From its inception, the NLG was openly critical of Hoover and the FBI, as evidenced by an oral report given at the 1940 NLG national convention by Detroit member Ernie Goodman. This was one of the first public attacks on Hoover, who began ordering covert actions against the Guild—including the first of several burglaries of the NLG office—shortly thereafter.[19] The Guild further attracted FBI attention when it drafted a report on FBI surveillance practices in 1949.[20] This report examined the case of alleged KGB spy Judith Coplon, in which it came to light that FBI agents had lied under oath about their surveillance methods. The NLG used reports from the Coplon case to show the FBI was engaged in warrantless wiretapping, illegal mail covers, and warrantless entries. A special Guild committee formed in 1949 to investigate and draft a report to expose the FBI's unconstitutional surveillance methods.[21] They write:

> The Coplon reports demonstrate that the interception of phone conversations by FBI wiretapping is so common and so widespread as to constitute one of the basic investigative techniques of its program…the FBI wiretaps numerous phones over extensive periods of time, and this in the absence of any reasonable indication that a federal crime has been committed or is contemplated.[22]

The NLG report accused the FBI of harboring "anti-Negro and anti-Semitic prejudices," claimed that the FBI's work was both "subjective and reactionary," and argued that the Coplon investigations demonstrated that "the FBI investigates persons in order to determine whether they have radical views or associations."[23] The Coplon reports also indicated that the wiretapping had given the FBI access to privileged attorney-client conversations and therefore deprived her of effective legal counsel.[24]

The Guild's criticisms of the FBI infuriated Hoover and led to decades of harassment and repression. In 1950, the FBI issued a document entitled "The NLG: Legal Bulwark of the Communist Party" in an effort to counter the NLG report calling attention to illegal surveillance practices. Although this report had no official status, the FBI used it as justification to collaborate with state and local authorities to collect information on the NLG, which was passed on to HUAC. The FBI also leaked information to journalists, citing the report to falsely assert that the Guild had been designated a subversive group.

The Bureau circulated literature attacking Ernie Goodman in Detroit, caused negative articles to be published about the Guild nationwide, and worked to disrupt the political campaign efforts of members running for public office. Addressing the ABA in 1953, Attorney General Herbert Brownell officially announced plans to add the NLG to the list of subversive organizations. As a result of this campaign, Guild membership dropped from several thousand members to only 500 by 1955.[25]

No prosecutions were ever brought against the NLG or its members. However, discovery materials from NLG v. Attorney General clearly show that the FBI placed NLG members on its illegal Security Index. The people on the Security Index list were deemed a threat to national security by the FBI and marked for arrest and possible indefinite detention in the event of war or another national emergency.[26] Under direct orders from Hoover, FBI agents broke into the offices of NLG chapters and of individual members (at least forty times) and surreptitiously tapped the national office phone between 1947 and 1951. In order to collect information on the NLG and its members, the FBI rummaged through the Guild's trash to access documents and listened to conversations held at the private law offices of members.[27] For four decades (1936-76), the FBI secretly exchanged information on NLG members applying to the bar with the National Conference of Bar Examiners.[28] Information collected from raids, wiretaps, and investigations was used to initiate proceedings in 1953 asserting that the Guild was a "subversive organization" under the Federal Employment Loyalty Security Program.[29] While these attempts to label the Guild as subversive failed (in both 1958 and 1974), the surveillance and harassment of NLG members caused a significant decline in membership, financial contributions, and public support during this period.

The FBI rummaged through the Guild's trash and listened to conversations held at the private law offices of members.

Inter-Agency Collaborations

While Hoover initiated the campaign against the NLG, the Bureau enlisted the assistance of other government agencies, all branches of the military, as well as banks and private businesses. The FBI also worked with the postal service, law schools, telephone companies, hotels, credit bureaus, state and local employees, printers, and neighborhood acquaintances to gather information on the Guild and its members. According to *NLG v. Attorney General*, the US Postal Service gave the FBI and other government agencies information on NLG mailing lists. From 1950-73, the FBI induced banks to turn over copies of financial transactions of NLG chapters and members. The IRS conducted an investigation on the tax status of the NLG and the Guild's Grand Jury Defense Project between 1970 and 1972, using impermissible political criteria in ordering these investigations. Hotels hosting NLG conferences and events were coerced into giving records to the government. From 1940-76, the FBI spied on NLG law school chapters and the CIA conducted surveillance on NLG student involvement in anti-war efforts.[30] In the lawsuit, the NLG also contended that the NSA intercepted all international telephone, cable, telegraph, and other electronic communications to which plaintiffs were party. However, the NSA refused to provide the documents requested and the court did not compel their release. The cooperation of these government agencies and private entities in the surveillance and disruption of the NLG led to almost constant harassment of the group and its members, and made it exceedingly difficult to continue defending the rights of clients.

United States government agencies collaborated to cause disruption to the Guild's international work as well. During the 1970s, they targeted the NLG Military Law Office in the Philippines, which provided legal counsel to GI resistors and conscientious objectors.[31] With Richard Nixon's approval, the CIA, Army, Navy, Air Force, and State Department urged the Philippine government to raid the NLG offices in 1971-72. The office was eventually closed in 1972 as a result of four raids in which files

and documents were confiscated and copied. Several Guild members were arrested and deported from the Philippines, which effectively ended NLG work there despite their open cases.

Former NLG President Barbara Dudley was in the Philippines and Vietnam with the Military Law Office from 1971-72, where she mostly worked with other Guild members out of a home-office in Olongapo—near Subic Bay Naval Base and not far from Clark Air Force Base in Angeles City.[32] According to Dudley, their house was "an unofficial 'GI Center' for the more courageous GIs who didn't mind the brass knowing about their opposition to the war. A lot of them just came by for the company... we were a bit of a home." As resistance to the Vietnam War grew, military officials began targeting the Military Law Office. Dudley describes the harassment NLG members faced from the US Navy: "They barred us from the base unless we were meeting with clients in the brig, using the law library or in court, and we required an official escort for any of those activities. The Navy raided our house a couple of times, allegedly looking for drugs (which of course they did not find), and assigned various intelligence officers to keep an eye on us, which several of them eventually confessed to us and were redeployed."[33]

The US government asked the Ferdinand Marcos regime (which declared martial law in September 1972) to deport NLG lawyers and legal workers based on the accusation that they were practicing law in the Philippines without a license. While these allegations were untrue—they were not practicing in Filipino courts but rather US military courts—Guild lawyers who came to replace Dudley were jailed and deported shortly after their arrival. One of the strangest moments experienced by Military Law Office members, Dudley recalls, came when immigration officials asked if they were members of the Communist Party: "'No,' was the somewhat surprised, honest and immediate answer," she remembers. "And then a document I had only heard of, but never actually seen, was tossed on the table with a triumphant flourish. The US Attorney General's Report from 1953 declaring the National Lawyers Guild to be a front for the Communist Party! We managed to prove that the report had been thoroughly and legally discredited, and were allowed to return to Olongapo."[34]

In addition to the disruptions to Guild work in Asia, the CIA engaged in surveillance of NLG delegations after 1947 to the IADL conferences. The agency also monitored and disrupted Guild visits to Cuba as part of Operation CHAOS, a domestic espionage project to unmask foreign influences on the student antiwar movement during the 1960s. On one delegation to Cuba, the United States asked authorities in Mexico to arrest Guild members in transit. They were subsequently held for four days, questioned about their political beliefs, and subjected to searches of their belongings before being expelled from the country.[35] Yet again, no charges or prosecutions were ever brought against Guild members for their international work. The point of harassing and detaining people engaged in these projects and delegations was not to uncover any criminal activity, but rather to hinder the assistance the NLG offered to clients considered a threat by business interests and the US government.

Use of Informants

Since the NLG's inception, US government intelligence agencies have used informants to infiltrate the organization and gather information about Guild work, members, staff, and affiliations. Although over 1,000 informants worked for government agencies to spy on the NLG, in the lawsuit the court denied access to the files on confidential informants who had not been publicly identified, claiming that such information could potentially harm national security and endanger the lives of those informants who were still working for the FBI and CIA.[36]

Beginning in 1940, the FBI used informants consistently to obtain information about all levels of NLG membership, from individuals to local chapters to the national office.[37] Government informants fully infiltrated the structure of the Guild—one even sat on the NLG board of directors in 1953 and 1954. Other informants posed as Guild members, Guild office workers, and attendees of NLG public events such as conventions, board meetings, law school chapter activities, chapter meetings,

committee and project meetings, lectures, fundraisers, and demonstrations. Informants were instructed whenever possible to make copies of documents including membership and mailing lists, meeting minutes, convention literature, legal strategy reports, petitions, agendas, lawyer referral lists, financial statements and budgets, and internal and external correspondence. The military and CIA used informants to monitor the NLG's Military Law Office between 1967 and 1971. Some informants went so far as to deliberately provoke dissention and hostility between NLG members in order to impair the organization's work. Infiltrators regularly spied on project and committee meetings that involved exchanges of information concerning cases and discussions of legal strategy, such as planning meetings for representation of the 1968 Republican and Democratic National Convention arrestees.[38]

While most of the informants who spied on the NLG will never be known, information about some has since come to light, such as Sheila Louise O'Connor Rees and her husband John Herbert Rees.[39] Their story provides insights into both the invasive surveillance and disruption to which the Guild was subjected and the questionable informants the FBI and other agencies used to infiltrate legal and activist organizations. Described as a "known con-man" in Britain, John Rees moved to the United States in 1968, where he sold information about leftist groups to local police departments and distributed a self-published periodical named *Information Digest* to government intelligence agencies and conservative politicians.[40] In 1970, he married Sheila O'Conner and the couple moved to Washington D.C., where they inserted themselves into the local activist community. He took funds from the D.C. Metropolitan Police Department to finance a bookstore and coffeeshop called the Red House Collective and they both worked with the progressive Institute for Policy Studies.

Starting in 1972, the Reeses began selling information on the NLG to the FBI, CIA, IRS, NSA, Secret Service, Drug Enforcement Administration (DEA), the Bureau of Alcohol, Tobacco, and Firearms (BATF) and other local, state, and federal authorities.[41] Sheila Rees even managed the NLG's Washington D.C. office for six months, working in close proximity to Guild lawyers. James Drew, who was then NLG D.C. President, recalled that Sheila was generally a good administrative worker who claimed she did not need payment because she was supported by her husband. According to Drew, she took advantage of her NLG position to gain access to local events and meetings in order to more thoroughly infiltrate the activist scene. The Reeses lived in a collective house with other activists and even a Guild attorney. NLG members and other progressive lawyers regularly stayed at this house when visiting the city; Drew remembers having Thanksgiving dinner there with John and Sheila, plus an ACLU staff attorney. William Kunstler, the well-known NLG lawyer who represented the Chicago 8 after the 1968 DNC, also stayed at the collective house on a trip to D.C.[42]

She took advantage of her NLG position to thoroughly infiltrate the activist scene.

While working in the NLG D.C. office, Sheila Rees copied internal documents that the Reeses sent to the FBI, including a letter about the Guild's plan to investigate illegal government surveillance activities.[43] The August 1973 issue of *Information Digest* quotes internal NLG documents about a lawsuit, including a draft complaint and memorandum.[44] According to the materials from the NLG lawsuit, Rees eventually began causing dissention among NLG members and other organizations while she was working for the Guild. She purposely sabotaged a community prison conference by not contacting speakers for the NLG panel. When approached, she started a dispute with the conference organizer, accusing them of sexism and threatening to sue. At a 1973 NLG convention in Austin, Texas, the Reeses interfered with the press and physically attacked a reporter. Sheila Rees provided information on Guild work in prisons that led to a report in 1973 accusing the NLG of instigating prison violence.[45] The Reeses made derogatory comments about NLG members and eventually helped to write a pamphlet called "Attorneys for Treason" with the reactionary Church League of America.[46] They also worked closely with Larry McDonald, a right-wing congressman from Georgia, to spread negative rumors about the Guild.[47]

Guild members in D.C. were alerted to the infiltration when they received a call from a committee

in New York State investigating the couple. After this notification, Drew said, the Reeses disappeared, leaving Guild members nonplussed by the whole incident. In hindsight, he said, the chapter should have more thoroughly investigated someone who wanted to work for free, but at the time no one had reason to suspect Sheila. The Reeses were extremely entrepreneurial in their surveillance, building connections with social movement activists in order to sell information to the highest bidder—which is likely why their exploits have been revealed. Many more informants will remain anonymous, and NLG members continue to assume that their work is likely being monitored through the use of government infiltrators.

Damages to the NLG

The 40-year FBI-led campaign against the Guild led caused serious damage to the work and reputation of the organization and its members. In total, the summary of offenses committed by the government against the NLG included 2,573 separate acts of trespass, burglary, conversion, entry upon premises by false premise, obtaining documents by false premise, surreptitious copying of documents, and acts designed to cause a loss of membership and contributions.[48] The collaboration between government agencies, the military, and private entities weakened the ability of the Guild to continue its work supporting the Civil Rights movement, anti-war efforts, and the many social movement activists targeted by government programs like COINTELPRO.

Despite the loss of members between the 1940s and 1960s, the organization continued to defend political activists who challenged oppressive government policies. However, numerous local NLG chapters dissolved entirely; by 1959, only four chapters—New York City, Detroit, San Francisco, and Los Angeles—were still in existence.[49] The precipitous decline in membership resulted in loss of income derived from dues and contributions. The Guild also suffered injuries in a variety of other forms, including disaffection and hostility. Because the organization was accused of being "subversive," the public reputation of the NLG became increasingly negative. The media, which were fed inaccurate and damaging information from the FBI and other government agencies, published unflattering articles about the Guild and its individual members. As a result, the NLG temporarily lost support from the public and the broader legal community and had difficulty attracting members and supporters.

In addition to lost income and orchestrated disaffection, the Guild also suffered such incalculable damages as deprivation of privacy, interference with organizational procedures, and loss of the ability to communicate effectively with the public.[50] Negative media and government portrayals also resulted in a loss of association as members of the legal community and general public became afraid to be seen as Guild affiliates. Furthermore, as a result of the intensive surveillance, many people were dissuaded from seeking legal representation from Guild members. NLG committees, projects, and law firms were required to take extra precautions to assure that their work was not being monitored and that privileged information from their clients remained private.

In addition to these damages, the Guild also had to divert time from its legal work to deal with the negative consequences of the government's covert surveillance. Bringing the lawsuit *NLG v. Attorney General* also incurred significant expenses. According to final calculations after the lawsuit was settled, the out of pocket expenses paid by the Guild were approximately a quarter of a million dollars and the value of the attorneys' time came to well over two million dollars.[51] However, the NLG received no monetary compensation when the suit was finally settled.

Surveillance of Other Legal Organizations

The NLG is not the only legal organization that has been targeted for government surveillance. While the ACLU was not as critical of the FBI's practices as the Guild, it was nonetheless subjected to spying and harassment by the Bureau and other government agencies. As early as the 1920s, the FBI was monitoring the ACLU. In 1929, it burglarized their office to examine files. Hoover began aggressively spying on the ACLU in 1940 after the organization publicly opposed a $100,000 appropriation for the FBI.[52] By 1954, he targeted the ACLU for massive surveillance, collecting more than 40,000 documents for the Bureau's files.[53]

Other progressive lawyers and law firms associated with the NLG were also spied on by local and national law enforcement agencies. During the 1970s, the People's Law Office (PLO) in Chicago—a Guild civil rights law firm—became the target of surveillance by the Chicago Police Department Red Squad. Several collective members who shared an apartment later discovered that the FBI had rented a room across the street to film them and read their mail.[54] This surveillance of the PLO eventually came to the attention of the US Supreme Court, when it was referenced in an opinion by Justice Douglas, who noted that the attorneys for a petitioner whose telephone conversations with her attorneys were illegally tapped "include an organization in Chicago known as the 'Peoples Law Office.'"[55] In 1974, several PLO collective members were named as plaintiffs in a lawsuit against the FBI, CIA, and Military Intelligence Corps to stop police spying and harassment.

State-sanctioned attacks on the work and reputation of political lawyers continue today.

The Center for Constitutional Rights (CCR)—another organization founded by NLG attorneys—has also been the subject of illegal arrests, wiretaps, and harassment. In 1963, CCR founder Benjamin Smith and his law partner were arrested in Louisiana on charges of failing to register a "subversive organization" (a reference to the NLG). Louisiana state police raided their office and removed files that were later used to connect Smith to so-called subversive organizations.[56] In 1972, while CCR was defending the Gainesville Eight—a group charged with conspiracy to cross state lines to incite a riot at the RNC in Miami—it was discovered that Vietnam Veterans against the War had been infiltrated and that the FBI accessed their legal defense strategies.[57]

State-sanctioned attacks on the work and reputation of political lawyers continue even today. In 2000, several groups including the NLG were infiltrated and monitored in the lead-up to the RNC in Philadelphia. John Rees and multiple undercover Pennsylvania State Troopers supplied intelligence that was used in an affidavit to secure a search warrant in order to preemptively raid a warehouse where puppets were being made. The raid resulted in the arrest of dozens of activists, the confiscation and destruction of personal property, and a significant setback for plans to protest the RNC.[58] In 2004, the FBI issued a subpoena to Drake University in Iowa seeking records about an antiwar conference held by the local NLG chapter. Surveillance documents from the NYPD relating to the 2004 RNC in New York included references to the Guild.[59] For their part, CCR lawyers maintain that their communications with clients at Guantánamo continue to be monitored. As these and other examples make clear, surveillance of legal professionals and disruption of legal support efforts continue unabated to this day.

Government Surveillance Past and Present

The 2013 Snowden revelations drew attention to NSA surveillance of US citizens, international human rights organizations,[60] other governments,[61] and even the United Nations.[62] The details provided by the recent leaks about the program's scope —such as the NSA's ability to collect nearly five billion cell phone records per day worldwide[63]— reveal much that was previously unknown about this secretive agency.[64] However, while recent scrutiny of the NSA's warrantless wiretapping and blanket surveillance

has provided new information about the monitoring of phone and electronic data, the focus on just one branch of the government spying apparatus has inadvertently obscured the much larger landscape of surveillance.[65]

It is crucial to remember that the NSA is just one part of a much broader surveillance system that includes not only national government law enforcement and intelligence agencies, but also state and local police departments, the military, private security firms, and corporations who share information and resources through a nationwide network of intelligence coordinating entities called fusion centers. This long-standing and coordinated surveillance apparatus also monitors relationships technically considered off-limits, including the established right of attorney-client privilege. Surveillance of legal professionals affects individual attorneys and legal workers whose involvement with high-profile clients can cause serious damage not only to their cases, but also to their personal lives and professional reputations. The following sections include examples of attorneys who have been the subjects of government surveillance from the 1970s until today.

1970: Surveillance of Human Rights Lawyers

The role of the NSA first came to the attention of the public in the 1970s, when the agency's collaboration with telecommunications industries to spy on Americans was discovered.[66] A bipartisan Senate investigation formed to investigate the widespread abuse of government wiretaps and eavesdropping practices. This investigation, known as the Church Commission,[67] confirmed that— between 1956 and 1971—the NSA, CIA, FBI, and other government agencies had operated a long-standing and wide-ranging surveillance and counterintelligence program targeting political dissidents, anti-war protestors, civil rights activists, and their attorneys.[68] The Senate Subcommittee on Constitutional Rights also discovered that the Department of Defense and the military collaborated with law enforcement and intelligence agencies to infiltrate demonstrations and political groups in order to collect intelligence on civilians.[69]

These Congressional investigations revealed that the NSA had been spying for at least five years on all commercial cable traffic to and from the United States through a program known as Operation Shamrock and sharing the information with other government law enforcement and intelligence agencies through its sister operation, Project Minaret.[70] Several top-ranking NSA agents nearly went to jail as a result,[71] and Congress passed the Foreign Intelligence Surveillance Act (FISA) in 1978 to prevent future abuses. As a result, a secret FISA court regulates the government's conduct when collecting intelligence inside the United States and issues a warrant before allowing the monitoring of American's communications.[72] During this period, many activists and lawyers also sued local law enforcement agencies for illegal surveillance practices and succeeded in winning court settlement agreements (called consent decrees) in which police agreed to change their policies.

Prior to the establishment of FISA, individuals had little recourse when they suspected they were being monitored. One of the first challenges to the US surveillance system came from NLG attorney Abdeen Jabara, human rights activist and former national President of the American Arab Anti-Discrimination Committee.[73] In the 1960s and 1970s, Jabara represented Arab-Americans and people who were the targets of government surveillance and repression. In the 1970s, he sued the FBI for monitoring his legal political activities supporting Arab organizations and causes.[74] During the proceedings, it was revealed that the FBI had received information on Jabara by going through the NSA.[75] The information collected on Jabara by the NSA and FBI was then disseminated to at least seventeen other government agencies and three foreign countries.[76] His lawsuit forced the secretive NSA to acknowledge that it had been spying on him since at least 1967—the first time the agency admitted to spying on an American.[77]

For their part, the FBI aggressively investigated Jabara. Agents and informants trailed him, monitored his public speeches, accessed his bank accounts, interviewed third parties, made pretext telephone calls

to him, placed him on a watch list, received information about his activities from domestic Zionist organizations, listened to his telephone communications with clients, and had informers report on his work with organizations in the Arab-American community.[78] These surveillance activities were part of a Nixon administration era program known as Operation Boulder, which targeted Arabs in response to the murder of Israeli athletes at the Munich Olympics in 1972. Under Operation Boulder, the government monitored and harassed domestic activist groups and deported hundreds of people.[79]

In 1979, a federal district court judge ruled that the United States had indeed violated Jabara's Fourth Amendment and privacy rights. However, after this precedent-setting victory in the lower court, the ruling was overturned by the Sixth Circuit Court of Appeals, which held that Jabara could be spied on even though he was not doing anything illegal. Blatantly disregarding the Fourth Amendment, the court claimed it was not reasonable to expect that private messages to foreign countries would not be intercepted by the NSA and subsequently shared with the FBI and CIA. This ruling essentially authorized the government to intercept private communication without seeking a warrant by going through the NSA, where collected information can be considered a "state secret."[80]

By 1984, the FBI agreed to destroy all files on Jabara and acknowledge that the lawyer had never engaged in criminal activity.[81] While his name was cleared, the effects on his work were ongoing: "After the Court of Appeals decision that reversed the lower courts finding on the NSA surveillance and a reasonable application of the Privacy Act, I felt that I had to be more circumspect in how I would do my own political work and what I should advise clients," Jabara said. "Most of all, I understood and conveyed to clients the limitations on what legal protections could be afforded them for even innocuous action that did not have state sanction when it came to hot button foreign policy issues."[82]

When Jabara first brought his case against the FBI and NSA, there was no legal framework prohibiting the collection of Americans' communications. Passage of FISA in 1978 and the creation of the FISA court were intended to curb the kind of excessive surveillance that he experienced. Nevertheless, there remain obvious parallels between his case and current government surveillance practices. Like their pre-FISA predecessors, the Bush and Obama administrations have both been quick to invoke the "state secrets" privilege to prevent lawsuits against the NSA.[83] The sharing of information—not only within the state surveillance apparatus, but also with foreign governments—is as common now as it was during the period when Jabara's case was pending.

2001: Lawyers Targeted in the "War on Terror"

The safeguards put in place in the 1970s to curb surveillance have been systematically dismantled over the past four decades, starting in the 1980s when Ronald Reagan reauthorized many of the prohibited domestic intelligence practices.[84] In the aftermath of 9/11, policies to regulate surveillance of Americans were even further eroded. The USA PATRIOT Act granted the executive branch unprecedented and largely unregulated surveillance powers, permitted law enforcement agencies to circumvent the Fourth Amendment, and allowed for the sharing of information between criminal and intelligence agencies.[85] By the end of 2001, all of the national telecommunications companies were again cooperating with the NSA on the development of a warrantless eavesdropping program.[86] In October 2002, the White House gave NSA Director Michael Hayden authorization to bypass the FISA court and collect communications of Americans who were corresponding with people outside of the country.[87] In July 2008, the FISA Amendments Act further weakened the power of the court to regulate surveillance by providing legal immunity to the telecommunications industry and giving more discretion to the NSA in targeting suspected terrorists abroad.[88] The new amendments gave the NSA virtually unchecked power to monitor the international phone calls and emails of individuals in the United States. Additionally, many local consent decrees were loosened after 9/11 in the name of the war on terror, and police departments resumed groundless surveillance of entire classes of people including Muslims, anarchists, and environmental activists.[89]

Legal professionals have been among those targeted by the government's war on terror. Notable among these have been attorneys representing detainees at Guantánamo Bay Detention Center, where 779 men have been sent since 2002.[90] CCR has been at the forefront of efforts to represent those imprisoned at Guantánamo and has organized more than 500 pro bono lawyers to conduct this work. Many of these attorneys believe they have been targeted by the government's warrantless wiretapping program because of their representation of Guantánamo prisoners.[91] In 2007, twenty-four attorneys filed a lawsuit against the NSA seeking records to show whether the government has been intercepting their communications with clients at Guantánamo and asserting that their right to offer representation had been hindered by the possibility of monitoring.[92] Consequently, they have been forced to avoid phone calls and emails, and instead to employ more expensive and difficult substitutes such as traveling overseas to meet with witnesses. These obstacles have diminished the ability of attorneys to effectively represent Guantánamo detainees.

These attorneys' suspicions are supported by evidence that the government has been monitoring communications between attorneys and their clients at Guantánamo. A report by the Seton Hall University School of Law's Center for Policy and Research reveals that the government has been eavesdropping on lawyers in client meetings at the prison using audio equipment and cameras to listen to conversations and read notes and confidential documents.[93] Microphones and cameras are disguised as ordinary objects like smoke detectors in meeting rooms. The report indicates that the surveillance of Guantánamo lawyers is not an anomaly; in 2001, private meetings between attorneys and clients accused of involvement in 9/11 were recorded by officers and guards at New York's Metropolitan Detention Center.[94] After the revelation of NSA spying in 2013, lawyers representing Osama bin Laden's son-in-law, Sulaiman Abu Ghaith, sought a temporary restraining order to block US government agencies from conducting special surveillance on his attorneys. The request was declined.[95]

While the purported goal of monitoring overseas communications is to prevent terrorism, new evidence suggests that the NSA also routinely spies on trade negotiations, communications of economic officials in other countries, and transnational corporations. Secret documents released by Snowden in 2014 revealed that the NSA worked with its Australian counterpart to monitor the privileged communications of US law firm Mayer Brown when their attorneys represented the Indonesian government in trade disputes with the United States. According to a report in the *New York Times*, "The disclosure…is of particular interest because lawyers in the United States with clients overseas have expressed growing concern that their confidential communications could be compromised by such surveillance."[96] Mayer Brown, a Chicago-based firm, has also collaborated with CCR on Guantánamo cases.

Monitoring of attorneys and clients can discourage lawyers from accepting high-profile criminal cases and makes effective representation more difficult, if not impossible. To cite but one example, the government used communications between attorney and client to justify their arrest of long-time civil rights attorney Lynne Stewart. At the time of her arrest, Stewart was representing Sheikh Omar Abdel Rahman, a spiritual leader of the Islamic Group (which the government has designated a terrorist group). Abdel Rahman's communications with Stewart were monitored through a FISA court warrant while he was serving a life sentence for conspiring to bomb New York City landmarks.[97] This surveillance included covert monitoring of Stewart's telephone calls, electronic communications, and meetings with Abdel Rahman over a period of three years.[98]

Based on these secretly monitored conversations, Stewart was charged and indicted with providing material support to a foreign terrorist organization. Although Stewart denied these charges, she was taken into custody and the FBI seized her files related to Abdel Rahman and other cases. In 2006, she was sentenced to twenty-eight months in prison after Judge John Koeltl refused to impose a 30-year sentence proposed by the prosecution. After a Second Circuit Court of Appeals panel remanded the case for resentencing in 2010, Judge Koeltl resentenced her to 120 months imprisonment. There is no doubt she was targeted as an example to dissuade lawyers from vigorously representing clients in highly charged political cases, especially when the government raises the specter of terrorism. Even more

revealing was that she released a press release for her client in 2000, but was not charged for this act until after 9/11, when it became clear that her communications with the sheikh had been monitored for years.[99]

2009: Military and Fusion Centers Spying on Lawyers

The intelligence efforts of national government law enforcement agencies, state and local police departments, the military, and the private sector intersect in fusion centers, which were introduced in 2003 by the Department of Homeland Security (DHS) to facilitate the exchange of information. There are currently 77 operational fusion centers in the United States covering 49 states plus Washington D.C.[100] This well-funded network has vastly extended the capabilities of the government and private-sector surveillance apparatus by creating a national intelligence system with a decentralized structure.[101] Criticisms of fusion centers include claims that they lack adequate regulation and oversight, evade privacy guidelines, compromise civil liberties, and do little to improve public safety.[102] While their stated purpose is to analyze vast amounts of information to detect and prevent terrorist plots, most of the information collected has proven worthless in terms of identifying criminal activity.[103]

Activists suffered preemptive arrests, harassment, and violations of attorney-client privileged communications.

Fusion centers work closely with military intelligence agencies as well, as in a recent case in which the Army has been accused of spying on privileged communications between attorneys and their clients. NLG lawyers, legal workers, and law students are currently working on *Panagacos v. Towery,*[104] a civil rights case brought by anti-war activists against military agents who acted as spies, monitored and disrupted their activism, and attempted to entrap them. One of these informants, John Towery, was trained at the Washington Fusion Center and was a civilian employee of Washington State's Fort Lewis Protection Division when he began posing as a peace activist with the local group Port Militarization Resistance (PMR). Between 2006 and 2009, PMR organized high-profile protests at the Port of Olympia and the Port of Tacoma in opposition to the wars in Iraq and Afghanistan. Towery infiltrated the group in order to pass on information about demonstrations to his supervisor, who in turn gave notice to local law enforcement. Based on these reports, multiple police departments engaged in preemptive arrests and harassment campaigns against PMR members.[105] Towery also targeted and infiltrated other activist groups, including the Olympia Movement for Justice and Peace, Students for a Democratic Society, Iraq Veterans Against the War, and the Industrial Workers of the World. His goal was to neutralize these groups through a coordinated campaign of false arrests and detentions, attacks on personal and family relationships, and attempts to impede the members from undertaking planned protests.

When Washington activists realized that Towery was a military informant, they brought a lawsuit against him, the Army, the Navy, the Air Force, the FBI, the CIA, and other intelligence and law enforcement agencies.[106] The suit brought to light that the military had been monitoring email lists set up specifically to facilitate communication between the defendants and their retained counsel in a criminal case concerning an action at the Port of Olympia in May 2006. The email list, known as the "Oly 22 listserv," was a confidential forum where attorneys, members of the legal team, and defendants discussed legal strategy, disseminated draft pleadings, and exchanged attorney-client privileged communications about tactics, strategy, and areas of concern. Intended to be secure, the list used the most advanced encryption and security precautions and technology available. But while the list's purpose and confidentiality was clear, Towery used knowledge obtained from the Army and Washington Fusion Center to gain access.

Towery eventually admitted that he accessed the list and passed information on to Pierce County Sheriff's officers, who turned the information over to the prosecution.[107] Initially, the prosecution refused to reveal the source of their information or the extent of the spying on the defendant's attorney-client privileged conversations. Once it became evident that the prosecution had obtained privileged information from the defense by way of Towery's infiltration, the case ended in a mistrial. The Oly22 were retried, but the court dismissed their case because of prosecutorial misconduct. After the Oly22 incident, the Tacoma Police Department produced discovery in other matters revealing that they had gained access to privileged email lists in Olympia in March 2007 and before, quoted from postings to some of those lists in their reports, and revealed that they had conducted clandestine operations in Olympia with the specific intention of spying on local activists.

Panagacos v. Towery highlights an important shift in the legal terrain regarding the military's surveillance activities. In 1970, a similar class action lawsuit (*Laird v. Tatum*) was filed when it came to light that the military had used more than 1,000 informants to gather information on civilians, mostly political activists.[108] The plaintiffs argued that their First Amendment rights had been violated by the military's surveillance of domestic political groups. However, the Supreme Court dismissed the case on the grounds that the plaintiffs lacked standing because they could not show that the spying had resulted in any damages or injuries.[109] In *Panagacos*, on the other hand, NLG attorney Larry Hildes successfully convinced the US Court of Appeals for the Ninth Circuit that the plaintiffs in the lawsuit suffered extensive damages through preemptive arrests, harassment, and violations of attorney-client privileged communications.[110] As Hildes explains, the constant surveillance of PMR caused serious consequences to the group and its activism: "PMR isn't very active at this point. [The spying] really took a toll on people and the organizing."[111]

2014: Surveillance of Whistleblowers and Their Counsel

The increasing technological capacity of intelligence agencies, and especially the NSA, has allowed the US government to expand surveillance to include bulk collection of phone and email data. Although the NSA is technically prohibited from targeting Americans and US-based organizations (including law firms), there is mounting evidence that privileged attorney-client communications are being swept up in the agency's dragnet surveillance programs. For whistleblowers and others who openly challenge the economic and political agendas of the US government, the expectation of the right to protected communications with their legal counsel has been all but destroyed.

Attorneys for whistleblowers such as Julian Assange (founder of Wikileaks) and Snowden have consistently expressed concern about government surveillance. In a 2013 interview, NLG past President Michael Ratner (CCR President Emeritus and legal adviser to Assange) said, "[The government is] still allowing the mass surveillance of my conversations overseas with all my clients, who I assume are all under surveillance by the government, whether it is Julian Assange or Guantánamo families or others."[112] In a later interview, Ratner added that "all of our legal advice to clients is taken in by the NSA."[113] As a result, the US government has access to the legal tactics prepared by whistleblowers and their attorneys, effectively eliminating their right to counsel. Jesselyn Radack, Director at the Government Accountability Project and legal adviser to Snowden, has similarly stated that she proceeds as if she is being monitored. She advises other legal professionals to employ encryption techniques to protect their work and communications: "I am encrypted to the hilt…it's a really unfortunate way to do business as a lawyer to have to pretty much arrange meetings in person with your client and to have to be so encrypted…anytime you want to communicate."

Legal advisers to whistleblowers are also subject to harassment and intimidation, as Radack experienced when she was detained by customs agents at London's Heathrow Airport. She described the encounter as "very hostile" and reported that she was aggressively questioned about Snowden, Assange, and Chelsea Manning by custom staff. Radack later discovered she was on an *"inhibited persons list,"* which

was created by DHS to give Transportation Security Administration (TSA) agents the authority to deny these passengers a border pass and/or to prevent them from traveling. *Following the ordeal, Radack released a public statement denouncing her detainment and the DHS list: "The government, whether in the US, UK or elsewhere does not have the authority to monitor, harass or intimidate lawyers for representing unpopular clients."*[114]

Radack is not the only lawyer to experience such treatment; Attorney Jennifer Robinson, who has also represented Snowden, appeared on the *inhibited passenger* list in April 2012. In an even more aggressive act of government reprisal, David Miranda, partner of former *Guardian* journalist and attorney Glenn Greenwald, was detained under the pretext of counter-terrorism for nine hours at Heathrow in August 2013.[115] Greenwald has been instrumental in the release of Snowden's documents, and the attempt to intimidate Miranda was clearly linked to Greenwald's journalism on the NSA and government misconduct.

Consequences of Monitoring Legal Professionals

There are grave consequences to violations of attorney-client privilege for individuals, the legal community, and society as a whole. Surveillance of legal professionals has a chilling effect on legal work, dissuades attorneys from taking on political clients, diminishes their ability to represent people, and requires that time-consuming and expensive precautions be taken to ensure that communications between attorneys and clients are secure.

Past instances in which progressive legal organizations and individual attorneys have been the subjects of surveillance highlight the serious consequences of spying on the legal community. On a personal level, attorneys for controversial clients can end up monitored, harassed, and even imprisoned. Professionally, constant surveillance may compromise the confidence of clients in the privacy of their communications with lawyers and diminish the effectiveness of legal counsel. In the criminal case that led to *Panacagos v. Towery*, in which intelligence gathered by the military was turned over to the prosecutor, the violation of attorney-client privilege resulted in a mistrial and subsequent dismissal; however, this outcome arose solely because the violations were discovered.[116]

In many cases, and as the dismissal of numerous lawsuits against government intelligence agencies indicates, attorneys cannot even confirm when they are under surveillance. Meanwhile, these dismissals suggest that many other such invasions have gone undiscovered. The monitoring of legal professionals can discourage political legal work, and cause attorneys to avoid taking on unpopular cases. Boghosian writes: "In the surveillance of attorneys, core principles of privacy, legal representation, due process, and assumption of innocence—once cornerstones that set the United States apart from totalitarian societies—are imperiled by the very institutions mandated to protect them."[117]

Erosion of Attorney-Client Privilege

The right to legal counsel in criminal cases is guaranteed by the Sixth Amendment.[118] To ensure the effectiveness of the defense, communications between attorneys and their clients are deemed privileged, meaning that any information exchanged must be kept confidential. This privilege protects against the compelled disclosure of confidential communications between a lawyer and client and is intended to produce honest and accurate communications in order to promote the administration of justice. The ABA Model Rules of Professional Conduct state that an attorney "shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is implicitly authorized in order to carry out the representation, or the disclosure is permitted."[119] The attorney-

client privilege is also codified in the Federal Rules of Evidence, which lays out the ethical obligation a lawyer has to their client. "It's one of the oldest principles underlying our system of justice," says Ellen Yaroshefsky, NLG member and director of the Jacob Burns Center for Ethics in the Practice of Law at Cardozo School of Law. "Without it you can't allow a lawyer to do their job in providing their client with adequate and serious representation."[120]

Through both legal and illegal avenues, the guarantee of private communications between lawyers and clients has been breached. The past twenty years have seen the steady erosion of attorney-client privilege in high profile cases. After a series of bombings in the US in 1993 and 1995, new Special Administrative Measures in prisons were enacted in 1997 to allow the restriction of mail, phone calls, and visitors for prisoners, although confidential communications with attorneys were still permitted. As a response to 9/11, the Federal Bureau of Prisons (BOP) issued an interim set of guidelines in October 2001 that allowed the Department of Justice (DOJ) to monitor conversations between attorneys and inmates in federal prisons without the knowledge of either party.[121] According to the new rules, monitoring of attorney-client interactions was permissible if the Attorney General had "reasonable suspicion" that verbal and written communications were being used to "facilitate acts of terrorism." However, the guidelines provided no requirement to inform the client or attorney that their communications were being monitored.[122] Because these new regulations dealt with prisoners—a notoriously invisible segment of the population—and because they were framed as "administrative" measures as opposed to legislation, they were met with almost no public reaction.[123]

According to former CCR litigation attorney Nancy Chang, these BOP policies represent an "unprecedented attack on the attorney-client privilege."[124] The guidelines put the power in the hands of the executive branch of the government, rather than investing it in the judiciary. Furthermore, because the terms of the new rulings are not clearly defined, they leave it to the discretion of the Attorney General to decide what counts as "facilitation" or "acts of terrorism." The overall effect, Chang writes, is that "the specter of government monitoring promises to thwart the ability of criminal defendants to receive the effective assistance of counsel to which they are entitled under the Sixth Amendment."[125] In the past decade, new programs and regulations have made the surveillance of attorney-client communications even easier. Shortly after 9/11, the NSA began the warrantless monitoring of telephone and electronic data of Americans communicating with people overseas. In 2008, FISA was amended to loosen the requirements for attaining a warrant for wiretaps.[126] Given the recently leaked information about the scope and capacity of NSA spying on electronic and phone communications, legal professionals must be more careful than ever to protect privileged interactions with their clients.

Chilling Effect on the Next Generation of People's Lawyers

While many legal organizations and lawyers will continue to accept high-profile cases despite the inconvenience and risk of surveillance, others will not. In particular, young legal professionals, who are facing a difficult job market while saddled with enormous debt, may be less willing to take such chances early in their careers. When surveyed on their thoughts about working with political clients, Guild law students, recently-barred attorneys, and legal workers all stressed the financial difficulties of taking such cases.[127] NLG attorney Dustin McDaniel explained the problem: "There is a constant lack of resources with which to finance the most 'controversial cases.' Specifically, the need for resources means that supporters generally have to make money working 'for the man.' They can help only in their off time, when they are often tired and stressed out from other demands in their lives." For example, young attorneys often end up doing document review (the tedious review of legal materials) in order to subsidize their work on political cases.

A Guild attorney from the NYC NLG chapter agreed: "Clients in these categories [animal rights and environmental activists, anarchists, people accused of terrorism, whistleblowers, and Muslims] may have limited access to funds, which can mean that representation must be provided pro bono or low

bono and paid work must be found elsewhere." However, the challenge of providing free or low-paid legal work while dealing with debt that often reaches $150,000 limits many new attorneys from taking these cases. In the past, the cost of legal education did not preclude this kind of work. Reflecting on her own experience as a law student in the 1960s, Barbara Dudley remarked, "The fact that I was able to go to UC Berkeley's Boalt Hall for $500 per semester meant I could graduate with no debt and go off to the Philippines and Vietnam with the NLG's Military Law Office for mere subsistence pay and do the political legal work that needed to be done in 1971 and in the many years since then."

In addition to the financial obstacles, new legal professionals often worry about the effect that defending clients targeted by the government will have on their reputation. Cardozo NLG law student Emily Hoffman said, "I know that defending 'controversial' clients could be inviting public retaliation and stigmatization upon myself. I do have some fear of being seen as someone who identifies with and supports problematic opinions and actions, even if these opinions and actions are in fact just those of my clients." Despite the risk of representing controversial clients, Hoffman still plans to pursue this kind of work when she graduates. Guild legal worker Barbara Bryer also reflected on the negative consequences of defending clients who are the focus of government investigations: "There is a risk that the representation of targeted individuals/groups might result in the targeting of those working on their defense." McDaniel shared this concern: "It is increasingly clear that the state will monitor and persecute you for working with these clients." In a competitive legal job market, the risk of taking cases that could potentially hinder the ability to find paid work is enough to keep many new graduates from being involved in "controversial" cases.

Law students and new legal professionals are acutely aware of the possibility of surveillance and its consequences. When asked if they knew of any examples of government spying on members of the legal profession, McDaniel responded, "I know that the NSA dragnet means that anything transmitted by electronic means for at least the last six years has been intercepted, including all communications sent and received by all US lawyers during that period." For her part, Bryer noted that, "There are many legal professionals and activists who believe they are spied on and complain about injuries and inconveniences caused by such personal and professional intrusions…the problem is further compounded in that the nature of these claims causes them to be difficult to substantiate." Referring to the negative consequences of surveillance, McDaniel elaborated: [Surveillance] fundamentally undermines the ability of lawyers to protect their clients, undercutting the possibility of ever defending 'controversial' clients in a meaningful way...Neutralizing the few members of the legal profession inclined to fight for the oppressed is simply a means of ensuring oppression will never stop." NLG legal worker Allan Masri argued that government agencies "waste their time and money by spying on people who have done no harm and who perform an important function in society."

The challenges of defending political clients are summed up by University of Arkansas NLG law student Alison Carter: "Depending on the case, our personal safety could be at risk; it's emotionally draining; it's financially costly." Yet despite the difficulties that come with representing political clients—financial burden, damage to reputation, and targeting for surveillance—Guild members continue to recognize the relationship between "cause lawyering" and social change. As Masri explained, "These clients have little or no support inside the government, primarily because government workers are afraid to voice any unconventional opinions. Supporting these people with their legal problems lets the government workers (and the general population) understand that these people have rights and their opinions may actually be correct." Or as University of Colorado NLG law student and NLG National Student Vice-President Whitney Leeds put it, "Only social movements can create real change, and activists need lawyers."

Attorneys who represent political activists and people accused of terrorism must be aware of the risks involved in defending these clients. However, the threat of surveillance should not stop the legal profession from taking on these cases. NLG attorney Larry Hildes offers these words to the next generation of legal professionals: "We as attorneys have extraordinary power and privilege. We are morally and politically obligated to use that power and privilege to help bring about justice, and we

can. Don't be afraid to take the hard cases, to represent those who dissent, and these days especially anarchists who get so targeted and marginalized. Don't be afraid to take on the military, the FBI, other agencies and groups that scare you, because if we don't defend those who do, who will?"[128]

Impact of Surveillance on Legal Projects

The following case study shows how mass surveillance hinders the work of a legal project whose purpose is at odds with government and corporate interests. The NLG Military Law Task Force (MLTF) formed during the Vietnam War to provide legal counsel to GIs in Japan and the Philippines who had been subjected to discharge, courts-martial, and non-judicial punishment.[129] It has remained active since, to fight the harassment of women and LGBTQ people in the military, represent military dissenters and conscientious objectors, counsel AWOL soldiers, and support military whistleblowers like Chelsea Manning.

As the discovery materials in *NLG v. Attorney General* showed, the Military Law Office and later the MLTF have been targets of extended monitoring and disruption by the FBI, CIA, and military intelligence agencies since the 1970s. Members continue to operate under the assumption that their work and their communications with clients are not secure. According to MLTF Executive Director Kathleen Gilberd, "Folks in our area of work usually assume that there's some surveillance and therefore take precautions. For example, I make a point never to get a client's address over the phone, having once, in the 1970s, had an AWOL client picked up at home within minutes of telling me his address. And this all hampers our work, especially today, when so many clients are at a long distance from their attorney or advocate."[130]

Other legal professionals working with the MLTF share Gilberd's concerns. Describing the situation, Gilberd noted that they tend to be cautious when talking about cases or interacting on the phone or by email with clients or potential clients "We assume that it's not safe to have open discussions of elements of an offense, or what a client has actually done. Generally, our experienced attorney members would not want to assume there's real confidentiality in any phone or online discussions. Therefore, I discourage clients from discussing the details of alleged offenses over the phone."[131] An MLTF attorney concurred: "I never put information in an e-mail. I would normally expect to meet the client face-to-face, barring that, I would discuss things over the telephone (hopefully a land line). Now that NSA is saving all telephonic communications, I have to evaluate the risk further. I might communicate by letter with instructions to destroy the letter after being read." Similarly, MLTF committee co-chair Daniel Mayfield stressed that "every important conversation about a case, every jail or prison call, and every email requires a statement reaffirming the attorney-client privilege."[132] Although many legal professionals include a written disclaimer at the end of all email communications,[133] they are aware that this cannot prevent phone and email conversations from being monitored.

The threat of surveillance should not stop the legal profession from taking on these cases.

As part of conducting their daily work, groups like the MLTF assume they may be under constant surveillance, and that there is always the chance that infiltrators or government agents are actively seeking information from the project and its members. Gilberd remarks, "I never assume that the person speaking with me is actually a client/concerned GI/innocent person, and craft my comments as if military police or others were on the other end of the call."[134] The level of precautions and suspicion that necessarily accompany the work of legal groups such as the NLG MLTF highlights the effort that must be put into maintaining confidential communications with clients and avoiding scenarios in which clients are put in danger. From avoiding phone and electronic communications to operating under the assumption that law enforcement and intelligence agents are monitoring the project, MLTF

members must always exercise caution while performing their work. This takes a toll on individual attorneys and legal workers and poses larger problems for a democratic society.

Legal Challenges to Mass Surveillance

Legal professionals and organizations have attempted to challenge mass surveillance programs and expose the extent of government spying. After it was revealed that the NSA had intercepted communications between the Indonesian government and the US law firm Mayer Brown, the ABA sent a letter to the NSA expressing concerns over surveillance of American lawyers' confidential communications with overseas clients and the sharing of privileged information. The ABA requested clarification on the agency's current policies and demanded that the NSA respect attorney-client privilege and take all appropriate action to ensure that such information not be disseminated to other agencies or third parties.[135]

Numerous lawsuits have also been brought to identify and challenge NSA surveillance programs. CCR continues to uncover the depths of government spying on its attorneys, especially in relation to their clients in Guantánamo. In 2006, the organization filed *CCR v. Bush* (later *v. Obama*) against the president, the head of the NSA, and other government agencies to challenge warrantless surveillance as a violation of FISA. In response, the NSA and DOJ used the "state secrets" privilege to avoid confirming that CCR attorneys were under surveillance. By 2011, a federal district court found that CCR could not bring the case because it lacked standing and could not definitively prove that its staff and attorneys were being monitored.[136] In 2014, CCR petitioned the Supreme Court to review the case in light of Snowden's revelations about the extent of the spying program. "We have always been confident that our communications—including privileged attorney-client phone calls—were being unlawfully monitored by the NSA, but Edward Snowden's revelations of a massive, indiscriminate NSA spying program changes the picture," said CCR Senior Attorney Shayana Kadidal.[137] However, the Supreme Court declined to review the case, ensuring that neither the Bush nor the Obama administrations will have to answer for the warrantless surveillance programs.[138]

Lack of standing has been cited as grounds for the dismissal of other lawsuits challenging warrantless wiretapping programs as well. In 2008, after Congress ratified and expanded the program, the ACLU filed a lawsuit—*Amnesty v. Clapper*—on behalf of a wide coalition of attorneys and human rights, labor, media, and legal organizations whose work requires them to engage in privileged telephone and email conversations with clients outside of the United States. Challenging the constitutionality of the 2008 amendments, the case was dismissed in 2009 when a New York judge found that the ACLU's clients could not prove their communications would be monitored. While the ruling was reversed on appeal, the Supreme Court finally dismissed the lawsuit in February 2013, holding that the ACLU plaintiff's did not have standing to challenge the constitutionality of the warrantless wiretapping program.[139]

In light of the 2013 revelations of the NSA's massive spying program, the NLG has joined the Electronic Frontier Foundation (EFF) and twenty-three other plaintiffs to challenge the illegal and unconstitutional program of dragnet electronic surveillance, including the bulk acquisition, collection, storage, retention, and searching of telephone communications information conducted by the NSA and other government agencies.[140] In *First Unitarian Church of Los Angeles v. NSA*, the NLG is part of a broad coalition of political and advocacy groups challenging the NSA's Associational Tracking Program.[141] By focusing on the associational rights of organizations, *this lawsuit* highlights the critically important free speech issues raised by the NSA's practices as well as the more frequently discussed privacy violations.[142] The Guild stated, as part of the lawsuit, that the NSA program has negatively impacted the organization through diminished membership participation, withdrawal or discouragement of new members joining, and other consequences that have a chilling effect on members' associational rights. NLG Executive Director Heidi Boghosian wrote in her affidavit that young attorneys in particular may

refrain from taking on controversial cases out of fear of "government surveillance and retaliation."[143]

Concerns about surveillance have forced legal organizations to alter their mode of communication to avoid increased monitoring of lawyers and clients. In the case of the NLG (which uses Verizon telephone and web services), members working on cases directly related to government, corporate, and military surveillance curtailed the duration and content of electronic "privileged" communications when it became known that Verizon was under a FISA Court order to turn over troves of customer data to the NSA.[144] Guild members working on initiatives such as the petition urging the compassionate release of Lynne Stewart and the *Panagacos* case are increasingly concerned about the confidentiality of their communications. NLG members who work on litigation and advocacy are purposely restricting their discussions of legal strategy and other confidential information to in-person meetings or written correspondence. Finally, the long history of government harassment of progressive legal organizations combined with the new revelations about the extent of surveillance leave the NLG unable to reassure the group's members and associates that the organization and its communications are not being monitored.[145]

Conclusion

Illegal government surveillance has come to the forefront of public debate in a way not seen since the late 1970s. To address growing concerns, President Obama appointed a panel to review the government's surveillance programs and practices in August 2013. In December 2013, the President's Review Group on Intelligence and Communications Technologies released a 300-page report titled "Liberty and Security in a Changing World," which provided recommendations for reforming intelligence activities.[146] These include ending the bulk collection and storage of phone records and introducing legislation that would require judicial approval before intelligence agencies can use a national security letter or administrative subpoena to obtain financial, phone and other records.[147] In responding to these recommendations, President Obama stopped short of implementing any meaningful changes to current surveillance programs.

From a legal standpoint, the proposed measures to reform mass surveillance are inadequate. As the history of spying on the legal profession indicates, even protected communications between attorneys and clients are not immune from government monitoring and intervention. In spite of the Obama administration's lukewarm response to proposed reforms, there are several ways to support efforts to limit the power of government intelligence agencies and their private counterparts, including:

- Donating time or money to civil liberties organizations such as the NLG, ACLU, EFF, and the Electronic Privacy Information Center (EPIC)
- Learning the history of government and corporate spying as well as the current mass surveillance programs
- Pressuring elected officials to thoroughly investigate the scope and legal implications of mass surveillance programs
- Writing, speaking, and organizing to educate the legal community as well as non-lawyers about the consequences of attorney-client privilege
- Using secure open source encryption programs to protect privileged electronic communications

Such steps are important; however, they are not enough. The entire mass surveillance apparatus—public and private—must be challenged. Michael Ratner urges: "There has to be an absolute end to mass surveillance, whether it's by private companies or by the government…The worst situation would be to have superficial reforms, and then the country goes to sleep on the mass spying that's still occurring…the NSA has to be torn apart root and branch."[148]
Ending mass surveillance means rejecting the premise upon which these programs have been built: that constant monitoring and collection of personal information somehow makes us safer. As Heidi Boghosian points out—and as the Guild emphasized in its 1949 FBI report—the focus of surveillance programs is not "investigating specific acts of violence or plans for violent attacks, but rather on monitoring communities and individuals holding particular political and religious ideologies."[149] Legal professionals must be prepared to defend people who express dissenting viewpoints despite the risks and inconvenience of possible targeting and surveillance. Barbara Dudley encourages lawyers, law students, and legal workers to stand up to government surveillance: "Don't be intimidated, don't back down, don't turn away from clients who need a defense or work you know needs to be done. The government wins if their surveillance keeps even one of us from speaking up or taking action."

Endnotes

[1] Glenn Greenwald, Ewen MacAskill and Laura Poitras, "Edward Snowden: the whistleblower behind the NSA surveillance revelations, *The Guardian*, June 9, 2011.
[2] Glenn Greenwald and Spencer Ackerman, "NSA collected US email records in bulk for more than two years under Obama," *The Guardian*, June 27, 2013 and Glenn Greenwald, "NSA collecting phone records of millions of Verizon customers daily," *The Guardian*, June 5, 2013.
[3] Glenn Greenwald, "Glenn Greenwald Responds to Media Slander and False Accusations," *Popular Resistance*, December 1, 2013.
[4] Nick Hopkins and Matthew Taylor, "Edward Snowden revelations prompt UN investigation into surveillance," *The Guardian,* December 2, 2013.
[5] Alex Kane, "Meet the Arab-American lawyer who the NSA spied on–back in 1967," *Mondoweiss*, October 3, 2013. For more on Jabara's case, see his interview with Amy Goodman, "Arab-American Attorney Abdeen Jabara: I Was Spied on by the National Security Agency 40 Years Ago," *Democracy Now*, October 17, 2013.
[6] Michael Smith, *Notebook of a Sixties Lawyer* (Smyrna Press, 1992), 93.
[7] Heidi Boghosian, *Spying on Democracy: Government Surveillance, Corporate Power, and Public Resistance* (City Lights, 2013).
[8] Ibid, Chapter 7.
[9] The US government refused to turn over the complete information requested by NLG attorneys; information on informants was not shared in the lawsuit, nor were about 10% of the requested files, which were deleted on the claim that they revealed state secrets. Letter from NLG to Professor Kent Sinclair, Jr., "*Re: NLG v. AG*," dated February 19, 1985.
[10] The Preamble to the NLG Constitution states: "The National Lawyers Guild is an association dedicated to the need for basic change in the structure of our political and economic system. We seek to unite the lawyers, law students, legal workers, and jailhouse lawyers of America in an organization which shall function as an effective political and social force in the service of the people, to the end that human rights shall be regarded as more sacred than property interests."
[11] Boghosian, *Spying on Democracy,* Chapter 7.
[12] The suit was brought in Federal District Court by NLG-NYC members Michael Krinsky, lead counsel, Ann Mari Buitrago, and Jonathan Moore.
[13] "A History of the National Lawyers Guild 1937-1987," National Lawyers Guild Foundation, 1987. On file with the National Lawyers Guild, National Office, New York, NY, 56.
[14] William Glaberson, "FBI Admits Bid to Disrupt Lawyers Guild," *New York Times*, October 13, 1989.
[15] For a more complete history of the NLG, please refer to Ann Fagan Ginger and Eugene M. Tobin, eds. *The National Lawyers Guild: From Roosevelt through Reagan* (Philadelphia: Temple University Press, 1988) and the interactive historical timeline on the NLG website at http://www.nlg.org/about/history.
[16] The NLG remains an organizational member today and the IADL's current president is NLG member Jeanne Mirer.
[17] The Mundt-Nixon Bill of 1948 and the subsequent McCarran Act (also known as the Subversive Activities Control Act of 1950) required Communist organizations to register with the United States Attorney General.
[18] Copies of statements outlining these positions can be found in the NLG Archives at Tamiment Library (NYU).
[19] "A History of the National Lawyers Guild 1937-1987," 12.
[20] NLG, "Report of the Special Committee of the National Lawyers Guild Appointed to Study Certain Alleged Practices of the FBI," (1949). Available in the NLG Archives at Tamiment Library (NYU).
[21] "A History of the National Lawyers Guild 1937-1987," 28.
[22] NLG, "Report on the FBI."
[23] Ibid.
[24] Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (Oxford University Press, 1990), 192.
[25] "A History of the National Lawyers Guild 1937-1987," 30.
[26] Seth Rosenfeld, *Subversives: The FBI's War on Student Radicals and Reagan's Rise to Power* (Picador, 2013).
[27] *National Lawyers Guild v. Attorney General* (Supplementary Response of NLG to Interrogatories).
[28] David Margolick, "FBI Scrutinized Applicants to the Bar, Documents Show," *New York Times*, June 15, 1985. The National Conference of Bar Examiners is a private organization that helps state and local bar associations investigate the character and fitness of bar applicants.

[29] This program was initiated by President Harry Truman in 1947. Executive Order 9835, or the "Loyalty Order," established the first loyalty program in the United States, designed to root out communist influence in the US federal government.
[30] *National Lawyers Guild v. Attorney General* (Supplementary Response of NLG to Interrogatories).
[31] Azadeh Shahshahani, "Breaking Ranks: the History of the NLG Military Law Task Force," *Huffington Post,* June 3, 2013.
[32] Personal Communication, Barbara Dudley, January 12, 2014.
[33] Ibid.
[34] Ibid.
[35] *National Lawyers Guild v. Attorney General* (Supplementary Response of NLG to Interrogatories).
[36] *National Lawyers Guild v. Attorney General*, 1982 US Dist. LEXIS 10271 (S.D.N.Y. Apr. 8, 1982).
[37] The information in this paragraph comes from *National Lawyers Guild v. Attorney General* (Supplementary Response of NLG to Interrogatories).
[38] Ibid.
[39] Aaron Leonard, "A Window Into Infiltration: The FBI Informant File of Sheila Louise O'Connor," *Truthout*, January 16, 2013.
[40] Rosenfeld, *Subversives,* 401.
[41] *National Lawyers Guild v. Attorney General* (Supplementary Response of NLG to Interrogatories).
[42] Personal Communication, James Drew, January 2, 2014.
[43] Rosenfeld, *Subversives,* 403.
[44] *National Lawyers Guild v. Attorney General* (Supplementary Response of NLG to Interrogatories).
[45] Ibid.
[46] "Attorneys for Treason: The True Story of the National Lawyers Guild (a Dynamic Expose from the Research Department of the Church League of America)," Volume 38, Issue 7 of *News and Views* (1975).
[47] Personal Communication, David Gespass, March 4, 2014.
[48] *National Lawyers Guild v. Attorney General* (Supplementary Response of NLG to Interrogatories) and Letter from NLG to Professor Kent Sinclair, Jr., "*Re: NLG v. AG*," dated February 19, 1985.
[49] *National Lawyers Guild v. Attorney General* (Supplementary Response of NLG to Interrogatories).
[50] Ibid.
[51] Calculating the numbers was difficult since so many lawyers worked on the case, therefore these figures underestimate the true value of labor and expenses. Letter from NLG to Professor Kent Sinclair, Jr., "*Re: NLG v. AG*," dated February 19, 1985.
[52] Walker, *In Defense of American Liberties*, 127.
[53] Ibid, 193.
[54] Boghosian, *Spying on Democracy,* Chapter 7.
[55] *Heutsche v. United States*, 414 US 898, 903 (1973) (Douglas, J., dissenting).
[56] Albert Ruben, *The People's Lawyer: The Center for Constitutional Rights and the Fight for Social Justice from Civil Rights to Guantanamo* (Monthly Review, 2011), 102.
[57] Ruben, *The People's Lawyer,* 157.
[58] "Affidavit of Probable Cause in Support, Search and Seizure Warrant, no. 97823," Philadelphia Police Department, August 1, 2000. The history of the NLG and its effort to provide legal support for RNC demonstrators was prominently featured in a post-protest report by Rees's Maldon Institute: "R2K: Philadelphia's Convention Protests," The Maldon Institute, August 17, 2000.
[59] Colin Moynihan, "Trove of F.B.I. Files on Lawyers Guild Shows Scope of Secret Surveillance," *New York Times*, June 25, 2007.
[60] Luke Harding, "Edward Snowden: US government spied on human rights workers," *The Guardian*, April 8, 2014.
[61] Ewen MacAskill and Julian Borger, "New NSA leaks show how US is bugging its European allies," *The Guardian*, June 30, 2013 and Jason Burke, "NSA spied on Indian embassy and UN mission, Edward Snowden files reveal," *The Guardian*, September 25, 2013.
[62] Mark Hosenball, "Exclusive: Obama orders curbs on NSA spying on U.N. headquarters," *Reuters*, October 29, 2013.
[63] Barton Gellman and Ashkan Soltani, "NSA tracking cellphone locations worldwide, Snowden documents show," *Washington Post*, December 4, 2013.
[64] The National Security Agency is the most secretive and least understood of the government intelligence agencies. While the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA) deal with law enforcement and intelligence (respectively), the NSA is responsible for breaking foreign intelligence codes while maintaining the security of American information. The NSA was secretly established in 1952 by President Harry Truman for the purpose of collecting, processing and disseminating intelligence information from foreign

electronic signals for counterintelligence and military operations. The NSA is under the jurisdiction of the Department of Defense and reports to the Director of National Intelligence.
[65] The US "intelligence community" alone consists of 16 separate agencies: Central Intelligence Agency (CIA), Department of Defense, Defense Intelligence Agency (DIA), National Security Agency (NSA), National Geospatial-Intelligence Agency (NGA), National Reconnaissance Office (NRO), Air Force Intelligence, Surveillance and Reconnaissance Agency (AFISRA), Army Intelligence and Security Command (INSCOM), Marine Corps Intelligence Activity (MCIA), Office of Naval Intelligence (ONI), Department of Energy Office of Intelligence and Counterintelligence (OICI), Department of Homeland Security Office of Intelligence and Analysis (I&A), Coast Guard Intelligence (CGI), Department of Justice, Federal Bureau of Investigation, National Security Branch (FBI/NSB), Drug Enforcement Administration, Office of National Security Intelligence (DEA/ONSI), Department of State Bureau of Intelligence and Research (INR), and Department of the Treasury Office of Terrorism and Financial Intelligence.
[66] James Bamford, *The Shadow Factory: The Ultra-Secret NSA from 9/11 to the Eavesdropping of America* (Anchor Press, 2008).
[67] The investigation was led by and named after Senator Frank Church. The formal name of the committee was the US Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities.
[68] For a detailed analysis of the effects of COINTELPRO, see Ward Churchill, *Agents of Repression: The FBI's Secret Wars Against the Black Panther Party and the American Indian Movement* (South End Press, 2001) and Seth Rosenfeld, *Subversives: The FBI's War on Student Radicals, and Reagan's Rise to Power* (Picador, 2013). For more on military spying, see Heidi Boghosian, "The Army Goes Spying Along," *NLG Review*, Vol. 70, No. 2 (2013): 100-112.
[69] Boghosian, "The Army Goes Spying Along."
[70] Bamford, *The Shadow Factory,* 161-168.
[71] After these scandals in the 1970s, NSA officials made a point to avoid public scrutiny throughout the 1980s and '90s. The NSA was technically not allowed to spy on Americans as laid out in the secret document US Signals Intelligence Directive 18 (USSID18), and it appears that the agency did initially make an effort to follow these guidelines. Bamford, *The Shadow Factory*.
[72] Strong penalties were put in place to deter the misuse of FISA courts: $10,000 fine and five years in prison per violation.
[73] For more information on Jabara and his lawsuit, please consult the Abdeen M. Jabara papers available through the Bentley Historical Library at the University of Michigan.
[74] Jabara was also a plaintiff in lawsuits against the Detroit Police Red Squad and the Michigan State Police surveillance of political activity by activists.
[75] Personal Communication, Abdeen Jabara, December 10, 2013.
[76] Michael Smith, *Notebook of a Sixties Lawyer* (Smyrna Press, 1992), 93.
[77] Alex Kane, "Meet the Arab-American lawyer who the NSA spied on–back in 1967," *Mondoweiss*, October 3, 2013. For more on Jabara's case, see his interview with Amy Goodman, "Arab-American Attorney Abdeen Jabara: I Was Spied on by the National Security Agency 40 Years Ago," *Democracy Now*, October 17, 2013.
[78] Personal communication, Abdeen Jabara, March 4, 2014.
[79] Kane, "Meet the Arab-American lawyer who the NSA spied on–back in 1967."
[80] Smith, *Notebook of a Sixties Lawyer*.
[81] Kane, "Meet the Arab-American lawyer who the NSA spied on–back in 1967."
[82] Personal Communication, Abdeen Jabara, December 17, 2013.
[83] The state secrets privilege is an evidentiary rule, which results in the exclusion of evidence from a legal case based solely on affidavits submitted by the government stating that court proceedings might disclose sensitive information which might endanger national security.
[84] Boghosian, *Spying on Democracy.*
[85] Nancy Chang, *Silencing Political Dissent* (Seven Stories Press, 2002), 46-47.
[86] Bamford, *The Shadow Factory.*
[87] The role of the FISA court came under criticism from President Bush as well as Vice-President Dick Cheney, who both wanted to skip the process of requesting a warrant from the FISA court in order to immediately monitor the calls and emails of international targets. Even before 9/11, the Bush Administration had been looking for ways to circumvent FISA, most likely because the court had rejected more wiretap requests from Bush than for the previous four presidents combined. Bamford, *The Shadow Factory,* 113-118.
[88] Ibid, 307.
[89] Federal law enforcement agencies have facilitated the surveillance practices of local police through grants and funding initiatives. From 2003-2012, DHS granted $35 billion to local governments to prepare for terrorism and other disasters (Boghosian, *Spying on Democracy*, 114). As a result, the surveillance abilities of police departments have increased significantly; the use of surveillance technologies in police departments has risen

from twenty percent in 1997 to over seventy percent in 2007. Stephen Rushin, "The Legislative Response to Mass Police Surveillance," *Brooklyn Law Review*, Vol. 79, No.1 (2013): 1-60.
[90] As of January 2014, 155 men remain in custody at Guantanamo. "Guantánamo by the Numbers," ACLU. Available at: https://www.aclu.org/national-security/guantanamo-numbers/.
[91] "CCR and Guantánamo Habeas Attorneys Believe Government Is Illegally Spying on Them Without a Warrant." CCR.
92 *Wilner v. NSA* is a Freedom of Information Act (FOIA) lawsuit seeking records of any NSA surveillance gathered on attorneys who represent detainees at Guantánamo.
[93] Mark Denbeaux et al., "Spying on Attorneys at GTMO: Guantanamo Bay Military Commissions and the Destruction of the Attorney-Client Relationship," Seton Hall University School of Law Center for Policy and Research (2013).
[94] Ibid, 5. The class action lawsuit against the MDC staff was filed in 2002, but remains pending.
[95] Bernard Vaughan, "Judge denies bin Laden son-in-law request for restraining order," *Reuters*, July 8, 2013.
[96] James Risen and Laura Poitras, "Spying by N.S.A. Ally Entangled U.S. Law Firm," *New York Times*, February 15, 2014.
[97] Chang, *Silencing Political Dissent*, 90.
[98] Boghosian, *Spying on Democracy,* 166.
[99] Stewart has since been granted compassionate release from prison on account of a terminal medical condition.
100 Ibid, 103.
[101] Fusion centers received more than $327 million in direct grants between 2004 and 2008, with an additional $250 million offered in President Obama's stimulus plan in 2008. Thomas Cincotta, "Intelligence Fusion Centers: A Decentralized National Intelligence Agency," *Public Eye Magazine* (2010).
[102] Cincotta, "Intelligence Fusion Centers."
[103] A 2012 Congressional investigation found that the intelligence gathered by fusion centers was often of poor quality and federal officials were unable to account for as much as $1.4 billion in taxpayer money allocated for fusion centers (James Risen, "Inquiry Cites Flaws in Counterterrorism Offices," *New York Times*, October 2, 2012). A 2013 report by the Brennan Center found that gaps in intelligence-sharing networks remain between local and federal police forces, threatening Americans' national security and undermining their civil liberties. According to author Michel Price, "The entire homeland security enterprise runs on disparate and ambiguous rules about what intelligence information can or should be collected, maintained, and shared. The result has been a great deal of confusion, serious infringements on civil rights and civil liberties, and a pile of useless information." National Security and Local Police, Brennan Center for Justice at NYU School of Law (2013), 39.
[104] Unless otherwise stated, the information in this section comes from *Panagacos v. Towery*, Interrogatories No. 8 and No. 12.
[105] Colin Moynihan, "Spy Suit Against Army Workers Is Cleared," *New York Times*, December 18, 2012.
[106] Ibid.
[107] On June 12, 2007, the court dismissed the Oly 22 criminal case based on prosecutorial misconduct and "gross prosecutorial negligence" for withholding and falsifying reports, having already ordered that the prosecutor produce the identity of the informants on the listserv for an in-camera hearing.
[108] Christopher Pyle, "CONUS Intelligence: The Army Watches Civilian Politics," *Washington Monthly*, 1970.
[109] Boghosian, "The Army Goes Spying Along," 101.
[110] Ibid.
[111] Nadia Kayyali, "Guild Lawyer Pushes Forward in Lawsuit Challenging Military Surveillance of Activists," *Guild Notes*, Vol. 38, No. 1 (Spring 2013), 2.
[112] Interview with Michael Ratner, "NSA Surveillance Program Needs to be Torn Apart from Branch to Branch," *The Real News*, December 20, 2013.
[113] "Spying on Lawyers: Snowden Documents Show NSA Ally Targeted U.S. Law Firm," *Democracy Now*, February 18, 2014.
[114] "Humiliating ordeal: Snowden's lawyer 'harassed' at Heathrow Airport," *RT*, February 17, 2014.
[115] Luke Harding, "David Miranda's detention: a chilling attack on journalism," *The Guardian*, February 2, 2014.
[116] Boghosian writes, "Prosecutorial access to attorney-client communications and legal strategy discussions affords the government an unfair legal advantage in pursuing cases in court." *Spying on Democracy,* 163.
[117] Ibid, 171.
[118] The attorney-client privilege can be traced back to British common law, the model for the American legal system.
[119] ABA Rule 1.6
[120] Nicolas Niarchos, "Has the NSA Wiretapping Violated Attorney-Client Privilege?" *The Nation*, February 4, 2014.

[121] These rules apply as well to pretrial detainees, INS detainees, and material witnesses, even though these inmates are all still presumed innocent at the time of the monitoring. Chang, *Silencing Political Dissent*.
[122] Attorney and client should be given notice, unless the DOJ has obtained a court order to allow for the monitoring without notice. A team is assigned to assess the communications and discard the privileged conversations. However, as Chang points out, this privilege team is "likely to consist of DOJ employees whose overarching objectives are the same as the prosecution team." *Silencing Political Dissent*, 90.
[123] Boghosian, *Spying on Democracy.*
[124] Chang, *Silencing Political Dissent*, 88.
[125] Ibid, 15.
[126] Boghosian, *Spying on Democracy.*
[127] All quotations in this section come from NLG members who responded to a survey in January 2014.
[128] NLG Attorney Larry Hildes, quoted in Boghosian, "The Army Goes Spying Along," 110.
[129] Shahshahani, "Breaking Ranks: the History of the NLG Military Law Task Force."
[130] Personal Communication, Kathleen Gilberd, December 20, 2013.
[131] Ibid.
[132] Personal Communication, Daniel Mayfield, January 9, 2014.
[133] An example of such a disclaimer: "This email and any attachments is intended exclusively for the use of the addressee(s), and may contain information which is LEGALLY PRIVILEGED, PROPRIETARY IN NATURE, OR OTHERWISE PROTECTED BY LAW FROM DISCLOSURE. If you are not the intended recipient, any use, copying, disclosure, dissemination or distribution is strictly prohibited and may subject you to legal action. If you have received this communication in error, please notify the sender immediately by email, or by the number listed above, destroy all copies, and delete the email from your inbox and server."
[134] Personal Communication, Kathleen Gilberd, December 20, 2013.
[135] Rob Boisseau, "ABA asks NSA how it handles attorney-client privileged information in intelligence work," *ABA News Release*, February 21, 2014.
[136] "CCR Warrantless Wiretapping Case Dismissed By Federal Judge," Center for Constitutional Rights, February 1, 2011.
[137] "Attorneys Argue Snowden Revelations on Spying Require SCOTUS to Revisit Earlier Decision in *Amnesty v. Clapper,"* Center for Constitutional Rights, January 4, 2014.
[138] "Recent Snowden Revelations Showed Government Likely Spying on Attorney Communications," CCR, March 4, 2014.
[139] Cindy Cohn and Trevor Timm, "Supreme Court Dismisses Challenge to FISA Amendments Act; EFF's Lawsuit Over NSA Warrantless Wiretapping Remains," Electronic Frontier Foundation, February 27, 2013.
[140] The plaintiffs include First Unitarian Church of Los Angeles, Unitarian Universalist Service Committee, The National Lawyers Guild, Greenpeace, Inc., Council on American-Islamic Relations, Human Rights Watch, People for the American Way, California Association of Federal Firearms Licensees, Franklin Armory, The Calguns Foundation, Free Software Foundation, Public Knowledge, Free Press, Acorn Active Media Foundation, Patient Privacy Rights, The Shalom Center, Charity and Security Network, TechFreedom, Students for Sensible Drug Policy Foundation, NORML (California Chapter), Media Alliance, and the Bill of Rights Defense Committee.
[141] The full complaint can be found on the EFF website: https://www.eff.org/files/filenode/firstunitarianvnsa-final.pdf.
[142] David Greene, "Deep Dive into First Unitarian Church v. NSA: Why Freedom of Association Matters," Electronic Frontier Foundation, January 27, 2014.
[143] Declaration of Heidi Boghosian for the National Lawyers Guild ISO Plaintiffs MSJ case No 13-cv-3287 JSW.
[144] Greenwald, "NSA collecting phone records of millions of Verizon customers daily."
[145] Declaration of Heidi Boghosian for the National Lawyers Guild ISO Plaintiffs MSJ case No 13-cv-3287 JSW.
[146] Richard A. Clarke, Michael J. Morell, Geoffrey R. Stone, Cass R. Sunstein, and Peter Swire, "Liberty and Security in a Changing World: Report and Recommendations of The President's Review Group on Intelligence and Communications Technologies," December 12, 2013.
[147] Ellen Nakashima and Ashkan Soltani, "Panel urges new curbs on surveillance by U.S." *Washington Post*, December 18, 2013.
[148] Ratner, "NSA Surveillance Program Needs to be Torn Apart from Branch to Branch."
[149] Boghosian, *Spying on Democracy,* 266.

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