

National Lawyers Guild of Chicago

Newsletter
4Q 2014



NLG and NPAP Attorneys Continue to Support the DeSean Vigil Arrestees

By: Max Suchan

As of December 21st, all of the DeSean vigil arrestees have been bonded out of Cook County Jail and are home with their families. Chicago's NLG mass defense committee provided the mechanism for several defendants to find criminal representation. Three NLG and National Police Accountability Project (NPAP) attorneys, Melinda Power, Sara Garber, and Mark Parts, are representing several of the arrestees who face unjust and very serious felony charges ranging from attempted murder of a police officer, aggravated battery of a police officer, and mob action.

These charges stem from the Chicago police aggressively provoking and disrespecting an August 24th community vigil for 17-year-old DeSean Pittman, a black youth murdered by CPD just days before on the city's south side. Police tore down memorial posters, kicked over candles, and disrupted a gathering held on private property. DeSean's mother, aunt, uncle-to-be, and high school best friend were among the five people arrested and charged with felonies. Several other vigil participants were also arrested and face misdemeanor charges.

Ever since August, dozens of anti-racist and police accountability activists (many of them NLG legal workers, law students, and lawyers) have been working hard to

raise the more than \$25,000 needed to bond out four of the defendants whose families could not afford these high bonds on their own. These activists have supported the defendants' friends and families through successful fundraisers online, and in organizing four well-attended dinners and dance parties. NLG attorneys successfully argued a bond motion to enable Derrick Wince, the last defendant behind bars, to be bonded out of jail just days before Christmas. The strong relationships between the defendants, their families and the attorneys and legal workers involved in the cases will continue as families and activists organize court support and on-going awareness around the cases.

Those involved with these efforts aim to create a revolving community bond fund to ensure that people like the DeSean vigil arrestees who face unjust police repression and serious charges do not have to sit in jail for months or even years before their cases go to trial. A community bond fund could also help alleviate pressure faced by many Guild attorney clients to accept unjust plea deals simply to get out of Cook County Jail. To get involved in this effort, please email Max Suchan at suchanmax@gmail.com.

SAVE THE DATE!

2015 NLG Midwest
Regional Conference

March 20-22

St. Louis University
Law School
St. Louis, MO

Photos from DeSean Vigil Arrestees Fundraiser Parties



All photos
courtesy of
Max Suchan



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Overcoming Arbitration Agreements and Class Action Waivers in Employment Cases: How Lawyers Can Engage in Collective Action to Combat Forced Arbitration!

By: Randy Choiniere & Chris Williams

According to a 2010 study, front-line workers in low-wage industries in Chicago, Los Angeles and New York lose more than \$56.4 million per week as a result of employment and labor law violations.¹ While the amount of wages stolen from any one low-wage worker may be relatively small, the total amount stolen from hundreds or thousands of workers by a single employer can be in the millions. Traditionally, class action lawsuits have been an effective means to disgorge these stolen wages from low road employers by creating efficiencies in the cost of litigation and allowing representative workers to recover for a class of workers who may be worried about retaliation if they bring their own claims. However, emboldened by recent Supreme Court decisions, many employers are instituting policies requiring employees and new hires to sign mandatory arbitration agreements and class action waivers as a condition of employment. As progressive lawyers, law students and legal workers, we need to understand the challenges presented by forced arbitration agreements and work together to develop a strategy to advocate for underrepresented low-wage workers who have been forced into the individual arbitration of their wage theft claims.

The increasing need for worker advocates to arbitrate individual wage theft cases is the direct result of legal developments that have incentivized employers to require individual arbitration agreements as a condition of employment. The Federal Arbitration Act (FAA), 9 U.S.C.

§ 1 et seq., is the weapon that the Court has used to repeatedly strike down employee attempts to have their wage theft claims heard in court. In *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 112 (2001), the Court held that the only employees exempt from coverage by the FAA are workers engaged in interstate transportation, effectively meaning that private sector workers in all other industries can be forced into arbitration agreements governed by the FAA. Efforts to circumvent forced arbitration clauses through state law contract doctrines such as unconscionability were effectively ended when the Court ruled in *AT&T Mobility v. Concepcion*, 563 U.S. 321 (2011), that the FAA preempted California state law prohibiting arbitration agreements that disallowed class-wide arbitration. The Court later further encouraged employers to draft arbitration agreements that preclude class-wide arbitration in *American Express Co. v. Italian Colors Restaurant*, 133 S. Ct. 2304 (2013), when it held that federal statutory claims could be effectively vindicated through individual arbitration even if the contractual waiver of class-wide arbitration made the cost of individually arbitrating a federal statutory claim exceed the potential recovery. Together, the Supreme Court's decisions relating to the FAA make it clear that both state and federal law claims will be governed by a pre-emptive federal pro-arbitration policy that allows employers to force individual arbitration agreements upon low wage workers who lack bargaining power.

Why are the Court's decisions authorizing forced individual arbitration such a threat to stopping wage theft in the workplace?



Imagine a company with a thousand workers requiring its employees to work off the clock for a half hour at the end of each shift, or a total of two and a half hours each week for every employee. At the federal minimum wage rate, this amounts to about \$18.00 per week for each employee. Over a three year period (the typical statute of limitations for wage cases), this amounts to about \$2,800 stolen from each worker, not a lot for a typical lawsuit, but a significant amount to a minimum wage worker. This one simple unlawful practice can net the offending company \$2.8 million in stolen wages.

Despite the challenges posed by forced arbitration agreements, there is a solution through an organized response. If even a small percentage of affected workers are able to bring successful arbitrations, the rules of arbitration and the fee-shifting provisions of many employment statutes can take away the financial incentive for employers to use these strategies. Under the applicable American Arbitration Association ("AAA") rules, the employer must pay the majority of the costs of the arbitration. For example, under the AAA, a worker cannot be required to pay more than \$200 of the arbitration costs when the arbitration agreement is part of an employer-promulgated plan.² In the example cited above, if one of the affected workers successfully brought an arbitration claim, the cost to the employer could rise to an additional

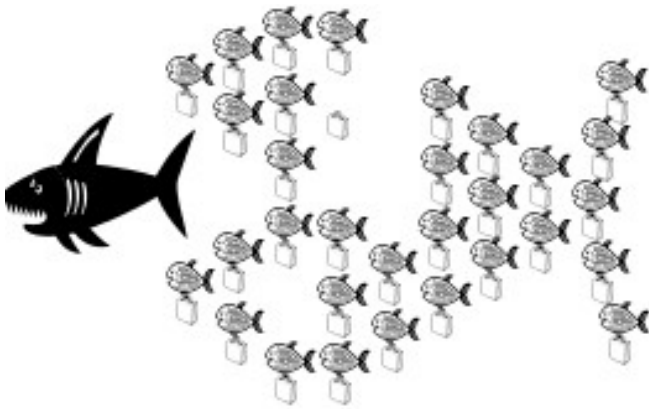
¹ Bernhardt, Annette, et al. "Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities." (2010).

² See AAA-Employment Arbitration Rules and Mediation Procedures.

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\$5,000 for the arbitration cost itself, plus the employee's attorneys' fees on top of its own attorneys' fees, all in addition to the underlying claim. Suddenly, a \$2,800 claim can cost an employer over \$15,000. If only 150 of the 1,000 employees were to bring a claim to arbitration, the costs to the company could exceed the amount owed to the entire class.



Of course, this type of organized legal strategy can only work by coordinating the efforts of a rich network of practitioners trained to assist workers in bringing their claims to arbitration. To that end, the Labor & Employment Committee, in

partnership with allies both inside and outside NLG, is seeking to recruit and train a number of lawyers and law students to arbitrate wage theft claims. As part of the training process, the Committee is developing a CLE that will help practitioners understand how to represent low wage workers at arbitration, something the Committee is confident that lawyers and law

students already have the skills and knowledge to do with only limited additional training. By recruiting, training and coordinating the efforts of a reliable network of lawyers and law students who can successfully arbitrate wage theft claims, the

Committee is hopeful

it can fill a needed advocacy gap, hold employers accountable and potentially provide a model that can be replicated in other parts of the country.

As progressive lawyers and legal



workers, it is imperative that NLG members advocate for vulnerable low wage employees and fight back against employers who attempt to shield themselves from wage theft liability through forced arbitration. In the coming months, the Labor & Employment Committee will be rolling out its program to help local lawyers, law students, and legal workers get involved in the fight against forced arbitration. If you want to be a part of this important effort, please contact Randy Choiniere at 312-860-4617 or choiniere.randy@gmail.com. You may also join the Labor & Employment Committee at its next meeting on Thursday, January 29 at 6pm at Cardozo's Pub (170 W. Washington).

2015 Midwest Regional Conference in St. Louis

Midwest NLG:

It is that time of year again! Save the date for our annual regional conference, this year to be appropriately held in St. Louis, Missouri. We will gather at the St. Louis University Law School in downtown St. Louis.

Friday Night 3/20 - Welcome Party

Saturday 3/21 - Conference & Dinner

Sunday Morning 3/22 - Conference & Meetings

Mark your calendars and plan your road trips! Join the Midwest NLG as we stand with St. Louis.

Registration and housing information to follow.

Committee Updates

Labor & Employment

After a relatively quiet end to 2014 for the Labor & Employment Committee, the Committee will be starting off 2015 with a flurry of exciting activities.

In conjunction with the Chicago Teachers Union (CTU), the Committee is planning a book signing event for renowned Chicago labor lawyer Thomas Geoghegan's new book entitled "Only One Thing Can Save Us: Why Our Country Needs a New Kind of Labor Movement." The book signing event will take place on Thursday, February 5 at 5:30 at the CTU headquarters located at 222 Merchandise Mart Plaza, 4th floor.

The Committee is also planning to launch a new project to train and recruit local lawyers and law students to represent low wage workers who have been forced into arbitrating their wage theft claims. An upcoming CLE on arbitrating employment claims is forthcoming, and we hope many local NLG members will help our effort to fight back against forced arbitration and class action waivers. More details about the project will be coming soon. The L&EC's first meeting of 2015 will take place on Thursday, January 29 at 6pm at Cardozo's Pub (170 W. Washington). Anyone who wants to get involved with the committee can contact Randy Choiniere at choiniere.randy@gmail.com.

National Police Accountability Project (NPAP)

The Chicago chapter of the National Police Accountability Project continues to be an active committee of the NLG. At our meetings, we have Chicago NPAP members present on issues of interest to civil rights attorneys (and law students) in the Chicago area. We have an active email list which is a good source of helpful advice, applicable legal documents and commiseration or congratulations depending on the outcome of our civil rights cases.

In November, we sponsored our third annual benefit for national NPAP at Nellie's Puerto Rican restaurant. Delicious food, good company, our own Chicago NPAP trivial pursuit game and prizes all contributed to a successful fundraiser.

Our January 12 meeting took place at 300 W. Adams, 2nd Floor, with a reception from 5:30 - 6:00, and a presentation and discussion from 6:00 - 8:00. Attorneys received 2 CLE credits. The topic Spoilation of Evidence was presented by Attorney Jared Kosolgrad. Judge Grady recently awarded Jared sanctions against the State's Attorney's office for destroying underlying criminal misdemeanor files in his pending false arrest and malicious prosecution lawsuit.

Our next meeting, tentatively scheduled for the end of February or beginning of March, will be a presentation by Irene Dymkar on the state's use of J. Doe warrants, and how to challenge the use of anonymous informants in civil rights cases.

For more information contact Janine Hoft at People's Law Office, 773-235-0070

Next Gen

The next NextGen meeting will be held next Tuesday, January 20 at 6pm at Cardozo's Pub (170 W. Washington). Remember: NextGen meetings will now be held on the third Tuesday of each month, so put it in your calendars!



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Queer Caucus

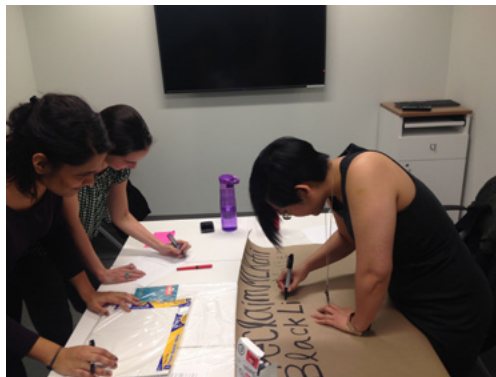
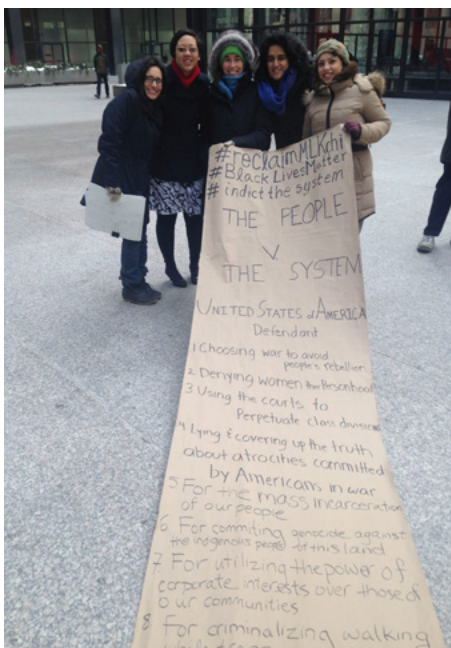
The Chi-NLG Queer Caucus has scheduled its first monthly meeting of 2015 for Friday, January 23 at 6:00pm at Stone Soup Co-Op on Ashland (between Wilson and Leland in Uptown). Building off of momentum from the December 2014 meeting, we will discuss further areas of interest for the group and make decisions about issues to take up in 2015. We're also in conversation on structure of the group. Issues presented so far are LGBTQ Youth Homelessness and Trans Rights, especially folks in the prison industrial complex.

The meeting is of course open to NLG members no matter how you identify that are interested in being part of the Chi-NLG Queer Caucus and can contact Noah Stein via e-mail - noahmstein@gmail.com

The United People of Color Caucus (TUPOCC)

On January 15, 2015, TUPOCC Chicago heeded the call from youth of color for solidarity actions that reclaim the radical legacy of Dr. Martin Luther King, Jr. That day, the radical legal community of color and its allies indicted the system for systematically controlling, devaluing, and breaking up communities of color and all other marginalized communities - women, immigrants, the disability community, the queer, trans, intersex, and HIV positive communities, and religious minorities - to name a few.

TUPOCC members unfurled a large scroll that stated the people's indictment against the United States of America. Members took turns reading out dozens of counts and then the People's Judge, Chapter Administrator, Remigio Torres, found the United States guilty of all crimes! The group ended the action with a demand for reparations for communities of color, for all marginalized communities, and specifically for police torture survivors in Chicago.



All photos courtesy of TUPOCC Chicago



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TUPOCC will be offering two free CLEs in the coming weeks. On Thursday, January 22nd at DePaul College of Law, 25 E. Jackson, Room 242, from 12:00pm-1:15pm, a panel including Candace Moore, Staff Attorney at Chicago Lawyers Committee for Civil Rights Under Law, and Jesus "Chuy" Garcia, Cook County Commissioner and Candidate for Mayor, who will discuss how restorative justice can be used to stop the "school-to-prison-pipeline" in Chicago's public schools. Join the Facebook event here: <https://www.facebook.com/events/774443579314956/>.

On Tuesday, January 27th at 12:00pm-1:15pm, in honor of Fred Korematsu Day, a special screening of the documentary "Of Civil Rights and Wrongs" will be held, followed by reflections from panelists including Bill Yoshino, Japanese American Citizens League, Rabya Khan, Council on American-Islamic Relations, and Shubra Ohri, People's Law Office. The event will be held at a law school in the loop, and more location details will be announced soon. Join the Facebook event here: <https://www.facebook.com/events/1056775734348423/>.

To keep up with TUPOCC Chicago, please follow our new twitter account: @TUPOCC_Chicago.



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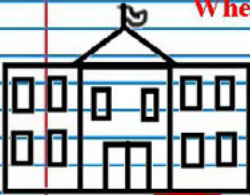
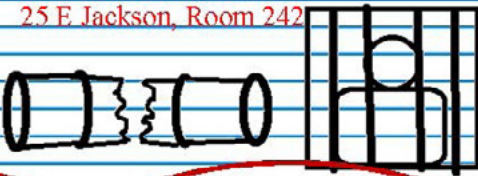
Stopping the School-to-Prison Pipeline

Using Restorative Justice to Stop the Criminalization of Black and Latino Youth in Chicago Public Schools

When: January 22, 2015

Time: 12:00 - 1:15PM

Where: DePaul College of Law
25 E. Jackson, Room 242

In Chicago, Black students and children with special education needs are suspended and expelled at particularly high rates.

The "School-to-Prison Pipeline" describes the reality that many young people are pushed out of school into the juvenile and adult legal systems because of harsh discipline policies, high stakes testing, police involvement in schools, and social oppression.

✓ **Candace Moore**, Staff Attorney at Chicago Lawyers Committee for Civil Rights Under the Law

✓ **Jesus "Chuy" Garcia**, Cook County Commissioner and Candidate for Chicago Mayor

This CLE panel will discuss the system and structure for suspension and expulsion, and how the principles of restorative/transformational justice are being implemented through programs inside Chicago Public Schools, community education workshops, and recent legislation. Speakers will share successful models, best practices, challenges, and ways to get involved.

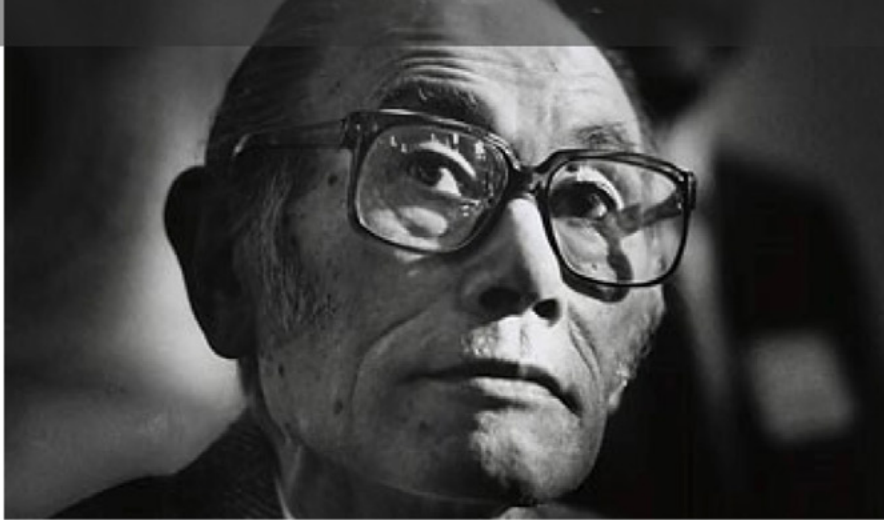
This Free CLE is presented by NLG Chicago's The United People Of Color Caucus and NLG DePaul Chapter

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IN HONOR OF FRED KOREMATSU DAY, A SPECIAL SCREENING:

OF CIVIL WRONGS AND RIGHTS



Tuesday, January 27th, 12pm-1:30pm

Location in the Loop TBA

Documentary screening and reflections by:

Bill Yoshino

Japanese American Citizens League

Rabya Khan

Council on American-Islamic Relations

Shubra Ohri

People's Law Office

Sponsors: CAIR-Chicago, National Lawyers Guild-Chicago TUPOCC, Japanese American Citizens League, Sargent Shriver National Center on Poverty Law, The Chicago International Social Change Film Festival, Muslim Bar Association of Chicago, National Asian Pacific American Women's Forum-Chicago

Student Group Sponsors: Chicago-Kent NLG Chapter, APALSA, ACS, Law Students for Reproductive Justice

***Free CLE
credit***

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