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# LESSONS IN MOVEMENT LAWYERING FROM THE FERGUSON UPRISING

*by Maggie Ellinger-Locke\**

## I. Introduction

Michael Brown was killed by Officer Darren Wilson on August 9, 2014.<sup>1</sup> That day, I was on vacation in Michigan with my family, hanging on the beach and playing in the water. My father passed away from liver cancer exactly four months before, and I made the decision to close down his law practice in the St. Louis, Missouri area, and move to Washington, DC, where my long-term partner had taken a job. The trip to Michigan was supposed to be a stopover on my way to DC; my car was packed to the brim.

Over the next few days I sat glued to Twitter, watching community members assemble around Canfield Drive, the place where Mike Brown's body laid baking for hours in the hot August sun. I watched the community turn from shock to anger, saw that anger boil over and take action. A QuickTrip gas station was set ablaze, businesses up and down West Florissant Avenue had their windows broken. People were chanting and marching, and their numbers were growing.

I sent emails to the listserv of the St. Louis Chapter of the National Lawyers Guild (NLG):<sup>2</sup> "What is going

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1 *Michael Brown is Killed by a Police Officer in Ferguson, Missouri*, HIST. (Aug. 6, 2020), <https://www.history.com/this-day-in-history/michael-brown-killed-by-police-ferguson-mo>.

2 *About*, NAT'L LAWS. GUILD, <https://www.nlg.org/about/> (last

on? Is anyone there to offer to help?" It was summer, others too were on vacation, and there was a clear need for legal support to the budding resistance on the ground. After several days of pulling out my hair and hemming about what to do, I decided to put my DC move on hold, and drove back to St. Louis.

This is the story of one person's experience supporting a significant movement moment. This is not the story of that movement, nor even of the legal-support infrastructure that supported that movement. This is just the work I did on the ground for a year in the St. Louis area, defending Ferguson frontliners and helping to organize all aspects of legal support. My hope is that other movement lawyers will find my experiences helpful in their own journeys.<sup>3</sup>

## II. Finding Beauty through Community

When I arrived in St. Louis, I reached out to the national office of the National Lawyers Guild (NLG) for help. Several longtime legal-support organizers answered the call. My mother opened her home to the dozens of people heading to town to help out; some stayed for months.

We started training people to be NLG legal observers (LOs). LOs observe law enforcement conduct directed at protesters during First Amendment-protected activities. Guildies came from all over, helping to set up legal-support infrastructure and train people to serve the movement as LOs.<sup>4</sup>

Among others, this included Blair Anderson of Detroit. Anderson is an original member of the Black Panther Party.<sup>5</sup> He was at the apartment the night Chi-

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visited Apr. 22, 2023). The National Lawyers Guild (NLG) is the country's oldest progressive bar association. Founded in 1937 because the American Bar Association refused to allow in Black and Jewish lawyers, NLG has worked on the frontlines of movements ever since, providing support to the Freedom Riders, the Attica Brothers, the Global Justice Movement, and more.

3 See generally Amanda Alexander, *Nurturing Freedom Dreams: An Approach to Movement Lawyering in the Black Lives Matter Era*, 5 HOW. HUM. & CIV. RTS. L. REV. 101 (2021) (informing the author's definition of movement lawyering).

4 "Guildies" is a nickname for members of the National Lawyers Guild.

5 The Black Panthers were a revolutionary Marxist political organization dedicated community self-determination and the end of

Chicago police assassinated Fred Hampton.<sup>6</sup> Police shot Anderson three times, and he would end up spending decades in prison. Only recently released, Anderson told me he believes legal observing is a powerful way to support racial justice movements. We became comrades and he stayed for weeks, training and inspiring mostly young Black activists.

Legal observers deployed nightly to the protests, suffering from the effects of chemical weapons and subjecting ourselves to being targets for police violence.<sup>7</sup> For weeks, every night we hit the streets, donning neon-green LO hats and writing notes about what we saw. In the mornings I attended bond hearings for people arrested the night before. Sometimes the tear gas would still be clinging to my hair in court. I had more than one judge comment on this, despite the frigid showers I would take when I got home from the actions.<sup>8</sup> After a month or so of this, my hair temporarily turned white. I was only 31 years old.

Our days were filled with organizing, visiting jails and courthouses, attending meetings, answering phone calls, and trying to catch up on sleep. At night we attended the protests, which were a fifteen-minute drive away from my home. After experiencing and witnessing violence every night, it was difficult for us to fall asleep when we got back to my mother's home in University City, often around three or four in the morning. We would stay up until sunrise and process the violence and trade stories from other resistance movements we had been part of. NLG's interim executive director jokingly called my mother's home "anarchist summer camp." And in a lot of ways, that is exactly what it was.

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white supremacy. See *A Brief History of Civil Rights in the United States: The Black Panther Party*, HOW. UNIV. SCH. OF L. (Jan. 6, 2023, 12:25 PM), <https://library.law.howard.edu/civilrightshistory/bpp>.

6 Alicia Maynard, *The Assassination of Fred Hampton*, DIGITAL CHICAGO, <https://digitalchicagohistory.org/exhibits/show/fred-hampton-50th/the-assassination> (last visited Mar. 23, 2023).

7 See *National Lawyers Guild Condemns Ongoing Arrests of Legal Observers in Ferguson*, NAT'L LAWS. GUILD (Aug. 26, 2014), <https://www.nlg.org/national-lawyers-guild-condemns-ongoing-arrests-of-legal-observers-in-ferguson/>.

8 Taking warm or hot showers will open your pores and reactivate tear gas long after its effects have otherwise worn off.

As time went on, the Uprising became more organized. People who had never met formed deep bonds after supporting each other in the streets every night. And the police continued to meet the movement with violence.<sup>9</sup>

While much of the experience in the streets was brutal, there were also moments of beauty. The most beautiful action I have experienced—before or after Ferguson—happened around the mass mobilization, "Ferguson October." A couple of artists organized a group of us to attend the St. Louis Symphony, buying tickets that were dispersed around Powell Symphony Hall. After intermission and just as the conductor was set to begin the next piece, at the back of the hall Derek Laney, a local artist and activist, sang loudly "Which side are you on? Which side are you on? Justice for Mike Brown means justice for us all," set to the tune of the old labor ballad.<sup>10</sup>

One-by-one those of us in on the action stood up and joined in the singing. Activists seated in the balcony dropped a series of banners with messaging asking the crowd to pick a side, and rained down leaflets talking about the protest. Eventually we left the hall, tears streaming down our faces. The action was mostly well-received by the crowd, and the symphony continued with its program after we left.

This experience offered a crucial lesson in movement legal organizing—you cannot just support activists with representation and organizing. To sustain the stamina that this work demands, you must connect with your heart as well.<sup>11</sup> After the symphony action I was rejuvenated, finding joy in the work and building community with artists, not just those holding down traditional infrastructure. And I was able to move forward with a deeper vision, embraced by an even more dynamic community.

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9 *2 Officers Injured in Ferguson; 5 Arrested*, KSDK-TV (Sept. 24, 2014), <https://www.ksdk.com/article/news/local/2-officers-injured-in-ferguson-5-arrested/63-278820562>.

10 See St. Louis American, *Demonstrators 'Disrupt' STL Symphony Singing a 'Requiem for Mike Brown'*, YOUTUBE (Oct. 5, 2014), [https://www.youtube.com/watch?v=T\\_7ErkQFduQ](https://www.youtube.com/watch?v=T_7ErkQFduQ).

11 Marika Dias, *Paradox and Possibility: Movement Lawyering During the COVID-19 Housing Crisis*, 24 CUNY L. REV. 173 (2021).

### III. Supporting Protest: Accountability, Collaboration, and Infrastructure-Building

Ferguson, Missouri, is an inner-ring suburb of St. Louis. I had represented people in its municipal court. When I arrived from Michigan, I found a party atmosphere—people were dancing on top of cars and in the street, openly consuming cannabis, and playing music. It was a true liberation zone. I also saw the vigil of flowers and teddy bears erected where Mike Brown's body laid, the pavement still stained with his blood.

That night police violence descended. Tear gas filled city blocks, the police beat and arrested dozens of protesters. Police arrested two reporters who were charging their phones at a McDonald's.<sup>12</sup> Reporters from all over the world assembled to video and broadcast the events.

I will never forget having a member of the National Guard perched atop an armored truck train his rifle on me. Law enforcement went out of their way to terrorize the protesters. Many wore "I am Darren Wilson" wristbands. They jeered and spat on us. They beat people indiscriminately, and nightly. When shooting rubber bullets into the crowd they targeted well-known organizers, street medics, and legal observers.<sup>13</sup> It would be years before I could handle being around fireworks again—the sound and the shower of sparks from the volleys of tear gas reminded me too much of these events.

News reports generally focused on the City of Ferguson, but many missed the unique context that led in significant part to the conditions that created rebellion—the St. Louis County municipal court system. Had Michael Brown been killed a few blocks to the north he would have been in Delwood; a few blocks to the south the hashtag might have been Jennings. Each municipality fits into a larger network of policing and

12 Ravi Somaiya & Ashley Southall, *Arrested in Ferguson Last Year, 2 Reporters Are Charged*, N.Y. TIMES (Aug. 10, 2015), <https://www.nytimes.com/2015/08/11/us/arrested-in-ferguson-2014-washington-post-reporter-wesley-lowery-is-charged.html>.

13 See, e.g., *Rubber Bullets, Tear Gas and Jail: Ferguson Police Crack Down on Journalists Covering Protests*, DEMOCRACY NOW (Aug. 20, 2014), [https://www.democracynow.org/2014/8/20/rubber\\_bullets\\_tear\\_gas\\_and\\_jail](https://www.democracynow.org/2014/8/20/rubber_bullets_tear_gas_and_jail).

control, creating a structure uniting the whole region.<sup>14</sup>

The framework for St. Louis County's municipal courts dates back to 1861, when the City of St. Louis split from the County. Locals call it "The Great Divorce." Balkanization of the County followed, frequently through the creation of new, racially restricted residential areas. The U.S. Supreme Court deemed the racial covenants that supported these communities unenforceable in *Shelley v. Kramer*, a case not-so-incidentally from St. Louis's Central West End neighborhood.<sup>15</sup> Years later, in that same gated neighborhood, images of a white couple haphazardly training weapons on mostly Black activists would go viral.<sup>16</sup>

By 2014, St. Louis County had ninety municipalities.<sup>17</sup> Some were large, upwards of 50,000 people.<sup>18</sup> Others were small; one municipality had just twelve people.<sup>19</sup> Each one had its own municipal code—ninety different sets of laws, governing 523 square miles between them, where about one million people live.<sup>20</sup> That number is small though; most people who live in the St. Louis area (approximately 2.8 million people), whether in the City or in adjoining counties, have reason to go to St. Louis County and its labyrinth of municipalities at some point. Most of those municipalities had their own police force, and eighty-one had their own court system.<sup>21</sup>

By statute, public defenders cannot represent clients outside of the state court system, so defendants in municipal court often go unrepresented.<sup>22</sup> Judges

14 Brendan Roediger, *Abolish Municipal Courts: A Response to Professor Natapoff*, 134 HARV. L. REV. F. 213 (2021).

15 *Shelley v. Kramer*, 334 U.S. 1, 20 (1948) (holding that racially restricting covenants violate equal protection).

16 Rachel Lippmann, *Central West End Couple Who Pointed Guns at Protesters Plead Guilty*, ST. LOUIS PUB. RADIO (June 17, 2021, 3:24 PM), <https://news.stlpublicradio.org/law-order/2021-06-17/central-west-end-couple-who-pointed-guns-at-protesters-pleads-guilty>.

17 THOMAS HARVEY, ET AL., ARCHCITY DEFENDERS: MUNICIPAL COURT WHITE PAPER 6 (2014), <https://www.archcitydefenders.org/wp-content/uploads/2019/03/ArchCity-Defenders-Municipal-Courts-Whitepaper.pdf>.

18 *Id.*

19 *Id.*

20 *Id.*

21 *Id.*

22 MO. REV. STAT. § 600.42.4(6) (2019).

and prosecutors are usually moonlighting, working elsewhere as private attorneys or even full-time state prosecutors. For example, until his resignation in the aftermath of a U.S. Department of Justice report, Ronald Brockmeyer was Ferguson's judge (its *only* judge), the prosecuting attorney in the nearby City of Florissant, and a private defense attorney in the next county over (St. Charles County).<sup>23</sup>

Municipal courts are designed to deal with civil cases. But many of the cases before them are really “quasi-criminal” in nature.<sup>24</sup> Courts treat cases as if they were criminal without providing defendants with the constitutional protections *theoretically* provided to people facing criminal charges in state court. Because all of this is dependent on a system of policing, or control, warrants and arrests are the most serviceable tool available to the system, and people regularly end up with warrants in multiple municipalities. Thus, after arrest, defendants may be transferred from jail to jail, often spending weeks or longer incarcerated until they can appear in front of a judge. Lawyers refer to this situation as the “muni-shuffle,” shuffling from one tiny jail to another.<sup>25</sup>

This is what our initial legal support team faced when the Uprising started. Activists were being arrested and then immediately lost in the system—so many had multiple municipal warrants. The first thing we needed was a way to locate activists and pay the sums to get them out of jail.

In stepped Missourians Organizing for Reform and Empowerment (MORE). MORE used its own land-line number to serve as jail support so arrestees could place a call and talk to someone at the MORE office.<sup>26</sup>

23 Nicolás Medina Mora, *7 Curious Facts About the Ferguson Municipal Judge*, BUZZFEED NEWS (Mar. 6, 2015, 7:58 PM), <https://www.buzzfeednews.com/article/nicolamedinamora/7-curious-facts-about-the-ferguson-municipal-judge>.

24 Mae Quinn & Eirik Cheverud, *Civil Arrest? (Another) St. Louis Case Study in Unconstitutionality*, 52 WASH. UNIV. J. L. & POL'Y (2016).

25 Samuel Lev Rubinstein, *Dismantling Policing for Profit: How to Build on Missouri's Post-Ferguson Court Reforms*, 54 UNIV. MICH. J.L. REFORM 953 (2021).

26 MORE no longer exists, but for more on their role during the movement see *Ferguson Legal Defense Committee Circa 2015*, FERGUSON LEGAL DEF., <https://www.fergusonlegaldefense.com/> (last visited Apr. 22, 2023).

Within a few months, over one hundred volunteers would end up staffing the hotline. Along with MORE's leadership a group of us launched a Ferguson Legal Collective (the Collective), initially comprising of defendant-activists facing felony charges and their supporters. This group worked to ensure everyone knew their next court date, had a ride to court, knew how to reach their lawyer, and had other holistic support.<sup>27</sup>

A separate part of the Collective took on organizing criminal-defense counsel, with a mission to secure individual representation and bond reductions for people with serious state-court charges. We were in a rapid-response moment and not focused on internal political alignment, counsel's range of experience working with activists, or ensuring strong communication between defendants and lawyers. Looking back, this was a serious mistake, and an important lesson learned. Movement cases require attorneys who understand movement cases—their political element creates important nuances for fulsome representation and client interaction.<sup>28</sup> And not everyone who volunteers shows up for the right reasons. Newsworthy events bring out attorneys looking to turn a buck, or to gain notoriety. Even experienced criminal attorneys can put themselves at a disadvantage by ignoring the political nature of cases like these. Now I know, having movement-aligned counsel is a top concern for building out criminal-defense capacity during movement moments.<sup>29</sup>

Another lesson we learned was the importance of making sure the people we represented were movement-aligned, or at least sympathetic. On occasion far-right groups would attend protests to counter-demonstrate. I was inadvertently assigned to represent one such counter-demonstrator. Upon meeting this client in the attorney interview room at the jail, I was sur-

27 See Irina Ceric, *Lawyering from Below: Activist Legal Support in Contemporary Canada and the US* (Oct. 2020) (PhD Dissertation, Osgoode Hall Law School of York University), [https://yorkspace.library.yorku.ca/xmlui/bitstream/handle/10315/38157/Ceric\\_Irina\\_2020\\_PhD.pdf?sequence=2&isAllowed=y](https://yorkspace.library.yorku.ca/xmlui/bitstream/handle/10315/38157/Ceric_Irina_2020_PhD.pdf?sequence=2&isAllowed=y) (discussing legal collectives and the role they can play in social justice movements).

28 Justin Hansford, *Demosprudence on Trial: Ethics for Lawyers in Ferguson and Beyond*, 85 FORDHAM L. REV. 2057, 2076 (2017).

29 William Quigley, *Ten Ways of Looking at Movement Lawyering*, 5 HOW. HUM. & CIV. RTS. L. REV. 23 (2020).



prised to learn he was openly hostile to the movement. He also did not realize a movement-aligned lawyer was set to handle his case. We both quickly ensured he secured representation elsewhere. While of course everyone should benefit from representation, there was no reason I, or any other movement lawyer, needed to be the one to provide it. Contrary to, say, the philosophy of John Adams, it is okay for lawyers to have a political, and to consider that political carefully when taking clients. Far-right activists can find their own lawyers.

Moving forward, we were much more discerning in connecting lawyers and clients. Running a large-scale jail support effort is challenging. Coordinating dozens of volunteers every night was how I spent much of my time; it was basically a crash course in management and systems administration. Much of my work was spent organizing or coordinating legal observers.

The legal team—including our LOs—were mostly white. Necessarily much of our work focused on antiracism. Nearly a year after the fact, I learned of a Black lawyer who came to town to help out. When she arrived for an LO training, a white LO turned her away. The volunteer at the check-in table told her, “[T]his training is for lawyers, the know your rights training is later today.” Translated out of a white gaze, what the LO did was assume this volunteer was not a lawyer because of her Black skin. Putting aside that the LO incorrectly believed only lawyers could serve as LOs, the microaggression perpetuated on this out-of-town lawyer was unacceptable.

When I heard this happened, I was horrified. I immediately reached out to the lawyer and apologized on behalf of the St. Louis NLG Chapter. This was a lesson in institutional accountability and antiracism for me; of course, I took responsibility for what took place. As an LO coordinator and chapter leader, I had a duty to account for the actions of those I helped train. This was not only an individual error on the part of the white LO, it was an institutional failure on the part of the NLG. We need to attack the ways whiteness shows up and causes harm in movement spaces.

#### IV. Proactive Civil Litigation—Victories in the Streets

##### A. Fighting for Community Demands, with a Dose of Creativity

Shortly after Darren Wilson killed Mike Brown, St. Louis County Prosecuting Attorney Robert (Bob) McCulloch opened a grand jury investigation into it.<sup>30</sup> The grand jury is an incredibly powerful tool for the prosecutor. They control entirely what information the grand jury receives—from evidence to witnesses to legal arguments. Hence the adage that a prosecutor can get a grand jury to indict a ham sandwich.<sup>31</sup>

McCulloch could have charged Wilson with murder himself by criminal information, as many demanded; he chose the grand jury route instead. So, when he held a press conference on November 24, 2014, and announced that the grand jury had returned a “no true bill,” i.e., declined to indict Officer Wilson on *any* charge, people were outraged.<sup>32</sup> The decision against indictment aside, McCulloch made it all the more insulting by blaming a grand jury for it, one he controlled.<sup>33</sup>

We worked with activists on a plan to call out McCulloch in court. Missouri has a peculiar *writ of quo warranto*<sup>34</sup> statute. It permits prosecutors to file ouster suits against elected officials accused of failing to fulfill their office’s duties. It also creates a complaint system. If someone files an affidavit in court about an elected official’s failure, it gets referred to the local prosecutor’s office. But if the affidavit is about the local prosecutor, then a court can appoint a special prosecutor to inves-

30 Frances Robels and Michael Schmidt, *Shooting Accounts Differ as Holder Schedules Visit to Ferguson*, N.Y. TIMES (Aug. 19, 2014), <https://www.nytimes.com/2014/08/20/us/shooting-accounts-differ-as-holder-schedules-visit.html>

31 Josh Levin, *The Judge Who Coined “Indict a Ham Sandwich” Was Himself Indicted*, SLATE (Nov. 25, 2014, 1:20 PM), <https://slate.com/human-interest/2014/11/sol-wachtler-the-judge-who-coined-indict-a-ham-sandwich-was-himself-indicted.html>.

32 CNN, *(Full Video) Ferguson Grand Jury Announcement*, YOUTUBE (Nov. 25, 2014), [https://www.youtube.com/watch?v=dd5sQEI\\_chs](https://www.youtube.com/watch?v=dd5sQEI_chs).

33 David Feige, *The Independent Grand Jury That Wasn’t*, SLATE (Nov. 25, 2014, 11:17 AM), <https://slate.com/news-and-politics/2014/11/ferguson-grand-jury-announcement-prosecutor-robert-mcculloch-influenced-the-proceedings.html>.

34 Quo warranto, Latin for “by what authority.”

tigate it. That is what we wanted.

Specifically, we wanted the special prosecutor to show how McCulloch had gamed the grand jury into a no true bill. And we were not just speculating. McCulloch had released the grand jury transcripts to the press. They showed that his office designed the proceedings to vindicate Darren Wilson's version of events. And perhaps, we hoped, that breach of public trust would be enough for the special prosecutor to bring an ouster suit.

Over many hours we argued the facts and case law and even brought in an expert witness at the judge's request to testify.<sup>35</sup> Still, it was a toss-up, because the statute left the appointment of the special prosecutor to the trial judge's discretion. Ultimately, we lost—well, we lost in court anyway. But the exercise shows that even when you lose in court, you can advance movement goals. The press and the public understood our gripe. Some of the organizers involved with the suit would organize the “Bye Bob” campaign,<sup>36</sup> leading to McCulloch's defeat to a primary challenger in the next election.<sup>37</sup> Our ouster goal was met, even if the mechanism we used was not successful. Winning can take many forms, and movement victories do not always lie in a courtroom.

As an abolitionist, I had mixed feelings about our legal theory.<sup>38</sup> Some might argue that we were pushing for the indictment, conviction, and imprisoning of Darren Wilson. I do not believe human beings should be locked into cages. But the suit was not actually pushing for this result. We merely sought the appointment of a special prosecutor to examine the way the prosecutor's office conducted the Darren Wilson grand jury. It is also worth naming that the Justice for Mike Brown

35 J. Dismissing Req. for Appointment of Special Prosecutor with Prejudice to Refiling Same, *Simmons v. McCulloch* 15SL-CC000177, St. Louis Cnty. Cir. Ct. (July 2, 2015), <https://www.documentcloud.org/documents/2158912-mcculloch-order.html>.

36 Matt Ferner, *How Activists Ousted St. Louis County's Notorious Top Prosecutor Bob McCulloch*, HUFFINGTON POST (Aug. 11, 2018), [https://www.huffpost.com/entry/st-louis-county-missouri-prosecutor-bob-mcculloch-defeat\\_n\\_5b6e0c96e4b-0530743c9f032](https://www.huffpost.com/entry/st-louis-county-missouri-prosecutor-bob-mcculloch-defeat_n_5b6e0c96e4b-0530743c9f032).

37 Note: McCulloch had won the Democratic Party primary in 2014 a few days before Wilson killed Mike Brown, so electioneering was not an immediate solution then.

38 See generally DERECKA PURNELL, BECOMING ABOLITIONISTS: POLICE, PROTESTS, AND THE PURSUIT OF FREEDOM (2021).

movement was not explicitly abolitionist. Years later, during the uprising sparked by George Floyd's murder, the movement would be much more abolitionist in scope, rallying around “defund the police.”<sup>39</sup> But that time had not yet come. The rallying cry of this movement was, as we chanted in the streets: “Indict, convict, send that killer cop to jail, the whole damn system, is guilty as hell.”<sup>40</sup> This powerful chant confused me: how can one simultaneously argue the whole system is flawed, while in the same breath seek to use its measures of accountability? Was that not the point, that the system's accountability measures *do not work*? Even better, that those measures are designed to *uphold* racial capitalism? This internal confusion on messaging illustrates the complexity we faced. White supremacy is a complex system, and there are not easy solutions to defeat it.

This provided another powerful lesson: how can we stay true to our values while uplifting the demands of those on the street? Organizing and movement work can be messy, and things are not always cut and dry. I had an opportunity to pursue movement goals through creative lawyering, but the strategy did not feel revolutionary, at least not fully revolutionary—we were using the system and its contradictions, exploiting those contradictions, but we were not advancing an abolitionist world.

### *B. Arrested in the Street, then Back to Court*

For the one-year anniversary of Mike Brown's death, activists planned actions throughout the city. Activists who had visited early on were coming back to show support, and we expected large numbers in the streets. One action took place on Interstate 70, at the bridge over the Missouri River, the dividing line between St. Louis and St. Charles Counties. Over sixty people took part; activists used barriers to bring traffic to a halt going both directions across the bridge.<sup>41</sup>

39 Sonali Kolhatkar, *An Abolitionist Makes a Case for “No More Police”*, YES MAG. (Oct. 3, 2022), <https://www.yesmagazine.org/social-justice/2022/10/03/police-safety-abolition>.

40 Rachel Colyer, *Indict. Convict. Send that Killer Cop to Jail. The Whole Damn System Is Guilty As Hell.*, DAILY KOS (Oct. 13, 2014), <https://www.dailykos.com/stories/2014/10/13/1336250/-Indict-Convict-Send-that-killer-cop-to-jail-The-whole-damn-system-is-guilty-as-hell>.

41 Joe Millitzer, *Car Breaks Through Protesters Shutting Down I-70*

I attended as a legal observer. After the action ended, the group left the highway, and we made our way down the embankment to where our cars were parked. There, we were met by police, who quickly moved in and arrested all of us. They placed our hands behind our backs and secured them with plastic cuffs.

Police moved us onto school buses where we waited, the hot August sun bearing down like it had a year before. We were eventually transported to a processing facility in Wellston, not far from my mother's home. After each one of us was processed we were put back onto the bus and taken to the St. Louis County jail.

I visited this jail dozens of times over the years, but this was the first time I did not use the visitor entrance. Once inside we were divided into groups for additional processing. My group was jovial but defiant, and we used the time to get to know one another. While we were originally supposed to be processed early, we were bumped to the back of the line because we were laughing so loudly. That meant we had to remain cuffed until we reached the main room of the jail. In my case that was not until nearly 5:00 a.m. I spent over twelve hours in the plastic cuffs.

Once we were finally in the main room, I made my way to the phone and called jail support. I was assured they were working furiously on the outside to support us, as I knew they would be. One of my comrades kindly offered me her lap, and I laid down and tried to rest for a bit while waiting to be released.

Finally, my name was called. I went outside to find my partner had taken the red eye from Washington D.C. and was there to embrace me. A street medic rubbed oils into my swollen wrists; it would take days for feeling to fully return to my fingers. Our cars were all impounded, and the movement provided funds to help us get them out. Soon thereafter I was finally able to get some sleep.

When I woke, we headed to a meeting of advocates at Mokabe's Coffee Shop to talk about the legal needs of the movement. There we discussed the charge we had

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on "Moral Monday", Fox 2 Now (Aug. 10, 2015, 5:26 PM), <https://fox2now.com/news/protesters-shut-down-i-70-near-blanchette-bridge/>.

all been arrested under, St. Louis County Ordinance Section 701.110, "Interfering with an Officer Unlawful." The ordinance reads makes it "unlawful for any person to interfere in any manner with a police officer or other employee of the County in the performance of his official duties or to obstruct him in any manner whatsoever while performing any duty."<sup>42</sup>

We thought that language violated the federal and state constitutions—namely, that it was so vague as to violate due process, and so broad as to criminalize a substantial amount of protected speech. It lacked a mens rea, and it allowed for violations in "any" manner, which would include constitutionally-protected activity. Case law was on our side. Police had used it to arrest hundreds, if not thousands, of protesters, merely a pretext for arrests—including the two journalists I noted earlier. Surely once examined, the courts would strike it down.

Unfortunately, that did not happen, but we found more legal success than the first case. At the trial court level, we survived a motion to dismiss but then lost on the merits. We appealed and received a limiting instruction from the appellate court—now police can apply the ordinance only to physical interference.<sup>43</sup> Verbal interference, or just auditory interference, was not enough. We had hoped for more, but this limited instruction has stopped prosecutions of verbal conduct under the ordinance, and we believe the case prevented the prosecutions of myself and everyone else arrested at the highway action. The case outlasted the statute of limitations for the highway action, and the County stopped charging demonstrators under the Ordinance once we filed our challenge. So again, victory can come in many ways.

## V. Conclusion

Nearly ten years since these events unfolded, the lessons I learned stay with me today. I still find beauty in community, seek to build protest infrastructure that is accountable to movements, and believe that most victories unfold in the streets, not in the courtrooms. It was a difficult time, where the paths of so many social justice advocates were launched or reborn. Many of us

<sup>42</sup> ST. LOUIS, MO, ORDINANCE NO. 16845 § 701.110 (2022).

<sup>43</sup> *Bennett v. St. Louis Cnty.*, 542 S.W.3d 392 (Mo. App. E.D. 2017).



put our lives on hold to contribute to the movement. I am grateful to have played the small role I did. I hope other movement legal workers will benefit from this story, and lean into nuance and complexity in their own paths. And together we will help lay the groundwork for future revolutionary activity.

*“It is our duty to fight for our freedom.*

*It is our duty to win.*

*We must love each other and support each other.*

*We have nothing to lose but our chains.”<sup>44</sup>*

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<sup>44</sup> ASSATA SHAKUR, ASSATA: AN AUTOBIOGRAPHY 52 (Lawrence Hill Books 1988).