# Mass Dissent

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**BOARD MEETING**

**February 17, 6:00pm**

14 Beacon St., 1st Fl.
Boston

## *The Left Take on the Economic Crisis*

We include in this issue of *Mass Dissent* various articles on the current financial crisis, together with our regular review concerning the Chapter. Our hope is to present, in a reasonably straightforward and nontechnical way, a discussion of some of the current issues which we think may be particularly interesting to our members.

Among the articles we present, you will find one on the subprime mortgage crisis ("Poster Children for the Collapse"), including Washington Mutual and Fannie Mae, keeping in mind that many of our members are already involved in productive legal work through the NLG Foreclosure Prevention Project to ameliorate some of the harshest effects of the foreclosure crisis. We also think it useful for us on the left to understand at least somewhat the role played by Fannie Mae, which has long served a generally progressive role in our society.

You will also find an article on the recent bailout of the "Big Three" automakers ("A Double Standard for Detroit and Wall Street"), and all the resistance to its relatively minor scale, to help see the resistance to this bailout within the context of anti-union animus. Articles on the need to rethink regulation ("Rethinking Markets, And Rethinking Regulation") and on Wall Street greed ("The New Gilded Age") will, we hope, prove interesting.

And remember, there may be a silver lining to this dark cloud. Without the crisis, John McCain (and Sarah Palin!) could be leading this country. As with any crisis, this one calls upon all of us to devote our energies to assisting those who most need our services and have the fewest resources. Unemployment is the highest it has been in 15 years, foreclosure looms for many, the only companies doing well are MacDonald's and Walmart (really), and our work is cut out for us.

*- Editors -*

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# *Join a Guild Committee*

**Street Law Clinic Project:** The Street Law Clinic project provides workshops for Massachusetts organizations that address legal needs of various communities. Legal education workshops on 4th Amendment Rights (Stop & Search), Landlord/Tenant Disputes, Workers' Rights, Civil Disobedience Defense, Bankruptcy Law, Foreclosure Prevention Law, and Immigration Law are held at community organizations, youth centers, labor unions, shelters, and pre-release centers. If you are a Guild attorney, law student, or legal worker interested in leading a workshop, please contact the project at 617-723-4330 or nlgmass-slc@igc.org.

**Lawyer Referral Service Panel (LRS):** Members of the panel provide legal services at reasonable rates. Referral Service Administrative/Oversight Committee members: Neil Burns, Neil Berman, Joshua Goldstein, Jeremy Robin, and Azizah Yasin. For more information, contact the Referral Service Coordinator at 617-227-7008 or nlgmass@igc.org.

**Foreclosure Prevention Task Force:** Created in June 2008, the Task Force's goal is threefold: (1) to draft and introduce policies that address issues that homeowners and tenants of foreclosed on houses face, (2) to provide legal assistance to these homeowners and tenants, *and* (3) to conduct legal clinics for them. If you are interested in working with the Task Force, please call the office at 617-227-7335.

**Independent Civilian Review Board:** In coalition with the American Friends Service Committee and Greater Boston Civil Rights Coalition, the NLG has been pushing for the creation of an independent civilian board to review complaints against Boston police officers. To get involved in the campaign, please contact the office at 617-227-7335.

**NLG National Immigration Project:** Works to defend and extend the human and civil rights of all immigrants, both documented and undocumented. The Committee works in coalition with community groups to organize support for immigrant rights in the face of right-wing political attacks. For more information contact the NLG National Immigration Project at 617-227-9727.

**NLG Military Law Task Force:** Provides legal advice and assistance to those in the military and to others, especially members of the GIRights Hotline, who are counseling military personnel on their rights. It also provides legal support and helps to find local legal referrals when needed. The MLTF and the Hotline exchange many questions and information through their listserves. Calls to the GIRights Hotline from phones in New England are handled from the AFSC office in Cambridge. To get involved, please contact Neil Berman (njberman2@juno.com) or Marguerite Helen (mugsm@mindspring.com).

**COALITIONS:**

**Jobs with Justice**, a coalition-based organization addressing workers' rights. The NLG is a member of Jobs with Justice; any interested Guild members can attend meetings & events.

# GUILD NEWS

## NLG HAPPY HOUR

The NLG Massachusetts Chapter's Happy Hour - for Guild members and non-Guild members - takes place on the **2nd Wednesday of every month, 5:30 - 7:30pm, at Kennedy's Mid-Town Pub** (44 Province St., 2nd Fl., Boston, close to Suffolk Law School). We hope you will join us for the next NLG Happy Hour on **February 11** - and bring friends!

## MENTORSHIP BRUNCH

The Chapter's annual Mentorship Brunch will be held on a **Saturday in March (date TBA) 12:30-3:30 pm**. Once again, we will be hosted by Nancy Kelly and John Willshire-Carrera in their **Jamaica Plain home**. The brunch serves as a great way for Guild students to meet and develop professional networks with Guild lawyers and legal workers. Please call the office (617-227-7335) for the address.

## Street Law Clinic Report

*The following Guild members conducted trainings for law students and/or clinics for members of Boston area community organizations and agencies:*

***December 5:*** *Workers' Rights* clinic at the Work Place in Boston, by **Jeff Petrucelly**.

***December 9:*** *Immigrant Workers' Rights* clinic at the Home for Little Wanderers in Brookline, by **Bob Warren**.

***December 17:*** *Immigration Law* clinic at Cambridge Cares About AIDS, by **Susan Church**.

***January 13:*** *Stop & Search* clinic at Tempo Young Adult Resource Center in Framingham, by **David Nathanson**.

***January 16:*** *Stop & Search* clinic at United Teen Equality Center in Lowell, by **Benjamin Falkner**.

***January 21:*** *Stop & Search* clinic at Cambridge Family & Children's Services, by **David Milton**.

***January 27:*** *Tenants' Rights* and *Foreclosure* training at New England School of Law, by **Jeff Feuer**.

***January 28:*** *Consumers' Rights & Bankruptcy Law* clinic at the Boston Living Center, by **Neil Berman** and **Deborah Roher**.

***January 29:*** *Foreclosure Prevention* forum at Mildred Ave. Middle School in Mattapan (organized with the City of Boston Councilors, by **Nadine Cohen, Jeff Feuer, Lee Goldstein, and law students Lori Hill** and **Liza Hirsch**.

***January 30:*** *Tenants' Rights* clinic at United Teen Equality Center in Lowell, by **Jeff Feuer**.


## OFFICES FOR RENT WITH NLG MEMBERS

Small office for rent in Cambridge law firm Pressman & Kruskal (Central Sq., next to T stop) with pleasant, relaxed atmosphere. Includes receptionist, phone system, internet, use of conference rooms, kitchen area, library, copier/scanner and fax; possible case referrals. Contact Kurt Pressman at 617-492-2211.

Great Downtown address - large and small offices, includes internet, conference room, copier/printer and fax machine. Perfect location for solo with referral possibilities. Shared space with two other attorneys primarily doing immigration and plaintiff discrimination work. Contact Joshua Daley Paulin at 617-482-4669.

Large sunny office in Cambridge in Central Sq. (two blocks from the T), half-mile from Mass. Pike. Share space with other Guild attorneys with varied practices. Includes receptionist, secretarial services, use of conference room, internet, photocopier, fax. $595/month. Contact Jamie Sabino (Klibaner & Sabino) at 617-492-5085.


### ARTICLES FOR *MASS DISSENT*

The March issue of *Mass Dissent* will focus on women in law and politics.

If you are interested in submitting an article, essay, analysis, or art work (cartoons, pictures) related to the topic, please e-mail the articles to **nlgmass-director@igc.org.**

***The deadline for articles is February 15th, 2009.***

## GUILD MEMBERS IN ACTION

**Laura Alfring** recently became a clinical fellow at Suffolk Law School's Juvenile Justice Center, where she defends juveniles in delinquency cases and supervises law students in Suffolk's juvenile defender clinic. (She is also very busy keeping it super real.)

Last year, **Prof. Brook Baker** of Northeastern University School of Law spent nine weeks in Africa during three separate trips. During his trips, he (1) consulted at the University of KwaZulu Natal, in Durban, South Africa, concerning a planned course on Intellectual Property Rights and Access to Medicine; (2) conducted workshops at the First Global Forum on Human Resources for Health, Kampala, Uganda; (3) visited a rural health clinic in Bwindi (Uganda) which has achieved remarkable success in providing quality care for HIV, malaria, and other diseases to a population exceeding 30,000 people; (4) co-taught a course on Intellectual Property and Access to Medicines in Durban (South Africa), attended by human rights lawyers, AIDS activists, and young legal academics from South Africa, Zambia, Rwanda, Zimbabwe, and Tanzania; (5) gave a presentation on IMF Expenditure Ceilings and health Financing in Africa at a Conference of Africa Chairs of Health, HIV, Gender & Finance Parliamentary Committees, at the UNECA Conference Center in Addis Ababa (Ethiopia).

In addition to his time in Africa, Prof. Baker has continued his work with Health GAP (Global Access Project) as co-chair and policy advisor. He attended the International AIDS Conference in Mexico City in August and has attended civil society consultations on global health initiatives in Geneva (three times) and Amsterdam. His work with Health GAP involves multiple HIV-related access to medicines, trade, health financing, IMF, and human-resources-for-health and health-system-strengthening campaigns, and more recently WHO-sponsored civil society research on Maximizing Positive Synergies Between Health Systems and Global Health Initiatives.

**Jennifer Honig** updated and edited the 2nd edition of "Just for Youth: Advocating for Youth in the Massachusetts Department of Youth Services," a publication of the Mental Health Legal Advisors Committee designed as a guide for families, advocates and attorneys on the civil legal issues affecting DYS involved youth (www.mass.gov/mhlac).

**Monica Halas** and the GBLS employment unit are working on four very important bills: (1) Paid Sick Days (she did a workshop on this bill at the NLG regional conference in 2007), (2) Temp. Worker Right to Know, (3) Modernizing and Protecting the Unemployment System (very relevant now as the federal analogue encouraging states to do this just passed in the House and is supported by Barack Obama), and (4) Wage Bill Extending the statue of Limitations. (The deadline for co-sponsorship is Feb. 4th.)

## 2008 NLG HOLIDAY PARTY IN PICTURES

The Chapter's Holiday Party in December, held at Stern Shapiro Weissberg & Garin, was again a great success.

Over 70 Guild members and friends gather in the beautiful SSWG conference room around a new gorgeous table, covered by platters of gourmet food, mostly from the Black Seed Café on Tremont St. in Boston.

All participants had a wonderful time eating, drinking, and catching up with friends.

*(right)* Lucky winners of the holiday party raffle drawing.

*Photo by Jason Stinnett*

# The New Gilded Age

by David Kelston

> "For Wall Street much of this decade represented a new Gilded Age. Salaries were merely play money - as Bonus Season became an annual celebration of the riches to be had in the markets - Bankers celebrated with five-figure dinners, vied to outspend each other at charity auctions and spent their newfound fortunes on new homes, cars and art. The bonanza redefined success for an entire generation." (*New York Times,* "Wall Street Profits Were a Mirage," December 18, 2008)

"Five-figure" dinners – that's $10,000 for a meal! What led to this extravaganza?

First, a bit of reality. The stock market has always, in Benjamin Graham's words,[1] been a pendulum that swings between unsustainable optimism (making stock prices too expensive) and unjustified pessimism (making them too cheap). No matter how careful the investor – and that's any of us with a pension or savings – risk is always with us. While we just saw the stock market lose a third of its value in a year, generally described as the worst loss since the Great Depression, let's not forget that losses of similar magnitude have in fact been fairly common. By our count, the market has plunged by thirty percent about a dozen times in short periods (24 months or less) in the last 100 years, and that is not counting its precipitous Dow decline from April, 2000 (11,187) to December, 2002 (8,300), or the fact that it lost 20% of its value in a single day in October, 1987. Why, then, we should wonder, are bull (up) markets so often filled with bull, with market professionals insisting that a "new world order" has arrived and that Graham's well-tested rules do not hold anymore. This is what happened last time around, in the massive bull market of 1999-2000 (which crashed massively in 2001-2002), with numerous Wall Street gurus (read, people who play with other people's money) predicting an endless joyride.

But this misplaced optimism is not just a peculiar inability of the financial wizards to remember the last crash; rather, as the current debacle shows, it is myopia fueled by greed in which, while the greediest do indeed lose some, it is the rest of us who suffer the most. The greed this time around rose to Gilded Age proportions.

Merrill Lynch,[2] profiled in a recent *New York Times* article (December 18, 2008), is a case study in greed where the greediest (and guiltiest) profited the most. Merrill's earnings in 2006 were a record $7.5 billion, and $5 billion to $6 billion (that's *billions*) of that was paid out in bonuses. More than 100 employees in Merrill's bond unit alone received six figure or higher bonuses, and its two traders most responsible for picking risky mortgages as investment vehicles walked away with over $80 million in bonuses. And the bonuses fueled even riskier conduct.

For example, even though there were obvious warning signs that the housing market was softening by 2006, Merrill's brokers, chasing huge bonuses, accelerated marketing what became toxic investment products, purchasing a California mortgage company in late 2006 in order to bundle its mortgages into investment instruments, a kind of bond that you, I or anyone else might find ourselves owning part of. The fact that the CDOs (collateralized debt obligations) were made up of mortgage loans that could not and would not be repaid seemed completely off the radar of the traders, who got their bonuses based on the bundling and sale of those investments, not their later performance. Thus, throughout 2007 Merrill (and many others) rushed deeper into the mortgage-as-investment business. The result, of course, was disaster, with Merrill writing down its investments by over $50 billion since 2006. But the brokers, the traders, the executives, generally still pocketed their excessive and unwarranted bonuses – Merrill's (since terminated) CEO's 2006 bonus was around $50 million. And all of these people failed to see the bubble bursting because it was so much in their interest for it to continue. Most of them still have their 2006 bonuses, and many of those bonuses alone represent more than the average Guild lawyer will make in a lifetime.

Is there something to do about this? Perhaps. Barney Frank is trying, as a step, to put much tighter control on bonuses (and other perks) paid out to any recipients of the current government bailout largesse, and various of our more rational capitalists are reported to be restructuring bonuses more into stock and less into cash (*i.e.*, if the company crashes, your stock bonus is worth a lot less), and real regulation of the markets will also help. But the problem is not one that is about to go away. For instance, Paul Krugman, an economist who so

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1 Graham (1984-1976) was the author of *The Intelligent Investor*, first published in 1950 and reprinted dozens of times since. No less than Warren Buffet calls Graham his mentor and *The Intelligent Investor* the best book ever written on investing strategy.

2 Merrill was hastily purchased in an arranged sale by Bank of America on September 18, 2008.

# *Rethinking Markets, And Rethinking Regulation*

*by Jeffrey Wiesner & Michael Cappucci*

The severity of the financial crisis, and its comparison by commentators to the Great Depression, should not distract from the fact that the present crisis is another example of a much more recent and disturbing historical trend: the privatization of profits and the socialization of loss. The other recent failures of the free market—the stock market crash of 1987, the savings & loan crisis of the late 1980s and early 1990s, and the collapse of the mega hedge fund Long Term Capital Management in 1997—also resulted in massive bailouts by the federal government—the taxpayers—in the wake of reckless profiteering by those in the financial industry. Although those previous bailouts will be dwarfed by the present one, because of systemic deficiencies in our financial markets this trend has enabled irresponsible greed on Wall Street to jeopardize the stability of the broader economy. Each time it intervenes in the financial markets, the federal government effectively transfers the cost of these multi-billion dollar bailouts to the backs of the American taxpayers, most of whom received no direct benefits and indeed, many of whom have suffered significant losses to their life savings.

While the present crisis is likely not the collapse of capitalism predicted by Karl Marx, it has—at least for the time being—fundamentally altered the philosophical debate. Until now, those on the right argued persuasively that comprehensive regulation of the financial services industry, on par with the Securities Act of 1933 and the Securities Exchange Act of 1934, was not necessary. The arguments of free market economists such as Milton Friedman that the invisible hand of the free market provides a more effective check on greed and irresponsible behavior than any centralized regulatory body held sway with those in our government. Both Ronald Reagan and Bill Clinton relied upon such arguments to lift regulation in the energy, transportation and financial industries.

The notion that market forces are sufficient to restrain the excesses of capitalism is no longer believed even by many of the theory's formerly strident supporters. No more evidence is needed than the spectacle of Secretary of the Treasury Henry Paulson, acting on behalf of the leaders of many of the largest investment and commercial banks in the United States—a veritable who's who of Wall Street: Citibank, Merrill Lynch, Bank of America, Wachovia, Goldman Sachs—each adherents of free market orthodoxy—appearing hat in hand before the U.S. Congress for help. As Nobel Laureate economist Paul Krugman has noted, there are no atheists in foxholes, and there are no libertarians during a financial crisis. Alan Greenspan, former Chairman of the Federal Reserve and one of the staunchest of guardians of the free market, testified to the tectonic shift occasioned by this crisis: "Those of us who have looked to the self-interest of lending institutions to protect shareholder's equity, myself included, are in a state of shocked disbelief." He continued, "This modern risk-management paradigm held sway for decades. The whole intellectual edifice, however, collapsed in the summer of last year."

Such a significant concession from Greenspan should have altered the debate. Yet, it seems to persist under the banners of "deregulation" and "regulation," both of which distract from the crucial point. For instance, it would be a mistake to suggest, as some on the left have done, that deregulation was the cause of the market crisis. In fact, if you consider the Sarbanes-Oxley Act of 2002, regulation of financial markets has actually increased during the eight years of the Bush administration. The only significant attempt at deregulation of the past ten years was accomplished in 1999—under Bill Clinton—with the passage of the Gramm-Leach-Bliley Act (GLB), a bill which, among other things, repealed the Glass-Steagall Act of 1933, the legislation that placed a wall between retail and investment banks. Although reasonable minds could disagree about the effect—good or bad—that GLB has had on the present crisis, it is worth noting that neither Bear Stearns nor Lehman Brothers, which suffered the two most notable failures so far in the crisis, took advantage of GLB to acquire or develop retail banking operations. Neither GLB nor deregulation was a significant contributor to the present crisis, because the term "deregulation" assumes the prior existence of regulation. The point is that the present frame of the argument—between regulation and deregulation—should be abandoned.

The true cause, as Greenspan himself said, was the failure of the free market's intellectual underpinnings. The *intellectual edifice* collapsed. Market fundamentalists such as Mr. Friedman, and formerly Mr. Greenspan, believe that markets tend toward equilibrium and that any deviations from equilibrium are random and can be attributed

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# Rethinking Markets, And Rethinking Regulation

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to external causes. What is now clear is that, as financier George Soros testified before the House Committee on Oversight and Government Reform, "[t]he crisis was generated by the financial system itself. This fact—that the defect was inherent in the system—contradicts the prevailing theory, which holds that financial markets tend toward equilibrium…" Market fundamentalism has justified the belief that the pursuit of self-interest is a sufficient check on the system; ergo the government should not interfere. This idea has provided the justification for a free market system that largely allows market forces to regulate the titans of high finance, until, that is, it all came tumbling down.

The starkest example can be seen in the quadrillion dollar derivatives market. (That wasn't a typo, yes, a *quadrillion*, according to the Bank for International Settlements (BIS) in Basel, Switzerland. That is around $190,000 for every man, woman and child on the planet.) The very fact that there is a financial market larger than the world's collective GDP should be enough to give us reason for pause. That it is almost completely unregulated should be enough to make us shudder.

One type of financial derivative that has gotten a lot of unfavorable press recently is the credit default swap. These arcane devices started out as (relatively) simple contracts to provide insurance to offset credit risk. If Party A had a lot of money tied up in French government bonds, Party A could enter into a contract with Party B to insure all or a portion of Party A's loss if the French government defaulted on its debt payments. Anyone could buy a credit-default-swap, as long as there was a willing seller, even if neither the buyer nor the seller owned the underlying asset. It is like someone buying an insurance policy for their neighbor's house. If the house burns down, the insurer is required to pay the policyholder the value of the house. But if everyone on the block is buying insurance policies on the same house, suddenly the insurers need insurance; so they spread the risk by taking out a policy of their own from someone else. When the secondary insurers get enough exposure, pretty soon they need to insure their risk too, and what started out as a simple homeowners policy ends up creating a billion dollar problem. Dislodged from ownership of the underlying assets, the credit default swap market became little more than a roulette table in Las Vegas. Soon, sophisticated hedge funds and traders were buying credit default swaps to bet against everything from sub-prime mortgages to Icelandic debt to shares of Morgan Stanley. Unlike the conventional insurance industry, the market for credit default swaps is almost completely unregulated. Insurance companies must hold large amounts of cash reserves to protect against a run of claims. Sellers of credit default swaps, which are not regulated, do not need to keep excess cash reserves. Eventually, when the housing market bubble burst, one seller, AIG, was left holding the bag, with trillions of dollars worth of unhedged credit default swaps on its books. As a result of its tangled web of derivatives contracts, AIG was dubbed "too big to fail" and then bailed out by the U.S. Treasury to the tune of $150 billion (and counting).

The present crisis may have brought an end to the debate about market fundamentalism, but a new debate will be needed to determine the kinds of regulation necessary to protect against the abuses to which our complex modern economy is vulnerable. The prior attempts at such regulation, the Securities Act of 1933 and the Securities Exchange Act of 1934, which are the backbone of today's financial regulation, were Depression-era responses to Depression-era problems. What we now need are 21st Century solutions to 21st Century problems. Gone are the bucket shops and house stock scams of the 1920s; and in their place are too-big-to-fail Wall Street banks hawking auction-rate securities, credit default swaps, collateralized mortgage obligations, special investment vehicles and a smorgasbord of other extraordinarily complicated, and potentially dangerous, financial instruments for short money, knowing that Uncle Sam will bail them out when something goes wrong.

Having exposed the shortcomings of the existing framework, the current crisis provides an opportunity for the Obama administration and responsible members of Congress to seriously reform the country's financial regulatory system. It is no longer possible, as opponents of regulation have argued for so long, that the Enrons, Bear Stearns and Bernie Madoffs of recent history represent mere anomalies of an otherwise healthy system. The edifice has crumbled. The time for action is now.

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*Jeffrey Wiesner is an attorney at Stern Shapiro Weissberg & Garin in Boston.*
*Michael Cappucci is an attorney practicing in Boston.*

# A Double Standard for Detroit and Wall Street

*by Brian McNamara*

In the wake of the financial crisis, both the financial and auto industries looked to the government for funds to keep them afloat. While each group eventually received funding, their interactions with Congress had two very different tones.

In mid-September of this past year, AIG, an insurance giant on the verge of failure because of its exposure to credit default swaps, was bailed out by the Fed in an initial $85 billion deal, since increased. Later that month, a $700 billion financial bailout proposal was announced by Treasury Secretary Henry Paulson. An amended version of this proposal was rejected by the House in late September. However, after a series of tax breaks and other compromises and earmarks were added to the legislation, both the Senate and House quickly passed the bill. Despite its passing, the bill has initially done little to stem losses on Wall Street.

At about the same time, shortly after the collapse of Lehman Brothers, the chief executives of General Motors, Ford, and Chrysler traveled to Washington to ask for $7.5 billion that would be used to finance $35 billion in loan guarantees that had been promised in a 2007 energy bill. Following this loan guarantee, the auto executives were summoned to Washington to convince Congress that they should be entitled to a bailout similar to the one given to Wall Street banks. At these hearings, executives were scolded and even ridiculed for having flown on private jets to the hearings, and for years of poor business decisions that had led their companies to this point. These hearings stood in stark contrast to the apparent ease with which Congress doled out $700 billion for floundering banks.

Ultimately, Congress rejected the auto executives' plea for funds. Instead, they received funds allocated from the financial sector bailout as approved by President Bush. The $17.4 billion lifeline thrown to G.M and Chrysler did not come without tough conditions: companies were required to reduce their debt, and to reach an agreement with the United Auto Workers Union to cut wages and benefits so they would be competitive with those offered by foreign based automakers working in the U.S.

Congress took a tougher approach to Detroit than to Wall Street. Even William Kristol recognized this difference in his *New York Times* column, "It seems to me true that the financial big shots haven't been treated nearly as roughly in Congress or in the media as the auto executives, who have done nothing remotely as irresponsible as their Wall Street counterparts."

So why did Congress treat the auto industry so differently from the financial sector?

Some argue that bailing out the Big Three would have amounted to confiscating money from productive members of the economy and spending it on failing ones. Others cite poor timing – the Big Three came begging for money at a time when the financial crisis was worsening, and when Congress was already bailout weary.

There are, however, two additional reasons for the disparate treatment: anti-union sentiment, and class bias. Despite the explanation of avoiding "throwing good money after bad," one of the true sticking points in Congress' rejection of a Detroit bailout was the United Auto Workers Union. Critics cite the U.A.W.'s progressive pay scale and retirement benefits as one of the causes for Detroit's demise. However, employee compensation accounts for only 10% of the cost of manufacturing a car. It is interesting to note that of the Senators who voted for the financial bailout and against bailing out Detroit, nearly 80% hail from "right to work" states – those states which prohibit agreements between trade unions and employers making membership or payment of union dues or "fees" a condition of employment.

Many of these right-to-work states are located in the South, where foreign car manufacturers are benefiting from employing non-unionized workers. While Southern Senators argue that bailing out Detroit amounts to supporting a bad business model, it is difficult to view their "no" votes on the Detroit bailout as completely free of anti-union bias. Bankruptcy for Detroit means increased productivity for foreign car manufacturers with plants in the South, and increased employment for right-to-work states' constituents.

An even more disturbing explanation for the difference in treatment is that the auto-industry, and specifically its employees, should not be entitled to the same benefits and treatment that employees of the financial sector deserve. Implicit in the condescending treatment auto executives received on Capitol Hill is the idea that people who work with their hands deserve less than those who work with their minds. Indeed, no Citigroup or AIG executive was summoned to Capitol Hill to outline a long-term plan for business success and viability. Employees of the Big Three – U.A.W. members – are less powerful than their Wall Street counterparts. Their vocation involves difficult physical labor rather than number crunching. Profits are driven in Detroit by the sweat of the brow rather than playing with numbers.

It is unfortunate to think that Congress' decision to bailout Wall Street and not Detroit was motivated by an anti-Union bias, or worse, a value judgment on the employees of each industry.

*Brian McNamara is a 3rd year law student at Northeastern Law School.*

# Poster Children for the Collapse

*by David Kelston*

There seems to be widely shared agreement that the subprime mortgage market – the making of mortgage loans that essentially could not be repaid, and the subsequent bundling of those mortgage pools by investment firms and sale to investors – was a primary factor in the current meltdown. These triple-A-rated mortgage backed securities in fact turned out to be junk. While no one yet knows the full extent of the subprime mortgage market, initial figures show it at over a half-trillion dollars in 2004 alone, tripling in the three years to that date, and the effects of these loans "bundled" is far greater. Two poster children for the subprime mess are the direct subprime lenders – Washington Mutual ("WaMu") being one of the largest (Countrywide may have eclipsed it) – and those who bought and resold the loans, most prominently the government-created and now government-owned Fannie Mae and Freddie Mac.

The first group of culprits, WaMu, Countrywide, Ameriquest, are generally associated with the Bush Administration and the Republican Party. In 2004 Ameriquest was the nation's largest subprime lender, and its founder, Roland Arnall, was one of the Republican party's top 10 donors. Fannie has always been more closely associated with the Democratic party. Brief portraits show blame and greed cutting across party lines, though Fannie may be less culpable than its purely private sector cousins.

**WaMu**

Washington Mutual, the largest bank to fail in U.S. history, was without question as fine a representative as we will find for every reckless, culpable and predatory lending practice that has contributed to the current sorry mess. WaMu was founded in 1889 in Seattle, and it survived the Great Depression and the savings and loan crisis of the 1980s. What it did not survive was the later Wild West lending culture, within its own walls and on Wall Street generally. WaMu's dramatic rise and fall can be tracked to the rise and fall of CEO Kerry Killinger. Killinger, an investment analyst by training, joined WaMu in 1983 and was its CEO from 1990 until it was purchased by JP Morgan Chase in September, 2008 for $1.9 billion, about five percent of its value a few years earlier.[1]

WaMu jumped into the subprime market with its purchase of a California mortgage company in 1999 that itself specialized in these loans – loans that did not meet Fannie Mae's purchase criteria. By 2002, WaMu had become the country's sixth largest bank by a series of acquisitions, and it frantically opened branches around the country, jumping from just over 1,000 branches in 1999 to close to 3,000 in 2006. With housing prices steadily rising and with a major government-encouraged push for wider home ownership, WaMu's astronomical growth was fueled by every manner of high risk, predatory lending practice. With its "Power of Yes" advertising campaign and an in-house culture "if you're alive, we'll lend," it provided undisclosed payments to realtors and mortgage brokers who steered their customers to WaMu, with higher referral fees the riskier the loan (i.e., the higher the interest rate WaMu would charge its often unwary customer); exponentially increased its adjustable rate loan portfolio, from 25 percent of its loans in 2003 to about three times that just three years later; and by 2005 was waist-deep (maybe neck-deep) in "no doc" loans – i.e., loans where the borrower's income was confirmed by nothing more than what the borrower – or the captive mortgage broker – wrote down.

The scheme essentially worked like this. WaMu (and Countrywide, and Ameriquest, and the rest) advertised aggressively and extended loans to virtually anyone who walked in the door (or was pulled through it), based often on undocumented income, inflated appraisals obtained by WaMu itself, and adjustable rate mortgages with low "teaser" rates scheduled later to rise. The riskiness of the loans was of relatively little interest to WaMu – since it sold the loans to Fannie and others, and made its money regardless of what happened later. But the scheme (it's a little like a Ponzi scheme) could only hold together as long as house prices – themselves fueled by easy credit – kept going up, since rising prices created increased equity and homeowners and lenders' ability to refinance mortgages with ever-higher principal balances if and when the borrower could not make the existing monthly payments.

Of course, just like a Ponzi scheme, it had to unravel, which it did as soon as housing prices stopped going up, and in fact started dropping. 2005-2006 was the culmination of the housing bubble. At that point, borrowers were left with houses worth less, often much less, than their debt, and with monthly payments they could not make and property they could not refinance. This created a foreclosure crisis, soon followed by a financial crisis.

*Continued on page 10*

1 WaMu's share price dropped from a high of $45 to, literally, zero.

## NLG STUDENT REPORTS

### NORTHEASTERN

**New Year, New President, What's Next?**

NLG Northeastern student chapter is organizing an event series that examines the impact of the past election on socially marginalized groups and the implications for social justice movements. The first event of the series aims to lay out the political landscape, post-election. This panel event will grapple with such questions as, "Is racism really dead?" and will consider the impact of specific ballot decisions on LGBT, immigrant, and other marginalized communities. The goal of the event is to illuminate the intersection of legal and social issues.

### SUFFOLK

In February, the Chapter will host a social gathering for all Guild students in the Boston area law schools. The gathering will serve as a way to exchange ideas as to what the area Guild students should concentrate on in their political and legal work.

## Poster Children

*Continued from page 9*

By 2007, significantly accelerating in 2008, the entire financial system was filled with the toxic assets, at just around the time Mr. Killinger walked away from WaMu with $88 million he had made since 2001 alone.

**Fannie Mae**

While hardly blameless, Fannie was in some ways a victim as well as a culprit, although its executives also pocketed scandalous fortunes. Fannie Mae was created by the New Deal Congress to facilitate home ownership (Freddie Mac, with similar purpose, was also Congressionally created). Fannie and Freddie became powerhouses not by making mortgage loans but by buying them, trillions of dollars worth, and selling guaranteed mortgages to investors. They became major Washington players, with ties to the Democratic Party. While Fannie originated the standards that define non-subprime loans, by no later than 2002 the Bush administration was pushing affordable housing (a good goal, bad strategy) and insisting that Fannie and Freddie meet ambitious goals for increased low-income lending. And the private sector joined in. With Fannie already rocked by accusations of fraudulent bookkeeping that led to resignations of top executives in 2004, the subprime lenders stepped in to pressure it. In one reported incident, Countrywide Chief Executives met with Fannie CEO Daniel Mudd (son of the famous broadcaster Roger Mudd) in 2005 and pressured Fannie, already losing its loan-selling business to Wall Street (a 56% decline the prior year), to buy Countrywide subprime loans.

With pressure from all sides – and, incidentally, handsome profits to be made – Fannie purchased or guaranteed $270 billion in risky loans from 2005 to 2008, more than three times as much as in all its earlier years combined. Freddie similarly plunged into the market, buying or guaranteeing more than $100 billion in subprime and other alternate mortgages, facilitating the WaMu-like predatory practices. After many months of warnings, the companies' stock lost half their value literally overnight, prompting Congress to authorize $200 billion in support. But even that was too late, and in September, 2008, the government seized control of both Fannie and Freddie. While the Republicans were wont to blame ills of every sort on Fannie and Freddie (John McCain did in 2004 join with other Republicans in sponsoring legislation to monitor Fannie and Freddie more closely), and while indeed they both eventually succumbed to the Wall Street orgy, they were a later facilitator, but hardly a creator, of the core problems fueled by too-easy credit, almost non-existent regulation, repugnant lending practices and profit-taking, and greed on a huge but hardly unprecedented scale.

## The New Gilded Age

*Continued from page 5*

often gets it right, has pointed out that, in an economy in which the finance sector – a sector that is not actually producing anything – has almost doubled as a proportion of national output in a decade (from less than 5% to 8%), we are in fact talking about $400 billion a year in waste, fraud and abuse (Krugman's words) in "a world gone Madoff." Wall Street's ill-gotten gains, Krugman tells us, have corrupted and continue to corrupt politics and a whole society, substituting greed for a life centered on service.

For the rest of us, who hope someday to retire in a condition other than impoverishment, we should remember what this article started with, and avoid distorted thinking, even if we cannot control the traders.

*David Kelston is a long-time Guild member and a member of the Chapter's Board of Directors.*

## NLG Massachusetts Chapter Sustainers

In the spring of 2003, the Massachusetts Chapter of the NLG initiated the Chapter Sustainer Program.

Since its inception, the Program has been very successful and has been enthusiastically joined by the following Guild members:

**Adkins, Kelston & Zavez • Jane Alper • Michael Avery • Samuel Berk • Howard Cooper • Andrew Cornell & Shelley Kroll • Melinda Drew & Jeff Feuer • Howard Friedman • Benjie Hiller • David Hoffman • Stephen Hrones • Martin Kantrovitz • David Kelston • Leslee Klein & Mark Stern • William Newman • Petrucelly, Nadler & Norris • Allan Rodgers • Martin Rosenthal • Sharryn Ross • Anne Sills & Howard Silverman • Ira Sills • Judy Somberg • Stern, Shapiro, Weissberg & Garin**

The Sustainer Program is one of the most important initiatives the Chapter has undertaken to secure its future existence. Please consider joining the Program and strengthen the Guild.

### YES, INCLUDE MY NAME AMONG NLG MASSACHUSETTS CHAPTER SUSTAINERS!

I, ______________________________, am making a commitment to support the Massachusetts Chapter of the Guild with an annual contribution of:

_____ $500 (not including my membership dues)

$ ________ (other above $500)

**As a sustainer I will receive:**

- special listing in the Dinner Program;
- 1/8 page ad in the Dinner Program;
- acknowledgement in every issue of *Mass Dissent*;
- two (2) free raffle tickets for a Holiday Party raffle;
- invitation to special events.

**Three ways to become a sustainer:**

- contribute $500 or more a year (not including dues)
- pair up with another person and pay $250 each, *or*
- join the "Guild Circle" and pay $50/month minimum.

*Please mail to:* NLG, Massachusetts Chapter
14 Beacon St., Suite 407, Boston, MA 02108

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Urszula Masny-Latos, Director 1/15/2009

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" ... 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 people, to the end that human rights shall be regarded as more sacred than property interests. Our aim is to bring together all those who regard adjustments to new conditions as more important than the veneration of precedent; who recognize the importance of safeguarding and extending the rights of workers, women, farmers, and minority groups upon whom the welfare of the entire nation depends; who seek actively to eliminate racism; who work to maintain and protect our civil rights and liberties in the face of persistent attacks upon them; and who look upon the law as an instrument for the protection of the people, rather than for their repression."

*Preamble to the Constitution of the National Lawyers Guild, originally adopted February 22, 1937, and most recently amended in July 1971.*

<u>*Fill out and send to*</u>:

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_____ Lawyer Referral Service
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_____ *Mass Dissent* (monthly publication)
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# Please Join Us!

Dues are calculated on a calendar year basis (Jan.1-Dec.31) according to your income*:

| | |
|---|---|
| Jailhouse Lawyers | Free |
| Law Students | $25 |
| up to $15,000 | $40 |
| over $15,000 to $20,000 | $50 |
| over $20,000 to $25,000 | $75 |
| over $25,000 to $30,000 | $100 |
| over $30,000 to $40,000 | $150 |
| over $40,000 to $50,000 | $200 |
| over $50,000 to $60,000 | $250 |
| over $60,000 to $70,000 | $300 |
| over $70,000 to $80,000 | $350 |
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| over $100,000 | $500 |

* Any **new** member who joins after September 1 will be carried over to the following year. Dues may be paid in full or in quarterly installments. Dues of $80 cover the basic membership costs, which include publication and mailing of *Mass Dissent* (the Chapter's monthly newsletter), national and regional dues, and the office and staff.
*No one will be denied membership because of inability to pay.*