

# Dorothy Day Archivist Found Guilty of Trespassing in Wisconsin

**Phil Runkel, Dorothy Day Archivist and Activist, Found Guilty of Trespassing in Wisconsin**

By Joy First

On Friday February 19 Phil Runkel was found guilty of trespassing in Juneau County, WI by Judge Paul Curran after a 22 minute trial. Phil had joined nine other activists in attempting to walk onto the Volk Field Air National Guard base and meet with the commander to share our concerns about the training of drone pilots that takes place there.



District Attorney Mike Solovey followed his standard procedure of calling Sheriff Brent Oleson and Deputy Thomas Mueller to the stand and identifying Phil as one of the people who walked onto the base on August 25, 2015 and refused to leave.

Phil cross-examined Sheriff Oleson asking him about the purpose of the space between the gates and guard house. Oleson responded that the space was used so that cars waiting to enter the base didn't back up onto the county highway. Phil asked when it was legal to be in that area, and Oleson responded that it was when you are given permission. But that isn't true. Cars drive through the gates and about a block to the guard house and wait to talk to the guard without getting permission to wait in that space.

Phil asked Oleson if we were asked why we were there so the base officials could determine if we were there for a valid

reason, and the sheriff responded that he knew we weren't there for a valid reason.

The state rested their case and Phil told the judge he would like to be sworn in to testify and then give a brief closing statement.

## **Testimony**

Your Honor:

I am employed by Marquette University, where it has been my privilege to have served since 1977 as archivist for the papers of sainthood candidate Dorothy Day. She has often been lauded for her performance of the works of mercy—most recently by Pope Francis—but scorned for her equally steadfast opposition to the works of war. This led to her arrest and imprisonment on three separate occasions for failure to take cover during civil defense drills in the 1950s. I am one of many who have been inspired by her example to seek peace and pursue it.

I respectfully plead not guilty to this charge. Following World War II the International Military Tribunal at Nuremberg declared that *“Individuals have international duties which transcend the national obligations of obedience imposed by the individual State.”* (Trial of the Major War Criminals before the International Military Tribunal, vol. I, Nürnberg 1947, page 223). This was one of the Nuremberg Principles adopted by the International Law Commission of the United Nations in 1950 to provide guidelines for determining what constitutes a war crime. These principles are arguably part of customary international law and part of domestic law in the United States under Article VI, paragraph 2 of the US Constitution (175 U.S.677, 700) (1900).

Former US attorney general Ramsey Clark testified under oath, at a trial of drone protesters in Dewitt, NY, that in his legal opinion everyone is obligated under the law to try to

stop their government from committing war crimes, crimes against peace and crimes against humanity

([http://www.arlingtonwestsantamonica.org/docs/Testimony\\_of\\_Elliott\\_Adams.pdf](http://www.arlingtonwestsantamonica.org/docs/Testimony_of_Elliott_Adams.pdf)).

I acted out of a conviction that the use of drones for extrajudicial, targeted killing constitutes such a war crime, and I sought to apprise base commander Romuald of this fact. I intended to uphold international law. (As Ms. First noted at her trial last week, Judge Robert Jokl of Dewitt, New York, acquitted five resisters for their action at the Hancock drone base because he was persuaded that they had the same intention.)

Article 6(b) of the Nuremberg Charter defines War Crimes—violations of the laws or customs of war—to include, among other things, murder or ill treatment of civilian population of or in occupied territory. Weaponized drones, assisted by reconnaissance and surveillance drones piloted from bases such as Volk Field, have killed between 2,494-3,994 persons in Pakistan alone since 2004. These include between 423 and 965 civilians and 172-207 children. Another 1,158-1,738 have been injured. This is data compiled by the award-winning Bureau of Investigative Journalism, based in London

(<https://www.thebureauinvestigates.com/category/projects/drones/drones-graphs/>).

According to the legal scholar Matthew Lippman (Nuremberg and American Justice, 5 Notre Dame J.L. Ethics & Pub. Pol’y 951 (1991)). Available at:

<http://scholarship.law.nd.edu/ndjlepp/vol5/iss4/4>) citizens have “the legal privilege under international law to act in a non-violent proportionate fashion to halt the commission of war crimes. “ *He contends that “Nuremberg... serves both as a sword which can be used to prosecute war criminals, and as a shield for those who are compelled to engage in conscientious*

*acts of moral protest against illegal wars and methods of warfare."*

Lippman counters the common admonition for protesters to confine themselves to legally-sanctioned means of dissent, such as lobbying congresspeople. He cites Judge Myron Bright, of the 8th Circuit Court of Appeals. Dissenting in *Kabat*, Judge Bright stated that: "We must recognize that civil disobedience in various forms, used without violent acts against others, is engrained in our society and the moral correctness of political protesters' views has on occasion served to change and better our society."

Examples he gave included the Boston Tea Party, the signing of the Declaration of Independence, and the more recent disobedience of "Jim Crow" laws, such as the lunch-counter sit-ins. *Kabat*, 797 F.2d at 601 *United States v. Kabat*, 797 F.2d 580 (8th Cir. 1986).

To Professor Lippman, *"Today's obscenity may be tomorrow's lyric."*

I'll conclude, then, with these words from a song many of us know: *"Let there be peace on earth. And let it begin with me."*

Note that Phil was stopped in the fifth paragraph, giving statistics on the number of people killed by drones, when DA Solovey objected citing relevance and Curran sustained the objection. Phil was not able to complete his statement, but it is included in this report because he provided valuable information that could be useful in future cases.

Curran asked Phil what his testimony has to do with trespassing and Phil began to talk about why he walked onto the base when the DA interrupted and said there is nothing about intent in the statute. As Phil persisted in trying to explain his actions to the judge, Curran became increasingly agitated and angry. He said he didn't need to be lectured by Phil about Nuremberg.

Phil tried to explain he was acting under the belief that he was obliged to enter the base, and that we are compelled to engage in resistance to illegal warfare. Again, Curran made his same old argument that his court is not going to tell Obama that what he is doing is illegal. That continues to be a false argument that the judge makes in many of our trials.

Phil was very persistent in trying to get his point across and continued to argue his case, but the judge could not hear anything he was saying.

Finally the judge said guilty and \$232 fine. Phil said he wanted to give a closing statement. Curran said it was too late, it was over, and got up and quickly left the courtroom. I am concerned about a judge who refuses to allow a closing statement. Is that legal?

### **This is the closing statement Phil would have liked to present.**

I stand with my co-defendants in the conviction that silence in the face of the injustice of the immoral, illegal and counterproductive drone warfare being carried out by our government makes us complicit in these crimes. And I fully endorse and support their testimonies before this court.

In his book *The New Crusade: America's War on Terrorism*, Rahul Mahajan wrote, *"If terrorism is to be given an unbiased definition, it must involve the killing of noncombatants for political purposes, no matter who does it or what noble goals they proclaim."* I ask your honor to consider which poses the real threat to peace and right order—the actions of groups such as ours, or those of the CIA and other agencies responsible for our drones policy.

Again, a very disappointing outcome, but Phil reminds us of the importance of what we are doing and why we must continue as he states,

*“I was disappointed, of course, that Judge Curran didn’t allow me to finish my testimony or make a closing statement. But such rulings won’t deter us from continuing to speak our truth to the powers that be.”*

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## **Another Grandmother Convicted**

### **Grandmother and Long-time activist Joyce Ellwanger Guilty of Trespass in Wisconsin**

*Report by Joy First of NCNR, The National Coalition for Nonviolent Resistance*

Joyce Ellwanger was found guilty of trespassing by Judge Paul Curran in Juneau County court on Friday January 22, 2016. Though Curran never formerly pronounced a verdict saying Joyce was guilty, he said she trespassed and he imposed a sentence in another heavy-handed trial for the nine activists who were arrested at Volk Field in August 2015.

Refusing our request to consolidate the cases, Judge Curran has already found Jim Murphy and Bonnie Block to be guilty. Jim spent five days in jail, and Bonnie asked for community service, but Curran refused and said that if she didn’t pay the fine it would be attached to her income tax. Four trials are remaining and coming up in February.

The DA, Michael Solvey, continued his familiar defense in Joyce’s trial. He called the county sheriff and a deputy sheriff to take the stand, establishing Joyce’s identity and that she did indeed cross onto the base.

Joyce cross-examined both witnesses. Through questioning the witnesses confirmed that when someone arrives at Volk Field they drive their vehicle to the guard house, several hundred feet past the brick gates, show their identification, and state why they are there. Joyce asked why we are discriminated against and were stopped at the gates and not asked about why we were there. The reply was that they knew we were there to protest and get arrested. Joyce stated that was not her intention. She was there to talk to the commander about the drones.

Judge Curran questioned the deputy about whether he (or another member of the general public) would be able to drive to the gatehouse and the deputy responded he would.

After the defense rested, Joyce took the stand. The Judge showed her the pictures of the gate and guardhouse that were entered into evidence and asked Joyce where the gates were and where the guardhouse was. It was noted that there was quite a distance between the two. Joyce continued her testimony by reading a moving statement about why she was there. She said that she stands with Jim and Bonnie in saying that silence is complicity. She also talked about how all human life is precious. (See full statement below.)

When she finished, **DA Solovey asked that her complete statement be stricken from the record, and the judge quickly sustained the motion.** We were all shocked by this, and later Joyce stated,

*“There were two areas in which I felt blindsided by Judge Curran and District Attorney Solovey: The first was when Mr. Solovey asked that my testimony be stricken from the record as irrelevant to the trespassing charge and the judge immediately sustained his request. There was not even time to raise an objection and I was stunned by this action which was inconsistent with allowing me and my codefendants in the past to enter our statements into the record.”*

That was it. Curran never actually pronounced a verdict stating Joyce was guilty. He said that an issue was raised that caught his attention. He questioned why we were not allowed to go to the guard house which was quite a ways from the gates – if that was the standard procedure for others arriving at Volk Field. But then Curran said he got the answer from the deputy who said we were told that we were not supposed to go beyond the gates, so that solved that problem according to the judge. He told Joyce she did trespass.

Looking back, I think this was a ruse on the part of the judge. He is presiding over eight almost identical cases and I can imagine he doesn't want it to look like he is just automatically finding us all guilty, so in this case he can say he did question whether we should have been arrested or not – whether we actually did trespass.

Joyce asked him about doing community service with Rev. Terry McGinley, who has offered to all of us and to the judge that he would supervise and report back to the court on our community service so that there would be no cost to the court in administering it. Judge Curran said that the trespass charge is an ordinance violation and it is not worth the time for Rev. McGinley to supervise us in community service and so he would not allow that.

He ordered Joyce to pay a \$232 fine within 60 days or it would be attached to her income tax. This tactic, which he also used in Bonnie's trial, does not allow us to choose to spend the five days in jail. For many of us, it goes against our conscience to pay the fine and we would prefer the jail time over paying the fine, but now Judge Curran has discovered a way to prevent that.

**Joyce discusses this as the second time**



## **she felt blind-sided during the trial,**

*“The second was when the judge, without ever announcing a verdict, indicated community service was not an option and announced a fine of \$232 with a 60 day limit to pay or to have the amount attached to my income tax return. I had asked for community service as an option, as had Mrs. Bonnie Block, whose trial preceded mine by two weeks. Rev. Terry McGinley, a local clergyperson was in court with me and had agreed to act as supervisor for that service and report my hours to the court. He had three Mauston non-profits lined up who were willing participants. Judge Curran maintained that this would be too onerous on the court. I find that a specious argument. My impression is that the judge and district attorney are attempting to use their authority to tighten restrictions and options for us in the hope that we will go away. They really do not understand that our witness is not about power or winning, but about standing with the powerless, often innocent, victims of our country’s illegal, immoral and counterproductive drone warfare.”*

**And so we will continue our resistance both at the base and in court.**

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## **Joyce’s statement on the stand:**

*Good afternoon, Judge*

*I would like to read a brief statement into the record this afternoon.*

*I stand with Fr. Jim Murphy and with Mrs. Bonnie Block in the conviction that silence in the face of the injustice of the immoral, illegal and counterproductive drone warfare being carried out by our government makes us complicit in these crimes. And I fully endorse and support their testimonies before this court. By the way, judge, Bonnie had her surgery*

*this morning and is doing well.*

*For me, the bottom line is that every life is precious, whether that be the life of my husband, my children, my grandchildren, my friends, drone pilots, or their victims...every life, equally precious to God and to me.*

*Former drone pilots are coming forward to share the trauma associated with their job. The Air Force now offers incentives up to \$125,000 I am told, to enlist drone pilots. And the shortage of those willing to serve is so severe that the Air Force is contracting with private companies to provide drone pilots. That should give us pause. The pilots being trained at Volk Field are part of an interconnected strategy of identifying potential terrorists and their sympathizers for destruction. Based on often unreliable intelligence, people are targeted and killed. It is not surprising, then, that the incidences of PTSD and suicide of drone pilots mirrors and sometimes exceeds that of combat troops on the ground.*

*How can you look at the strewn body parts of the men, women and children you have killed and not be affected. The trauma to the communities and families who endure drone attacks and drone killing is incredible: daily surveillance from the sky; fear of letting their children go outside to play or go to school; afraid to attend weddings, funerals, community gatherings; afraid even to offer assistance when drone strikes happen because of the double tap strike likely to follow minutes afterward.*

*Their suffering is beyond words. The legal arguments we have presented in the past are in the court record. I will not elaborate on them here, except to say that I believe that the U.S., as a country that subscribes to the rule of law, must honor those international laws, courts and declarations we say we subscribe to, but only seem to uphold when it is in our self interest.*

*The Haitians, some of the poorest people in our hemisphere, have a wonderful proverb, "We see from where we stand." We stand in different places, judge, trying to hold on to our piece of the truth. Sue Frankel-Streit, a member of a Catholic Worker Community in Virginia, puts it well: "There are times in the lives of all people of conscience when the truth in one's heart is in such deep opposition to the falsehood of the world that one must put everything else in life aside and act upon the truth." I take full responsibility for my actions on August 5, and would only ask that you stand with me and my co-defendants to understand that there is nothing criminal in our intent or actions. I cannot in good conscience be silent, nor can I in good conscience pay a fine for speaking my piece of the truth.*

*Did you receive the letter I sent you on January 19? As you know, it concerns the possibility of community service. I have left a copy with the court clerk and ask that it be included in the record.*

*I cheerfully and hopefully await the verdict of the court. I do not think you were comfortable in sending Fr. Murphy to jail, and I certainly agree that is a needless expense. I hope you will consider community service as an option this court will adopt for Juneau County residents as well as us. I would ask for permission for the possibility of a short statement from Rev. McGinley after the verdict is announced and before sentencing, and also of a question for you, judge, should I be found guilty.*

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**Joyce's letter to the judge pre-trial regarding the possibility of community service:**

*January 19, 2015*

*Hon. Paul S. Curran, Judge*

*Juneau County Circuit Courthouse*

200 Oak Street  
Mauston, WI 53948-1349

Dear Judge Curran:

I am writing today to inform you that, should I be found guilty of trespass to land at my trial on January 22 at 1:45 in your court, I will be asking for community service in lieu of jail time or a fine.

This issue came up at the trial of Bonnie Block, my co-defendant, at her trial on January 8 before your court. My understanding of your remarks at that time is that you needed more time to think through whether you will accept this option for her. So, I am bringing to your attention now, in writing, my request for community service.

I am also writing to explain my particular situation. I am providing home hospice care for Robert Love, a 67-year old man, a member of my congregation, Hephatha Lutheran Church, 1740 W. Locust, here in Milwaukee. Mr. Love lives in a small cottage in our backyard. He spent most of his life in prison on drug-related charges, and no plans were made for his housing upon his release. We were able to put him in the cottage, and he has been with us for about five years. After having three productive years of employment, the COPD from which he suffers became severe enough that he could no longer work.

Today, he spends his days in a hospital bed, and I support the hospice nurses who look in on him two days a week by preparing his meals, keeping his house, doing his laundry, seeing to his bodily needs-emptying urinals, helping with changing Depends etc., and overseeing his meds and oxygen supply. He is expected to die within the next six months, actually, the nurses are surprised he is still alive today. Mr. Love has no family nearby, and the family he has visited him only once in the last five years, and cannot provide help to him at this time.

*I can be supervised in giving care to Mr. Love by the Aurora Hospice nurses with whom I share responsibility for his care. If this is not an acceptable community service I would ask to be supervised by Rev. Terry McGinley, who will be present at my trial to provide service through his church or another non-profit in Mauston which he has contacted and agreed to such service. To be transparent, I would hope that I might do that service from here (something like data entry, mailings, thank you notes, etc.).*

*Trusting that you will give this your thoughtful consideration, I am prepared to cheerfully accept your judgment on January 22.*

*Sincerely yours,*

*Joyce Ellwanger*

*Case # 15 F0431*

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*This is one of 3 great descriptions by Joy First and Bonny Block of trials for civil resistance activists protesting drones at Volk Field Air National Guard Base in Wisconsin. These scenarios seem very similar to the ones we face at Hancock Air National Guard Base in Upstate New York. It isn't every day that we get such a careful transcription of events.*

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**Catholic Worker Found Guilty**

# in Juneau County

## **CATHOLIC WORKER, PEACE ACTIVIST DON TIMMERMAN FOUND GUILTY IN JUNEAU COUNTY, WI**

***Report by Joy First of NCNR, The National Coalition for  
Nonviolent Resistance***

In another farcical trial for the 14 activists arrested at Volk Field Air National Guard Base in Wisconsin, Don Timmerman was found guilty of trespass in a Juneau County trial presided over by Judge Curran on February 1. Apparently Judge Curran, who said he did not want to consolidate our trials because it could be prejudicial to us, has fine-tuned his skills in short-circuiting any defense we might provide and the whole trial lasted about eleven minutes.

As predicted, DA Solevey had Juneau County Sheriff Brent Oleson and Deputy Sheriff Thomas Mueller take the stand and establish that Don was at Volk Field on August 25 and that he crossed onto the base after he was told not to by the Sheriff.

Under cross-examination Don asked Oleson if he knew why we were there. The DA objected as irrelevant and the judge sustained the objection. Don asked Mueller if he was aware that the base property was purchased by the taxpayers. Don was going to make the point that we had the right to be on the property, but this question was also objected to and the objection was sustained.

Don took the stand and said he wanted to talk about why we were there. Curran said it was irrelevant to the charge – that intent is not an element of the trespass charge – and therefore he would not allow this testimony. The judge complained that he has heard this information repeatedly over

the last couple of years and that moral convictions are not relevant to the case.

Don said that if he was not allowed to talk about why he was there, he didn't have anything else he wanted to say.

The judge quickly told Don he was guilty of trespass and would be fined \$232, and that it would be attached to his income tax refund if he didn't pay it. Again, a defendant was tried and convicted without being allowed to provide a defense.

Don asked Curran if he could do community service or jail time and the judge said no. The judges made the same empty argument that it would take too much time to administer community service with a number of additional hearings being required. This is simply not true. We have models for community service in both Milwaukee and Madison where it is a matter of filling out a form that would be signed by a local minister and then turned into the court.

Don asked Curran if he could say one more thing and the judge said he would allow it. Don said, "I cannot allow killing of innocent people in my name. This needs to be stated over and over. We are always going to be protesting killings." And with that the judge stood up and quickly left the courtroom.

Don was hoping to read the following statement on Nuremberg from Nuremberg and American Justice during his testimony, but was not allowed:

Allegiance to the nation-state must be replaced by a loyalty to the human community and by a respect for international law. It is not the rebel who threatens civilization, but the compliant conformist who mechanically suppresses his moral qualms when confronted with the dictates of authority. The famous therapist R.D. Laing reminds us that the perfectly adjusted bomber pilot poses a greater threat to the survival of the human species than does the hospitalized schizophrenic. Laing goes on to note that so-called normal

individuals have been responsible for the unnecessary death of perhaps one hundred million of their fellow human beings in the twentieth century.

And so we are reminded of the importance of continuing our work. It might seem disheartening to witness the outrage and absurdity of the United States criminal justice system, but as I was driving to court today I was thinking of the words that Art Laffin always shares, "Keep your eyes on the prize." Whether we are found guilty or not in this sham of a court does not really matter in the big world picture. What we need to stay focused on, and what really matters, is the thousands and thousands of innocent children, women, and men who are being killed by U.S. drones. Continuing our message to stop the killing is what is important. And Don told the judge, "We will be back."

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## **No Justice for Drone Protesters**

**Gagged and Censored:**

**Justice is not Served for Drone Protester in Wisconsin Court**  
*by Joy First*



In May of 2014 Bonnie Block and Jim Murphy were arrested at Volk Field, a Wisconsin Air National Guard Base where they train operators to pilot Shadow drones with cameras to do surveillance and "target acquisition" so that the Predator and Reaper drones (remotely piloted from other US military bases) can drop Hellfire missiles on presumed militants in multiple countries. Bonnie and Jim are both part of the Wisconsin Coalition to Ground the Drones and End the Wars and have been protesting drones at Volk Field every month for more than three years.

Last May Bonnie and Jim went on a bus tour of Volk Field as part of an open house to which the public was invited. When the bus stopped at a museum on the base, they got off and tried to hand out flyers to others who were on the tour. They were told to stop handing out their "propaganda" and leave the base. Since they had come by the tour bus they had no way leaving on their own and yet they were arrested for trespassing and taken to the Juneau County Jail. They were released on bail and the ultimate charge was an ordinance violation of "trespass to land".

In September, Jim was found guilty in a bench trial and ordered to pay a fine.

Bonnie asked for a jury trial and, in response, the Juneau County District Attorney filed a Motion in Limine, asking that Bonnie be prohibited from making "any argument that is known to be false or irrelevant to the issues before the Court" including among other things the policies of the US Government, International laws, the Charter or certain Resolutions of the United Nations, or moral or ethical strictures believed in by the defendant. She was also prohibited from commenting in any way "that her prosecution was a violation of any Constitutional or International Right or privilege." This hearing was on March 3, 2015 in Mauston, WI.

It is common for prosecutors to file a Motion in Limine when a jury will be hearing a case against protesters, and this is something that we must continue to vociferously object to. In this case, the prosecutor had 25 points listed in his Motion, including 19 that asked the Court to prohibit Bonnie's possible defense in some way. It looked like he used a boilerplate document that was more applicable to a criminal trial and he actually withdrew 8 of them when Bonnie objected. Many of the points were simple procedural issues that Bonnie didn't object to and the judge quickly granted.

Of course, the important matters of the motion revolved around whether Bonnie could raise Constitutional free speech issues or provide any of the reasons she has for opposing drone warfare and handing out a leaflet raising four questions about drones. The judge also forbade Bonnie to make any reference to jury nullification i.e. asking the jury to ignore the facts and nullify the jury instructions in reaching their verdict. He did allow that juries have this right, but Bonnie is not allowed to raise it.

In arguing for her right to speak about drones, the US Constitution, or why she was handing out leaflets, Bonnie said that she needs to be able to tell the whole truth for there to be a fair trial. Otherwise the jury could presume she was on the base for no good reason. Prohibiting this in a pretrial order prevents her from presenting a defense for her action. She argued that the prosecutor can object during the trial if something is improper and the judge can make a ruling at that point. Bonnie said that these pretrial motions are overbroad and will have a chilling effect because she will have to wonder if something inadvertent will result in her being found in contempt.

The judge responded saying that this charge is about trespass and that is all that is going to be tried. Political beliefs are not going to be allowed. If Bonnie talked about drones or international law or the US Constitution, it could mislead the

jury. He went on to say that there is no way they will get through the trial without referencing the leaflet that Bonnie and Jim were attempting to distribute, but neither side, nor any witness, can say anything about the actual content of that leaflet. If these rules are not followed the judge will grant a mistrial and impose sanctions.

Bonnie said that this trial is about a constitutional free speech issue and the jury should be the ones to decide on whether she was trespassing or had a constitutional right to be on the base sharing her literature. The judge responded that deciding about constitutional issues is not up to the jury and Bonnie will not be allowed to bring that up.

Bonnie will now be going to trial on April 1 without being able to offer a strong defense. Her ability to do so has been taken away by the prosecutor and the judge before the trial even begins. This happens so many times in trials for protestors and it is outrageous. We are gagged and then we are censored.

As we consider this grave miscarriage of justice in Wisconsin, we realize it is all part of a bigger system of illegal actions by our government. Our hearts and minds hold the images of the children, the mothers and fathers, the grandparents who have been murdered by US drone strikes, remembering that the training for this program of targeted assassination begins at places like Volk Field, and knowing for certain that the resistance must continue.