Out of Order: Radical Lawyers and Social Movements in the Cold War

By

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Abstract

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My dissertation, *Out of Order: Radical Lawyers and Social Movements in the Cold War*, analyzes how progressive lawyers coordinated the legal defense for organizations and activists, while at the same time defining and practicing their own politics and expectations. Through the lens of a particular organization, the National Lawyers Guild, I examine the trajectories of the labor movement, the struggle for social justice, and expressions of international solidarity, and show how these trajectories diverged and intersected throughout the second half of the twentieth century. I argue that the NLG served a significant function. It was an organizing space where lawyers and activists would discuss and develop legal strategies and political tactics and test the limitations of legal — and extra-legal — protest. Consequently, the NLG became a mirror that helped make and, in turn, reflected the political coalitions and ideological ruptures within the Left during this often tumultuous era. The variety of progressive and radical positions debated, as well as the numerous organizations that worked with and around the NLG, gave the organization a unique vantage point and a continuous ancillary role in the trajectory of social movements.

Strikingly, the global incorporation of a human rights platform during this period captured a significant measure of the energy and attention of radical lawyers. This development helped broaden the scope of civil and economic rights struggles. The continuing impact of this development on the ideological and practical construction of progressive litigation, community empowerment, and networks of solidarity during the late Cold War has been profound. In juxtaposition to the experience of lawyers in the United States, the final chapter looks at progressive attorneys in Mexico. This chapter analyzes the role lawyers played in regards to social movements in other legal systems and the broader impact human rights discourse had on domestic legal strategies in Mexico in particular. Critically, it stresses the international undercurrents of radicalism and social justice between the 1960s and 1980s.

For my parents:
Dan y Cristina

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List of Abbreviations

AAJ	American Association of Jurists
ABA	American Bar Association
ABLDC	Attica Brothers Legal Defense Committee
ACLU	American Civil Liberties Union
ACPFB	American Committee for the Protection of Foreign Born
ANAD	Asociación Nacional de Abogados Democráticos
BALSA	Black American Law Student Association
BLA	Black Liberation Army
BPP	Black Panther Party
CASL	Committee to Assist Southern Lawyers
CATF	Central American Task Force
CCR	Center for Constitutional Rights
CISPES	Committee in Solidarity with the People of El Salvador
CLAS	Committee for Legal Assistance in the South
CNPDPPDEP	National Independent Committee in Defense of the Imprisoned, Persecuted, Disappeared, and Political Exiles.
COINTELPRO	Counter Intelligence Program of the FBI
CORE	Congress of Racial Equality
CPDPP	Committee in Defense of Political Prisoners
CPUSA (or CP)	Communist Party USA
CRLA	California Rural Legal Assistance
CTM	Confederation of Mexican Workers
DFS	Federal Directorate of Security

DGIPS	General Directorate of Political and Social Investigations
ECLC	Emergency Civil Liberties Committee
EEOC	Equal Employment Opportunity Commission
FALN	Fuerzas Armadas de Liberación Nacional
FNAD	Frente Nacional de Abogados Democráticos
FSA	Frente Socialista de Abogados
IABA	Inter American Bar Association
IADL	International Association of Democratic Lawyers
IJA	International Juridical Association
ILD	International Labor Defense
JCyA	Conciliation and Arbitration Board
LCDC	Lawyers Constitutional Defense Committee
LSCRRC	Law Student Civil Rights Research Council
LSL	Lawyers Security League
LSC	Legal Services Corporation
LSP	Legal Services Program
MALDEF	Mexican American Legal Defense and Education Fund
MFDP	Mississippi Freedom Democratic Party
NAACP	National Association for the Advancement of Colored People
NAACP - LDF (or LDF, Inc Fund)	Legal Defense Fund
NBA	National Bar Association
NCBL	National Conference of Black Lawyers
NJP	National Jury Project

NIP	National Immigration Project
NLG	National Lawyers Guild
OEO	Office of Economic Opportunity
PCM	Partido Comunista Mexicano
PLO	People's Law Office
PLO	Palestinian Liberation Organization
PRI	Institutional Revolutionary Party
RNA	Republic of New Africa
SDS	Students for a Democratic Society
SLA	Symbionese Liberation Army
SNCC	Student Nonviolent Coordinating Committee
UAG	Universidad Autónoma de Guerrero
UAW	United Automobile Workers
UE	United Electrical, Radio and Machine Workers of America
UFW	United Farm Workers
WKLD/OC	The Wounded Knee Legal Defense/Offense Committee
WUO	Weather Underground Organization

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This dissertation has always been a collective effort. I spent countless hours on my own going through archival materials, reading in libraries, couches, and coffee shops, traveling between Mexico and the United States, transcribing long interviews, and staring into the blank computer screen, but I was never alone. I would like to thank all those who have accompanied and supported me on this long and arduous journey.

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Camilo Eugenio Lund Montaño
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Introduction

Soon after Richard Nixon came into office in 1969, the administration brought charges against alleged leaders of the violence during the Democratic National Convention the previous year. The Attorney General indicted eight activists under the criminal statute against the crossing of state lines to incite a riot. William Kunstler, the legendary defense attorney, was in charge of the defense. He had been a civil liberties lawyer in New York and a civil rights lawyer in the South. In his opening statement, he emphasized his clients' First Amendment rights. The defendants were furious at him. They wanted Kunstler to talk about Vietnam, not the Constitution. Pacifist and advocate of nonviolent social change David Dellinger, one of the seven defendants said, "We wanted to put the government on trial, not win our freedom on a technicality."[1] As influential New Left activist Tom Hayden explained in a newsletter in May: "We want to use our case to go over once again what the basic issues raised in Chicago were. We want to win our case on the basis of widespread popular support."[2] The prosecutors and the mainstream bar were also taken aback by the politics and antics of the trial. In November, Frank Greenberg, the president of the Chicago Bar Association, asked "What do you do when the accused proclaims himself a revolutionary who is not subject to 'our' rule of law; when he deliberately sets out to create chaos in the courtroom and to disrupt by every means at hand all efforts at orderly procedure?"[3]

While at the time the trial was heralded as the "trial of a generation," as "guerrilla theater," it was not the first nor the only political trial of the anti-war and New Left movements. Also in 1969, twenty-one members of the Black Panther Party were charged with conspiracy to bomb police stations in New York City. The previous year, Huey Newton, the co-founder and chairman of the Black Panther Party, stood trial in California for the murder of a police officer. By 1968 several anti-war trials received considerable media attention and the defendants sought to reverse the charges and accuse the government of leaving them no choice as they resisted an "illegal" and "immoral" war. All of these trials ended with unfavorable verdicts for the defendants — with the notable exception of the Panther 21 trial. And yet, the movements continued. This dissertation looks at the lawyers involved in these trials.

At one point or another, all social movements come up against the legal system. The government has often responded with subpoenas, injunctions, prison sentences, and even violent repression. Still, the struggles persisted. Labor unions demanded their collective bargaining rights; inhabitants of a small town in Mississippi desegregated a public swimming pool; Communist sympathizers claimed their constitutional right of freedom of speech and association; Native American nations fought to assert their sovereign rights; Puerto Rican nationalists appealed to international law for recognition of their prisoners of war status; and flight attendants filed a class action lawsuit alleging employment discrimination based on their sex, age, and marital status. In all these instances, the individuals and groups involved

[1] Quoted in David Langum, *William M. Kunstler: The Most Hated Lawyer in America* (New York: New York University Press, 1999), 123.
[2] Ibid, 105.
[3] "Revolution in the Courtroom," *Chicago Tribune*, 7 November 1969, 18.

had to work within a legal framework of established norms and procedures. In most of these instances they worked with lawyers who were committed to present the defendants' positions in legalese without having the politics getting lost in translation.

In this dissertation I analyze the history of left-wing lawyers between the 1930s and the 1980s. I focus on the National Lawyers Guild (NLG), founded in 1937, and whose affiliates worked across the country. Through the lens of the NLG and its members, I look at the history of the labor movement, the struggles for social justice, and the manifestation of international solidarity throughout the second half of the twentieth century. I argue that lawyers played a crucial role in shaping and mediating the encounters between social movements and the legal system. Furthermore, organizations like the NLG played two distinct roles. First, they provided first-rate and much-needed legal assistance to individuals and organizations within these social movements. Second, they created an organizing space where lawyers and activists discussed and developed legal strategies and political tactics to test the limitations of legal — and extralegal — protest. Consequently, the NLG became a mirror that reflected the political coalitions and ideological ruptures within the legal community and the Left during the Cold War.

The lawyers involved constructed a narrative thread through which one can look at the politics and trajectories of social movements in the twentieth century and their changing relationship with the courts. The prototypical example, the civil rights movement, demonstrates how in the postwar era, after decades of concerted efforts to push local and federal courts towards desegregation, and after geopolitical demands pushed the Supreme Court to rule more forcefully against racial discrimination, the movement became in part reliant on the courts for redress. However, when the remedies were too slow and too ineffective, mobilization and direct action moved the focus beyond the courts. Many of the lawyers involved also followed suit and changed their legal tactics and strategies to adapt to the new types of demands. The trials that followed the mass arrests and acts of resistance also vividly reflected both the politics of the activists and the government as defense attorneys and prosecutors fought to frame the narrative of this confrontation between Black demands and government response.

There are contrasting images of the role of lawyers in society, especially in the United States. There is a prevalent stereotype of the lawyer as a callous and greedy figure who will take advantage both of the system and of their clients. However, there is also the heroic trope of the crusader for justice: from the fictional undefeated champion of the wrongfully accused, Perry Mason; the defender of the downtrodden and the marginalized, like Clarence Darrow; the articulate technician who knows how to work the system for the benefit of their clients — Samuel Leibowitz and later on William Kunstler; and, the leaders of a righteous cause, such as consumer advocate Ralph Nader taking on the automotive industry. The flipside to these figures is the concern from communities that lawyers will use their legal expertise and take over the decision-making process, or, in cases involving social movements, that they will slow down momentum by focusing money and energy on the technicalities of the courts. Naturally, some activist organizations were wary of lawyers but recognized their instrumentality. A lawyer from California quoted a young woman at an annual conference of organizers within communities of color: "I look at the lawyers as boulders that I throw in the road when we need a pause. When organizing is not going too

well and we need a breather, and we need to re-group and strategize, then we say: 'Bring in the lawyers.'"[4]

The history of progressive lawyers reflects the shifting legal circumstances in which social movements have operated, notably the broad-gauged postwar, Cold War inspired repression of dissident political activity. More narrowly this context included the extreme anti-Communist McCarthyism of the 1940s and 1950s as well as the fierce federal repression of leftwing activism in the late 1960s and 1970s. Furthermore, the relationship of a predominantly white-male organization — the NLG — that defended activist groups such as the Black Panther Party, tenant unions during rent strikes, commercial flight attendants, and Central American asylum seekers, sheds light on the complicated intersections across race, class, gender, and citizenship. The debates and frictions between the lawyers and their clients illuminate the rise of identity politics in this period, especially how these politics played out within the NLG. In particular, the Guild's inability to incorporate Latinx and Black lawyers demonstrates the limitations of the inclusion of people of color within progressive organizations. This was due in part to the independent trajectory of empowerment in these communities of color in the late 1960s and early 1970s. This problem also owed to the NLG's own inability to provide a hospitable space for both these movements on their own terms and the lawyers of color coming out of and representing the interests of those communities.

This dissertation analyzes the history of the National Lawyers Guild not only because it is one of the oldest surviving progressive legal organizations, but also because its history covers a broad and revealing ideological spectrum. The NLG was founded as a coalition of communists, socialists, civil libertarians, and liberals. Strikingly, the Guild has maintained this broad coalition, with much struggle, for most of its history. This is not to say that the Guild is the only organization where progressive lawyering has taken place. For example, the National Association for the Advancement of Colored People (NAACP), founded in 1909, as well as its subsequent legal offshoot the NAACP Legal Defense Fund, founded in 1940, have fought for the civil rights of African Americans. The American Civil Liberties Union was formed in 1919 to defend the First Amendment rights of critics of World War I. When the ACLU refused to defend alleged Communist Party members in the 1950s, progressive lawyers formed the Emergency Civil Liberties Committee to fill the void. Locally, organizations like the Harlem Lawyers Association and the Wolverine Bar Association litigated cases of racial discrimination in public spaces and the workplace in New York and Detroit respectively. There are also a large number of individual defense attorneys and law offices historically that have taken on the cause of the marginalized and the oppressed.

Many members of these organizations took to heart the dutiful role to defend their clients zealously, irrespective of their politics and personal positions. One of the more zealous of these organizations, the ACLU, has often claimed the Bill of Rights is their client. In 1978 they successfully defended the Nazi party's (National Socialist Party of America) right to hold a rally in a Jewish area of Skokie, Illinois. In contrast, lawyers in the Guild pride themselves in choosing their clients because of their politics or social position. They often

[4] Maria Blanco, Interview by author, Berkeley, 9 December 2016.

condemn the "poisonous even-handedness" of organizations such as the ACLU.[5] The Guild lawyer intends to keep activist clients organizing and out of jail and assisting clients whose cases could help further social and economic justice.

In the dissertation I argue that the Guild served three functions. First, as a bar association, when it was founded the Guild provided an alternative to the then-segregated American Bar Association, the main professional association in the country. As a legal organization, the Guild offered professional development workshops, a national network of lawyers in the same field, brief banks, job opportunities and internships for law school students. Second, it was a political platform: a forum where organizers, activists, lawyers, and legal workers came together and discussed political positions and assembled legal strategies. Finally, it was a mirror, a reflection of the social dynamics within social movements and the Left. However, as I will discuss below, it was an incomplete mirror that could not reflect the totality of all in its view. Nonetheless, the Guild offers an insight into the of the progressive left, from the Popular Front coalition politics to the new social movements at the end of the Cold War. The Guild likewise illustrates the divergence and convergence of the three main axes of radical lawyering: the labor movement, the struggle for social justice, and international solidarity.

Members of the Guild also embody the conundrum of the radical lawyer. As attorneys, they are part of "the system," an integral cog of the judicial machinery. As radicals, they reject the system; they are often antagonistic to its structures and practices. Understanding and exploiting this contradiction, as well as other contradictions of the legal and political system, became a fundamental task of the radical lawyer. The far-reaching platform of the Guild also reveals a variety of positions *vis-à-vis* the law. For instance, Doris Brin Walker, a lawyer in the Bay Area, member of the Communist Party-USA and part of the Old Left, wrote in the spring of 1974, "We have in this country legally protected rights of dissent greater than what exists anywhere else. We undoubtedly disagree as to the importance of this fact in bringing about revolutionary change; but it *IS* a fact, owed in largest part to our revolutionary origins and to our written constitution."[6] In contrast, in the NLG conventions of the late 1960s several law students wore pins that read, "Law is Bullshit." Kenneth Cloke, one of the organizers for the Free Speech Movement in Berkeley, described the law as a creation and instrument of power. Rather than minimizing the contradictions between social classes, law is used by the ruling class in order to control the results. "This law," he wrote, "has been accomplice to the greatest criminals, and should be sentenced to be hung by the neck until dead."[7]

Most radical lawyers didn't have much faith in the courts as the benefactors of justice. In this view, meaningful social change could only occur through mass mobilization and pressure. Their goals were not to find test cases to reform social and economic inequalities, but rather to slow down the repression of social movements, to keep activists out of jails and in the streets, to demystify the law and empower their clients, to take on the burden of the "law's delay" while maintaining a sense of urgency. There was an underlying

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[5] Diane Garey, *Defending Everybody: A History of the American Civil Liberties Union.* (New York: TV Books, 1998), 13-15.

[6] Doris Brin Walker, "The Class Role of the United States Courts," *The Guild Practitioner*, Spring 1972.

[7] Kenneth Cloke, "Law is Illegal," in Jonathan Black, *Radical Lawyers: Their Role in the Movement and in the Courts* (New York: Avon, 1971), 43.

debate among the lawyers: Should their role be solely that of a hired technician providing the best procedural advice and knowledge for their clients? Or, should they be active participants in the movement, whose particular skills were to be used to its benefit, to be the "legal arm of the movement"? Should they rather become revolutionary subjects in their own right, organizing and radicalizing a traditionally conservative profession as well as personally engaging in direct action and disruptive tactics? Could they find a way to be all three?

The term "radical" is capacious and even ambiguous, carrying different meanings depending on the context and tone. In the dissertation, I use it to refer to lawyers who self-identified as radical, often in an attempt to distinguish themselves from their liberal colleagues. Generally, the latter argued that they had to continue to address the issues through litigation and legislation; the former believed that social justice objectives could only be achieved outside of the courtroom — after enough social and political pressure forced institutional change. Of course across time and in various settings these positions converged and diverged. Nonetheless, radical lawyers proudly assumed their role as a mediator between social movements and the legal system. They formulated legal strategies on constitutional grounds, but also had creative and innovative approaches. These included resorting to affirmative litigation using statutes from the Reconstruction era, challenging racism and prejudice in the jury selection process, saturating court proceedings with continuous motions and objections in anti-draft cases, and using tort laws from the late eighteenth century to impede the U.S. military presence in Central America.

The category of the "radical lawyer" was not universally accepted, as the dissertation will demonstrate. Some lawyers rejected it because it was vague or contradictory. Alternative terms used were "people's" lawyers, "movement" lawyers, "revolutionary" lawyers, or "progressive" lawyers. However, they all encompass the distinction between a civil libertarian or liberal lawyer, on one side, and a left-progressive politically oriented lawyer, on the other. I will use most of these terms interchangeably throughout the dissertation, except in the debates on the nuances of the terms. Similarly, there are several anachronistic terms widely used in the sources and interviews — such as "Negro," "alien," and "third world" — which I will use only in quotations. Finally, the prevalent concept "the Movement" will either be in quotes or capitalized when used in the way that most interviewees did: as an all-encompassing category for the civil rights, anti-war, women's, Black liberation, and other marginalized communities' movements.

The various challenges to "the system" also extended to the legal profession, bringing in new terms and concepts. An important struggle for radical lawyers was to battle and shed their own privileged social status position and the internal hierarchies in the law office. Traditionally, people who worked in a law office and were not lawyers would be the secretaries or the investigators, the former would usually be women and the latter considered unskilled. In the late Sixties the concept of the "legal worker" emerged as a part of the hierarchical challenge. The empowerment of legal workers was an additional way to demystify the law and the profession, formally allowing non-lawyers to be involved in the development of legal strategies and in the decision-making process of the offices and the Guild. They were incorporated as full voting members of the organization in the early 1970s. Later on, however, a non-politicized term for non-lawyers became more common in law offices: paralegals.

While this study centers the NLG, the focus of the dissertation is the people who constituted the organization. The politics, relationships, and cases of the lawyers in question were for the most part not conducted in the name of the Guild. However, the discussions and dynamics between these lawyers took place within Guild spaces. As a result, the distinction between the work done by particular Guild lawyers and the work done by the NLG itself was at times clearly demarcated and at other times blurred. Conversely, while resolutions at Guild conventions did not always materialize in tangible legal efforts, they illustrate the mentality, aspirations, and expectations of many Guild lawyers. Furthermore, the NLG's history functions as a cohesive case study for radical politics. Lawyers involved in the Guild defended virtually all aspects of what constitutes social movements in the United States: workers, immigration, Native Americans, Communists, Black Nationalists, the homeless and the unemployed. Because of the limitation of source materials and the need to narrow the focus of this study, there are several angles, like Native American struggles and the fight for Puerto Rican independence, which will not be covered in great depth here. Nevertheless, the larger legal history and politics of these struggles obviously demand further research and analysis.

The Guild's history also provides a revealing narrative thread that connects the New Deal to the Ronald Reagan presidency. Indeed that narrative thread has persisted up to the present period. Consequently this work traces legal strategies that led to the successful campaigns for labor and union rights, as well as the ebbs and flows of the "long civil rights movement." The conservative shift of the federal courts in the late Sixties, along with the heightened militant actions of the anti-war movement and the Black liberation struggle, marked the zenith of radical lawyering. At the end of the Seventies a combination of extremism, disillusionment and exhaustion ("burn out," as the interviewees described it) brought the decline of the radical Left. However, the Guild, and its members, continued to find its place in the courts and alongside the activists. Most notably perhaps, the NLG is the only radical organization that can claim to have survived World War II, McCarthyism, the Vietnam War, continuing federal surveillance and repression, the New Left sectarian implosion of the Seventies, and the end of the Cold War.

The dissertation's treatment of almost fifty years illustrates not only a history of continuity, but also points of rupture. In the narrative of social movements and the Left, there is a significant generational tension: as a generation becomes stodgy and moderate, a new set of "Young Turks" comes along and challenges them to push the politics in a new, more radical direction. Tracing the history of the Guild vividly illustrates these dynamics within the U.S. Left since the late Thirties. In turn, this history captures changing politics and attitudes towards the legal system, the profession, racism, sexism, and the global role of the United States.

This history showcases at least four shifts: two relatively minor and two openly confrontational. The two minor shifts are when the founding members passed the baton to those who became lawyers in the Forties, and when folks who came of age after the end of the Vietnam War took on leadership positions in the 1980s. The contentious shifts were when the New Left generation took on the old guard of the Old Left in the 1960s, and when the new radicals who came of age after the end of the Cold War challenged the leadership in the 2000s. This last shift is beyond the scope of the dissertation but will be briefly analyzed in the conclusion.

The dissertation follows a chronological structure. The first chapter explains the formation of the NLG in the 1930s, and traces how its members went from occupying prominent positions in New Deal programs to becoming targets of the Red Scare. Their involvement in the Popular Front and the proximity of many of its members to the Communist Party made them vulnerable to the congressional committees on "Un-American" activities. However, the development of legal strategies from the Scottsboro case to the Smith Act trials assigned lawyers a distinctive role during this period. Chapter 2 narrates their involvement in the civil rights movement in the South and the successful use of the federal courts in order to curtail negative state courts rulings. Additionally, the chapter looks at how the growing anti-war movement forced the NLG to take on a more active role assisting that movement. Nonetheless, the ideological and generational divisions generated by that assistance created significant internal tensions. The third chapter focuses on the years between 1968 and 1974, when militant protest forced a re-examination of the lawyers' role and the limitations of legal and extra-legal struggles for social change. Even though there were numerous positive court decisions, the continuation of the war in Vietnam and the conservative shift of the judiciary, compelled many attorneys to support violent factions, causing further fissures within the NLG and the Left in general.

The end of the war in 1975 and the concurrent ebbing of 1960s-based social movements signaled a transformation in the left-wing legal community's political objectives. Many members began to focus on expanding economic rights and protecting the legal services programs from Lyndon Johnson's Great Society legislation. Others turned their attention towards human rights violations in Latin America and the Middle East. Chapter 4 examines the interaction of human rights with civil and economic rights, which led to successful — albeit temporary — campaigns concerning immigration law in the United States and against military involvement in Central America. Starting with the Spanish Civil War (1936-1939), the NLG sought to establish international solidarity networks. With the buildup of the Cold War those efforts intensified, but they also created sharp ideological rifts. For example, the Israel-Palestine conflict nearly caused the NLG to fall apart. Nonetheless, the Guild survived these crises in its to solidify the original intention of providing a space for coalition building and development of legal strategies.

In juxtaposition to the experience of radical lawyers in the United States, the final chapter looks at progressive attorneys in Mexico. Through the defense of student groups, rank-and-file union dissidents, and insurrectionary militants, they sought to politicize the legal process by pointing out the faults in the civil code of law, challenging corrupt judicial decisions, or by appealing to international law. This chapter examines the social history of support communities and the broader impact that human rights concerns had on domestic legal strategies and political ideologies. In particular, this chapter stresses the international and transnational undercurrents generated by the Cold War. The chapter therefore is an initial installment of a larger and ongoing project.

Why Mexico?

When I started this historical analysis of the National Lawyers Guild, I was also looking for transnational networks of radical lawyers. The formation of international legal organizations such as the Inter American Bar Association (IABA) and the American

Association of Jurists (AAJ) elicited new questions regarding the National Lawyers Guild related to progressive organizations in the Western Hemisphere. I became especially interested in the interactions between Mexican and U.S. American lawyers during the immigration battles and the Central American armed conflicts of the 1980s. Unfortunately, beyond the coordination of individual human rights lawyers in the border, there were no significant collaboration among legal organizations until the mid 1990s with the challenges to the North American Free Trade Agreement from labor rights organizations in both countries. But that topic lies beyond the chronological scope of this study. Nonetheless, while the research in Mexico was limited in some ways, it did yield a revealing trajectory parallel to that of the NLG of radical lawyering in Mexico through legal organizations, such as the Socialist Front of Lawyers (FSA) and the National Front of Democratic Lawyers (FNAD). The research also offered a nuanced perspective on the impact that the labor, political prisoners, and human rights movements had on Mexico in the 1970s and 1980s.

While there is a growing historiography on social movements in Mexico in this period, very little attention has been given to the role lawyers played.[8] Some scholars, however, are starting to challenge the "monolith" narrative of the of the Institutional Revolutionary Party's (PRI) rule, and show how regional dynamics and some relationships with institutions (like the army) were not always top down.[9] However, the courts — at least from the perspective of the interviewees — seemed to have a strong relationship with the executive branch. But further research on the actual decisions and relationships among the judges, magistrates, and heads of the Arbitration offices might very well indicate that the courts had more power than we think. At least such research would bring more nuance to the political connections between the PRI, the president, and the executive. Still, In the chapter I often conflate government, authorities, and president, mostly because the human rights movement sought to localize or allocate the responsibility to the highest offices possible, and because that is the language that most of the lawyers I met with used. This is another testament to the lasting effects of the narrative built by the PRI of the all-powerful executive office. The research is not intended to support the previously dominant narrative, but rather to reflect the perspectives of the interviewees.

There are also a limited number of archival sources for the FSA and FNAD. The Centro de Estudios de Movimientos Obreros y Sociales in Mexico City holds materials mostly related to the activities of the Mexican Communist Party (PCM) during the 1940s and 1950s. I had to rely predominantly on personal papers of lawyers and on the reports from the Dirección General de Investigaciones Políticas y Sociales (DGIPS) — a covert branch

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[8] Laura Castellanos, *México armado, 1943-1981* (Mexico D.F.: Ediciones Era, 2016); Fritz Glockner Corte, *Memoria roja: Historia de la guerrilla en México* (México: Ediciones B, 2007); Verónica Oikión Solano and Marta Eugenia García Ugarte, eds., *Movimientos armados en México, siglo XX* (Zamora, Michoacán; México, D.F.: Colegio de Michoacán : CIESAS, 2009); Adela Cedillo and Fernando Herrera Calderón, eds., *Challenging Authoritarianism in Mexico: Revolutionary Struggles and the Dirty War, 1964-1982* (London: Routledge, 2012); Paul Lawrence Haber, *Power from Experience: Urban Popular Movements in Late Twentieth-Century Mexico* (University Park.: Pennsylvania State University Press, 2006); Jaime M Pensado and Enrique Ochoa, *México Beyond 1968: Revolutionaries, Radicals, and Repression during the Global Sixties and Subversive Seventies*, 2018; Joe Foweraker and Ann L Craig, *Popular Movements and Political Change in Mexico* (Boulder, Colo.: Rienner, 1992).

[9] Paul Gillingham and Benjamin T Smith, eds., *Dictablanda: Politics, Work, and Culture in Mexico, 1938-1968*, 2014; Pensado and Ochoa, *México Beyond 1968*; Gabriela Soto Laveaga, *Jungle Laboratories: Mexican Peasants, National Projects, and the Making of the Pill* (Durham: Duke University Press Books, 2009).

within the Office of Domestic Affairs (Secretaría de Gobernación) of the Mexican government. DGIPS was in charge of putting together files and reports on social movement activists and organizations.

The DGIPS files are composed mostly of newspaper clippings and sporadic reports of different events and meetings. Because government agents put them together, these materials help provide insight into the government's perspective. However, as historian Alexander Aviña pointed out, the scope and scale of the archive, the agents' success in repressing movements, or the longevity of Institutional Revolutionary Party (PRI) rule, "should not lend an image of omnipotence or ruthless efficiency to the DFS and DGIPS."[10] In other words, the fact that the files are vast does not mean that the information is accurate or reliable. In addition, access to the files, kept in the National General Archive (AGN) and regulated by the federal government, has been a complicated task for historians. In 2002, Mexican president Vicente Fox Quesada opened up the files of the DGIPS, the Federal Directorate of Security (DFS) (the largest federal secret police agency), and its successor: the Center for Investigation and National Security (CISEN).[11] However, the agency continued to regulate access to the materials and kept many files classified. In 2015, during the presidency of Enrique Peña Nieto, an additional set of regulations was implemented further narrowing access to these materials — allegedly to protect sensitive information and personal data. These new regulations led to the withholding of previously released files — including several of my own requests.[12] Currently, in 2019, the administration of Andrés Manuel López Obrador promises greater transparency and has opened up many of the archives of these agencies. As expected, this created a massive backlog of requests. By March 2019, the archivist informed me that they were receiving between 50 and 100 new requests a day, which have to be sorted and processed. Although I was informed that the requests I submitted in December 2018 — for FNAD and other individual lawyers — were found, they still need to be processed and won't be made available for at least another year.[13]

As a result, at this point, my principal sources are the oral history interviews that I conducted. These, of course, have their own limitations. Unlike the access I had with lawyers in the United States, in Mexico I had to start from scratch. In general, lawyers who have worked with social movements share an understandable degree of suspicion, at times even paranoia, about researchers. In Mexico the feeling is especially palpable, owing largely to the legacy of the Cold War and the history of government repression. For instance, an old

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[10] Alexander Aviña, "An Archive of Counterinsurgency: State Anxieties and Peasant Guerrillas in Cold War Mexico," *Journal of Iberian and Latin American Research* 19:1 (July 1, 2013), 41.

[11] "Fox hace públicos todos los archivos sobre las desapariciones en los años 60 y 70," *El País*, 18 June 2002.

[12] "Cisen, 16 años controlando los archivos de la Guerra Sucia," *Contralínea*, Num. 648, https://www.contralinea.com.mx/archivo-revista/2018/08/06/cisen-16-anos-controlando-los-archivos-de-la-guerra-sucia/ Accessed on 30 May 2019; "Archivo de movimiento estudiantil de 1968 seguirá con restricciones de acceso: AGN," *Paolarojas.com.mx*, 6 June 2018, https://paolarojas.com.mx/archivo-clasificado-de-movimiento-de-1968-seguira-con-restricciones-agn/, Accessed on 30 May 2019.

[13] Jorge Nacif Mina, "El Archivo General de La Nación En La Era de La Apertura de La Información Pública En México," *Desacatos* 26 (2007): 11–24; María Magdalena Pérez Alfaro, "Archivos, Memoria y Censura. Sobre Las Restricciones a La Consulta Del Fondo DFS En El AGN-México," *Debates*, no. 11 (2017): 121–33. "Así abrimos los archivos de espionaje en México," Shareni Guzmán, *La Silla Rota*, 28 February 2019, https://lasillarota.com/asi-abrimos-los-archivos-de-espionaje-en-mexico-sergio-aguayo-vicente-fox-cisen-santiago-creel/273662, Accessed 30 May 2019.

Communist Party lawyer agreed to meet with me on two separate occasions, but as soon as he found out I was part of a U.S. university, he cut the meeting short because he believed that I could be a CIA operative. Or, in case I wasn't, the CIA could access any information I might get from him. While I was able to speak to seven lawyers, a combination of busy schedules and distrust made others wary of me. It took two years for one particular lawyer who had belonged to both the FNAD and its successor organization, ANAD, to finally agree to an interview, which took place in March of 2019. It was only after I interviewed him that the "snowball" (in the snowball methodology of oral history interviews) finally began to roll down the hill. Therefore the chapter is an exploratory study into radical lawyering in Mexico, and the oral history project and research will continue beyond the scope of this dissertation.

Sources and Historiography

For the project I consulted archives in New York, Chicago, Berkeley, Palo Alto, and Mexico City. While many of the collections are from the personal papers of individual lawyers and law offices, the main collections of the NLG are held in the Bancroft Library at UC Berkeley and the Tamiment Library at NYU. In the latter, Victor Rabinowitz, a prominent member of the Guild, donated more than 300 boxes of correspondence, newspaper clippings, position papers, and legal files. At least fifty of the boxes were obtained after the NLG filed a lawsuit against the FBI in 1977. The collection also contains most of the newsletters and publications from the national office and the regional chapters. In addition to these materials, I relied heavily on oral history interviews I conducted.

At this point, I find it necessary to include a personal disclaimer. I was attracted to this topic largely because of Daniel Lund, my father. He was a lawyer and member of the National Lawyers Guild. Although I grew up hearing his version of some of these stories, I did not fully engage with the subject until he passed away in 2010. I first approached his friends and colleagues and I was able to gain the trust of many lawyers and legal workers. I need to acknowledge that because of my last name I was able to access an extensive network of radical lawyers. Even the people who were distrustful or skeptical of my intentions did not agree to a formal interview, they nevertheless agreed to share some of their stories and perspectives. As a complementary project to the dissertation, I plan to continue the interviews with lawyers and legal workers and build a substantial and accessible oral history collection.

For the project I spoke with over fifty lawyers and legal workers. Forty agreed to be formally interviewed: 17 women and 23 men. While the main locations of interviews were New York, California, and Chicago, many of the lawyers had lived and worked in different places of the country. I tried to find enough narrators to cover the different areas of law and the different social movements involved with the Guild: most worked on criminal law, but many others focused on labor, immigration, civil rights, housing, and human rights. Most of the narrators were active in the Guild — some much more than others — but there were also some who worked independently of the Guild, which helped them maintain a critical perspective toward the Guild. It is important to note that the voices most critical of the Guild were lawyers and legal workers of color.

These critical voices point out the main limitation of the scope of the dissertation. The mirror's reflection depends on the perspective of the observer; the same applies to the Guild and social movements. A more complete image would undoubtedly include the testimonies of the defendants, the activists and organizers who stood trial for their actions and politics. An additional distortion to this reflection is the lack of voices of lawyers and legal workers of color. As will be described in the following chapters, the Guild has always been predominantly white and has had a complicated relationship with Black and Latinx lawyers. The history of the NLG provides an anamorphic but telling perspective: how a predominantly white radical legal organization saw its own role in the history of "the Movement" among communities of color.

The number of publications written by the radical lawyers themselves, mostly memoirs and autobiographies, is voluminous.[14] As I mention in the following chapters, an especially important aspect of the Guild was its national and local publications. The chapters and national office had periodicals, as well as journals celebrating anniversaries and dinners.[15] In the early Seventies there were several collections of essays and interviews exploring the role of the radical lawyer.[16] Most of the analyses of these editions were prescriptive, figuring out what is to be done, and for the most part full of sanguine rhetoric of the impending revolution. In the late Sixties and early Seventies, there was, however, a more belligerent rhetoric, which also demonstrated the growing frustration with the slowness or lack of social and political change. The memoirs are therefore more critical of the shortfalls and naiveté of

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[14] For starters consult: Benjamin J. Davis, *Communist Councilman from Harlem: Autobiographical Notes Written in a Federal Penitentiary* (New York: International Publishers, 1969); Royal W. France, *My Native Grounds: The Autobiography of Royal W. France* (New York: Cameron Associates, 1957); Charles R. Garry and Art Goldberg, *Streetfighter in the Courtroom: The People's Advocate* (New York: Dutton, 1977); Jeffrey Haas, *The Assassination of Fred Hampton: How the FBI and the Chicago Police Murdered a Black Panther* (Chicago: Chicago Review Press, 2009); David Kairys, *Philadelphia Freedom: Memoir of a Civil Rights Lawyer* (Ann Arbor: University of Michigan Press, 2008); Florynce Kennedy, *Color Me Flo: My Hard Life and Good Times* (Englewood Cliff: Prentice-Hall, 1976); Arthur Kinoy, *Rights on Trial: The Odyssey of a People's Lawyer* (Cambridge: Harvard University Press, 1983); William M. Kunstler and Sheila Isenberg, *My Life as a Radical Lawyer* (Secaucus: Carol Pub. Group, 1994); Conrad J. Lynn, *There Is a Fountain: The Autobiography of Conrad Lynn* (Brooklyn: Lawrence Hill Books, 1993); Victor Rabinowitz, *Unrepentant Leftist: A Lawyer's Memoir* (Urbana: University of Illinois Press, 1996); Michael Steven Smith, *Notebook of a Sixties Lawyer: An Unrepentant Memoir and Selected Writings* (Brooklyn: Smyrna Press, 1992); Michael E. Tigar, *Fighting Injustice* (Chicago: Section of Litigation, American Bar Association, 2002); Evelyn Williams, *Inadmissible Evidence: The Story of the African-American Trial Lawyer Who Defended the Black Liberation Army* (Chicago: Lawrence Hill Books, 1993); D'Army Bailey and Roger R. Easson, *The Education of a Black Radical: A Southern Civil Rights Activist's Journey, 1959-1964* (Baton Rouge: Louisiana State University Press, 2009); J. Tony Serra, *Tony Serra: The Green, Yellow and Purple Years in the Life of a Radical Lawyer* (Kensington: Grizzly Peak Press, 2014).

[15] *A History of the National Lawyers Guild, 1937-1987* (New York: National Lawyers Guild Foundation, 1987); Ann Fagan Ginger and Eugene M. Tobin, eds., *The National Lawyers Guild: From Roosevelt through Reagan* (Philadelphia: Temple University Press, 1988). A full list of the regional and national periodicals is included in the bibliography.

[16] Black, *Radical Lawyers*; Gerald Lefcourt, ed., *Law Against the People: Essays to Demystify Law, Order, and the Courts* (New York: Random House, 1971); Marlise James, *The People's Lawyers* (New York: Holt, Rinehart and Winston, 1973); Ann Fagan Ginger, *The Relevant Lawyers: Conversations out of Court on Their Clients, Their Practice, Their Politics, Their Life Style* (New York: Simon and Schuster, 1972); Albert Ruben, *The People's Lawyer: The Center for Constitutional Rights and the Fight for Social Justice, from Civil Rights to Guantánamo* (New York: Monthly Review Press, 2011).

the era, while still presenting laudatory accounts, emphasizing the importance of specific cases and trials and the impact they had on "the Movement."

There is a growing number of biographies on particular movement lawyers.[17] These provide much needed context and analysis of the impact of the individual figures. In addition, the case studies on the wider legal side of social movements are mostly focused on civil liberties and civil rights organizations also demonstrate the valuable link and exchange of knowledge and skills between the legal and activist organizations, and the significant role litigation played in the development of social movement tactics and strategies.[18] However, most of these legal organizations, such as the ACLU and the NAACP, operated within the ideological and political framework of liberal democracy and defense of the Constitution. The dissertation shows that movements and lawyers who went beyond the pale of liberal democracy, who advocated for more radical transformations of the political system and who advocated for a sense of justice beyond constitutional guarantees, also had to mediate and push through the existing mechanism and rhetoric of the legal system.

There are at least two dissertations that look specifically at the role of radical lawyers. Percival Bailey traces the trajectory of the formation of the NLG and how it went from a leading progressive bulwark to one of the main targets of the postwar "Red Scare" in his 1979 study.[19] Nancy Andersson in 1980 argued that a group of radical and progressive lawyers were able to create a "sector" within the traditionally conservative profession and

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[17] Steve Babson, *The Color of Law: Ernie Goodman, Detroit, and the Struggle for Labor and Civil Rights* (Detroit: Wayne State University Press, 2010); Robert J. Blakely, *Earl B. Dickerson: A Voice for Freedom and Equality.* (Evanston: Northwestern Univ Press, 2012); Ann Fagan Ginger, *Carol Weiss King, Human Rights Lawyer, 1895-1952* (Niwot: University Press of Colorado, 1993); David J. Langum, *William M. Kunstler: The Most Hated Lawyer in America* (New York: New York University Press, 1999); Bryan D. Palmer, *James P. Cannon and the Origins of the American Revolutionary Left, 1890-1928* (Urbana: University of Illinois Press, 2007); Gilbert Ware, *William Hastie: Grace Under Pressure* (New York: Oxford University Press, 1984); Sarah Hart Brown, *Standing Against Dragons: Three Southern Lawyers in an Era of Fear* (Baton Rouge: Louisiana State University Press, 1998); Robert C. Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union* (New York: Columbia University Press, 2000); Maurice Daniels, *Saving the Soul of Georgia: Donald l. Hollowell and the Struggle for Civil Rights.* (Athens: University of Georgia Press, 2016); Paulette Frankl, *Lust for Justice: The Radical Life & Law of J. Tony Serra* (Santa Fe: Lightning Rod Publications, 2010); Diana Klebanow and Franklin L. Jonas, *People's Lawyers: Crusaders for Justice in American History* (Armonk: M.E. Sharpe, 2003); Alan Howard Levy, *The Political Life of Bella Abzug, 1920-1976* (Lanham: Lexington Books, 2013); Genna Rae McNeil, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* (Philadelphia: University of Pennsylvania Press, 1983); Sherie M. Randolph, *Florynce "Flo" Kennedy: The Life of a Black Feminist Radical* (Chapel Hill: The University of North Carolina Press, 2015); Rosalind Rosenberg, *Jane Crow: The Life of Pauli Murray.* (Oxford: Oxford University Press, 2017).

[18] Donald A. Jelinek, *White Lawyer, Black Power: Civil Rights Lawyering during the Black Power Era in Mississippi and Alabama* (Berkeley, Jelinek Publishers, 2015); Earl Johnson, *Justice and Reform: The Formative Years of the OEO Legal Services Program* (New York: Russell Sage Foundation, 1974); Manfred Berg, *The Ticket to Freedom: The NAACP and the Struggle for Black Political Integration*, (Gainesville: University Press of Florida, 2005); Diane Garey, *Defending Everybody: A History of the American Civil Liberties Union* (New York: TV Books, 1998); Robert C. Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union* (New York: Columbia University Press, 2000); Judy Kutulas, *The American Civil Liberties Union and the Making of Modern Liberalism, 1930-1960*, (Chapel Hill: University of North Carolina Press, 2006); Jack Greenberg, *Crusaders in the Courts: Legal Battles of the Civil Rights Movement*, (New York: Twelve Tables Press, 2004); Gilbert Jonas, *Freedom's Sword: The NAACP and the Struggle Against Racism in America, 1909-1969* (London: Routledge, 2007); Lee Sartain and Kevern Verney, eds., *Long Is the Way and Hard: One Hundred Years of the NAACP* (Fayetteville: University of Arkansas Press, 2009).

[19] Percival Roberts Bailey, "Progressive Lawyers: A History of the National Lawyers Guild, 1936-1958" (PhD diss., Rutgers University, 1979).

shaped their own set of practices and expectations by consciously introducing radical political ideology into their professional work.[20] In this dissertation, I push beyond both of these works and argue that the Guild not only was revitalized after the McCarthy era but also continued to have a significant role within the legal profession and in relation to the main social movements in the Sixties and Seventies.

There is also a considerable body of work on "cause lawyering."[21] Stuart Scheingold and Austin Sarat, the leading scholars of this particular historiography, define cause lawyers as transcending the service to any particular clients; rather it implies a choice of work with clients with whom they share a political or moral commitment. "Not only are they eager to take sides in social conflict and to identify themselves with the sides they take," the authors argue, "but they are determined to construct their legal practice around this taking of sides."[22] While cause lawyers transform the nature of legal advocacy — by prioritizing a larger cause or movement over professional and institutional codes of conduct — they still operate within the framework of the legal system and are compatible to the means and ends of liberal democracy. Radical lawyers, on the other hand, represent the margin of cause lawyers, as part of the "transformative Left." The more these lawyers move further away from liberal democratic center, Scheingold and Sarat contend, the more precarious their political and professional prospects and they are often forced to adopt more confrontational strategies. "At the same time, they are, implicitly and contradictorily, dependent on the state that they wish to transform." According to the authors, The NLG, "through its resolute pursuit of alternatives to liberal democratic visions of the state, corporate enterprise, and the legal profession, has been the bulwark of transformative-left cause lawyering in the U.S. for a long time."[23] However, as other analyses maintain, the authors argue the Guild declined along with the New Left in the mid Seventies. I contend otherwise: the Guild not only survives, but also witnesses another historical transformation, this time in the late twentieth century, as it shifts its focus to international solidarity work and concerns like human rights, immigration, and prisoners' rights.

Similarly, Thomas Hillbink's dissertation and subsequent articles also places Guild lawyers at the radical margins of the cause lawyering movement. For all three authors, radical and cause lawyering reached their zenith in the 1960s. Hillbink argues that in the Seventies there was a substantial decrease in radical lawyers. With the few exceptions of people like William Kunstler and Leonard Weinglass, most radical lawyers remained active "albeit less visibly" defending radical causes in the Seventies and Eighties. However, "to the extent there was a radical lawyering 'movement' it had lost steam as the New Left dissipated" and radical

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[20] Nancy E Anderson, "Radical Lawyers: An Examination of the Left-Wing 'Sector' of the Bar" (PhD diss., New York University, 1980).

[21] Austin Sarat and Stuart Scheingold, *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford: Oxford University Press, 1998); Austin Sarat and Stuart A Scheingold, *Cause Lawyering and the State in a Global Era* (Oxford: Oxford University Press, 2001); Austin Sarat and Stuart A Scheingold, *Cause Lawyers and Social Movements* (Stanford, CA: Stanford Law and Politics, 2006); Austin Sarat and Stuart A. Scheingold, *The Cultural Lives of Cause Lawyers* (Cambridge: Cambridge University Press, 2008).

[22] Stuart A Scheingold and Austin Sarat, *Something to Believe In: Politics, Professionalism, and Cause Lawyering* (Stanford: Stanford University Press, 2005), 9.

[23] Ibid, 117.

lawyering "waned for the most part" with the end of the Vietnam War.[24] Most of the practitioners found an outlet in academia — "where the ideas found in the writings of radical lawyers moved into the law reviews under the name of Critical Legal Studies."[25] What followed, according to Hillbink — as well as Scheingold and Sarat — was a surge in public interest law, driven mostly by the established bar, the ABA, and liberal organizations like the ACLU.

There are other, more critical, analyses of cause lawyering. Mary Ann Glendon argued that the "golden age" of lawyering — where litigation was the last resort and lawyers contributed to social integration by being part of the "cooling off" mechanism of social conflict — ended in the 1960s. The decline of professional ethics began with cause lawyers' "hubris" of seeing themselves as the "vindicators" of an expanding array of claims and rights, unbalancing the "wheels of democracy" by insisting on constant and antagonistic litigation.[26] One of the arguments of this dissertation is that radical lawyering, alongside other forms of cause lawyering (including poverty lawyers and public interest law), continued well beyond the end of the Vietnam War and the waning of the New Left. Many lawyers did find or create bulwarks within academic spaces. However, they remained connected with the Guild and other radical organizations. Although increasingly marginalized by the right-wing shift in the courts, radical attorneys continued to use innovative tactics and strategies to not only uphold the constitutional ideals of the State, but also to pursue the transformation of those ideals and the State itself.

Many social movement scholars have pointed out the crucial role played by lawyers in specific campaigns. Litigation is one of the core strategies of social movements — along with mass mobilization and electoral politics.[27] As agents of the court, lawyers play a significant part in this strategy, but are often seen as taking on leadership positions, diminishing the energy and resources through lengthy court processes, or facing accusations of hijacking the movement. The focus on the radical legal community and the perception of their own primary or secondary roles illustrates the complicated dynamics between social movement organizations and their networks of support and solidarity. For example, Thomas Rochon in *Culture Moves*, argues that political and social transformation both occur in response to rapid cultural change while new ideas and perspectives are generated within a small group of critical thinkers and are then developed and put into practice by groups on the ground.[28] However, my study of the Guild and the radical legal left demonstrates that the

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[24] Thomas Miguel Hilbink, "Constructing Cause Lawyering: Professionalism, Politics, and Social Change in 1960s America" (Ph.D. diss., New York University, 2006), 12.

[25] Ibid., 320.

[26] Mary Ann Glendon, *A Nation Under Lawyers: How the Crisis in the Legal Profession Is Transforming American Society* (New York: Farrar, Straus, and Giroux, 1999).

[27] Marco Giugni, Doug McAdam, and Charles Tilly, eds., *How Social Movements Matter* (Minneapolis: University of Minnesota Press, 1999); Joel F Handler, Jan Hollingsworth, and Howard S Erlanger, *Lawyers and the Pursuit of Legal Rights* (London: Academic Press, 1978); Jules Lobel, *Success without Victory: Lost Legal Battles and the Long Road to Justice in America*, Critical America (New York: New York University Press, 2003); Doug McAdam, Sidney G. Tarrow, and Charles Tilly, *Dynamics of Contention* (New York: Cambridge University Press, 2001); Sidney G. Tarrow, *Power in Movement: Social Movements and Contentious Politics* (New York: Cambridge University Press, 1998); Frances Fox Piven and Richard A. Cloward, *Poor People's Movements: Why They Succeed, How They Fail* (New York: Vintage Books, 1979).

[28] Thomas R. Rochon, *Culture Moves: Ideas, Activism, and Changing Values* (Princeton: Princeton University Press, 1998).

flow of perspectives goes in both directions — between community groups and supporting organizations — and the generation of ideas increases when there are plural and open spaces to discuss and organize.

The impact lawyers had on the political culture in the U.S. has mostly focused on the link between the mainstream bar and the powerful lobbying firms in Washington, DC. As historian Judy Kutulas points out, even the ACLU moved away from the margins of radical politics and helped shaped the compromising, anti-communist liberalism of the postwar period.[29] Lawyers were also instrumental in the conservative momentum of the Seventies and Eighties.[30] Jerold Auerbach, who wrote *Unequal Justice* in the aftermath of the Watergate scandal, pointed out the dubious role played by lawyers in certain critical events: the Dwight Eisenhower's administration reluctance to enforce the school desegregation Supreme Court decisions, the ABA's early opposition to social justice objectives through the creation of legal services programs, and Watergate. These particular legal efforts, Auerbach argued, created a "sustained crisis of professionalism," which led to the disintegration of "faith in legal authority."[31]

My work shows that for the most part radical lawyers in the United States did not believe social change — or social justice — would come from the courts. Contemporary analyses have also surmised the limitations of the justice system. As Gerald Rosenberg points out, while courts can be effective producers of social change, "this occurs only when a great deal of change has already been made."[32] Change had to occur in the streets and in the legislative halls. While most radical lawyers acknowledged this, they also believed government repression created an urgency and necessity, which needed to be confronted. In 1971 Jonathan Black, lawyer editor of *Radical Lawyers*, wrote in the introduction: "It is naive, perhaps, to imagine that ultimate revolutionary victory can ever be achieved except on the streets, but at this moment of struggle, the courts are a battleground that cannot be abandoned."[33] One of the most repeated refrains of the time was that the key role of the radical lawyer is to keep the activists in the streets. Once again, this revealed an important distinction between radical lawyers and cause lawyers or their liberal counterparts. Unlike the latter, the former, for example, did not believe that the Supreme Court decisions on civil rights in the 1950s would have happened if not for the mass mobilizations in the streets and the international pressure of the Cold War.

The human rights movement has been commonly heralded as a vigorous change in the Cold War paradigms of justice and solidarity. However, there is a growing clarification of the political use of human rights by the Jimmy Carter presidency and other governments. In

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[29] Kutulas, *The American Civil Liberties Union and the Making of Modern Liberalism, 1930-1960*.

[30] Michael Avery and Danielle McLaughlin, *The Federalist Society: How Conservatives Took the Law Back from Liberals* (Nashville: Vanderbilt University Press, 2013); Daniel R. Ernst, *Lawyers Against Labor: From Individual Rights to Corporate Liberalism* (Chicago: University of Illinois Press, 1995); Glendon, *A Nation Under Lawyers*; Robert Granfield and Lynn M. Mather, *Private Lawyers and the Public Interest: The Evolving Role of Pro Bono in the Legal Profession* (Oxford: Oxford University Press, 2009); David Luban, *Lawyers and Justice: An Ethical Study* (Princeton: Princeton University Press, 1988).

[31] Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976), 41.

[32] Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?*, American Politics and Political Economy Series (Chicago: University of Chicago, 1991), 35.

[33] Black, *Radical Lawyers*, 13.

The Last Utopia, Samuel Moyn claims that human rights were a rhetorical device the Carter administration used to depoliticize anti-communism and provide another way to attack the Soviet Union without being bound to any tangible action domestically.[34] Similarly, Barbara Keys argues that both liberals and conservatives took up the struggle for human rights as a mechanism to assuage the moral losses after the Vietnam War, to reassert U.S. power abroad while simultaneously attacking the USSR as it supports or protects foreign "evildoers."[35]

However, radical lawyers incorporated grassroots tradition of human rights, which converged civil rights, social justice, and international solidarity. In the Popular Front era, these lawyers used human rights in direct contrast to property rights. In the preamble of the Guild's 1937 constitution, it reads: "The National Lawyers Guild aims to unite the lawyers of America in a professional organization which shall function as an effective social force in the service of the people to the end that human rights shall be regarded as more sacred than property rights."[36] Radical lawyers in the 1970s and 1980s incorporated many aspects of the new human rights movement, yet maintained this comprehensive notion in order to connect struggles abroad with domestic struggles, to incorporate international law into national courts, and to manifest support and solidarity to foreign social movements. Furthermore, the expansion and incorporation of international law and human rights gave the Guild and radical lawyers a new platform to develop new litigation strategies.

The dissertation is part of an ongoing challenge to the historiographical dichotomy of the "good Sixties" versus the "bad Sixties."[37] While there was a turn towards violence and extremism among certain individuals and groups, there was a continued attempt to build and transform social movements — with their respective failures and successes. Put another way, these ongoing efforts to respond to changing circumstances and critical challenges of the Seventies and Eighties are more complicated than the simplistic "good Sixties" versus the "bad Sixties" notion. Along the lines of Michael Kazin, Howard Brick and Christopher Phelps, I follow a trajectory between the efforts of coalition-building from the Popular Front of the 1930s to the Reagan years of the 1980s.[38] The Guild was at the forefront of progressive legal organizing during this period. The NLG's ongoing efforts yet limited success at incorporating anti-racism and anti-sexism dynamics — including the fight against homophobic politics — demonstrate both the sustained struggle and particular limitations of support and affinity groups. The generational changing of the guard with the emergence of the 1960s New Left did cause deep fissures but it did not create a seismic shift. Likewise, the

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[34] Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Harvard University Press, 2012).
[35] Barbara J. Keys, *Reclaiming American Virtue: The Human Rights Revolution of the 1970s* (Cambridge: Harvard University Press, 2014).
[36] Quoted in Ginger and Tobin, *The National Lawyers Guild*, 10.
[37] Todd Gitlin, *The Sixties: Years of Hope, Days of Rage* (New York: Bantam Books, 1993); Bryan Burrough, *Days of Rage: America's Radical Underground, the FBI, and the Forgotten Age of Revolutionary Violence* (New York, Penguin, 2015); Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Stanford: Stanford University Press, 1994); John P. Diggins, *The Rise and Fall of the American Left* (New York: W.W. Norton, 1992); Richard Ellis, *The Dark Side of the Left: Illiberal Egalitarianism in America*, American Political Thought (Lawrence: University Press of Kansas, 1998); Milton Cantor, *The Divided Left: American Radicalism, 1900-1975* (New York: Hill and Wang, 1978).
[38] Michael Kazin, *American Dreamers: How the Left Changed a Nation* (New York: Knopf, 2011); Howard Brick and Christopher Phelps, *Radicals in America: The U.S. Left since the Second World War* (New York: Cambridge University Press, 2015).

generational change represented by those who came of age in the post-Vietnam era also did not represent a complete break with past positions and strategies. Rather than looking at the history of radical politics as a series of fits and starts, it should be seen as an intergenerational process of negotiation, dialogue, rejection, adaptation, and conciliation.

The aim of this dissertation is to contribute to the existing literature by analyzing the radical lawyer with greater historical specificity and critical nuance. To do so, I examine the development of legal tactics, creation of defense committees, construction of alternative spaces, and the challenges posed to hierarchical structures and established professional dynamics. Furthermore, this work demonstrates how litigation has been a constant aspect of the radical challenge to the legal and political system in the U.S., even where the most extreme forms of confrontation have been translated into legalistic concepts and employed procedural strategies. The dynamic between the judiciary and the defense attorneys has gone through a series of transformations, producing an incessant dialectical relationship between social movements and the legal system. The radical lawyers in this study have a compelling story to tell. This work in particular is a probing and hopefully insightful effort to tell an important part of that story.

Chapter 1
Popular Fronts and Civil Rights: The Development of the Legal Left, 1936-1962

By December of 1936 a difficult year was coming to an end. Franklin Delano Roosevelt had handily won his reelection bid and was getting ready to defend the challenges to his New Deal policies in the Supreme Court. More than two thousand U.S. Americans sailed off to fight on the side of the Republicans in the Spanish Civil War. The recently formed United Auto Workers had staged a sit-in strike at the Ford plant in Flint, Michigan. The Supreme Court reversed the conviction of a young African American, Angelo Herndon, who had been accused of violating a Georgia state statute on insurrection. The case that was garnering the most attention, the Scottsboro trial, was in its fifth year. Alabama was negotiating with Samuel Leibowitz, the well-known criminal defense lawyer from New York, to find a compromise as more civil rights organizations were joining the defense.

It was in this context that a group of lawyers met in New York City on Christmas Day to form the National Lawyers Guild. They did not agree with the politics of the American Bar Association, which had been on the forefront of the corporate reaction towards Roosevelt's New Deal policies, so they set out to organize an alternative organization.

Tracing the ideological roots of any group can yield long and tedious interpretations. However, it's imperative to identify the issues that brought these lawyers together and situate the first steps of the organization in order to show the changes and continuities throughout its trajectory. Many of these early issues became recurring themes in the development of the National Lawyers Guild (NLG). For instance, the defense of civil liberties of political dissidents, the formation of defense committees for labor and economic rights, the implementation of civil rights for racial minorities, setting precedent for immigration and international law, are aspects that shaped the Guild at different periods in time. This chapter sets the stage for the formation of the NLG and describes its trajectory from a Popular Front organization to a target of the McCarthy era and the anti-communism of the Cold War. The chapter will also illustrate the first discussions concerning the issues and the dynamics that allowed the organization to have a continuous presence in left wing politics.

Legal Support Organizations from the First Red Scare to the New Deal

The idea of building an organization to defend civil rights and civil liberties was not new in the United States. After the First World War there was a severe assault against opposition and radicalism. With the combination of the Espionage Act of 1917 and the Sedition Act of 1918, Congress curtailed free speech and freedom of assembly while expanding the persecution and prosecution of war resisters, political dissenters, and labor organizers. Attorney General Mitchell Palmer and the Department of Justice conducted a series of raids between 1919 and 1920 that led to the arrest and deportation of hundreds of labor and leftist leaders. Immigrants were especially targeted because of the alleged radical foreign ideologies that threatened the institutions of the United States. Moreover, there was widespread violence and discrimination against African Americans throughout the country. During this period, several organizations were formed to defend the legal rights of those targeted by oppression and violence.

The main legal organization at the time, the American Bar Association (ABA), was formed in 1878. During World War I the ABA came out in support of the espionage and sedition acts and restrictions and sought their expansion in order to strengthen the protection against foreign threats. In 1918 the president of the association gave a report on

"Civil Liberty in America" to the ABA annual meeting. The association recognized the "necessity of indefinite struggle and unceasing endurance until the enemy of Christian civilization is forced to yield to the power of the sword." He was alarmed by the increase of "urban population, state laws to tax and regulate industry, labor-management disputes, and the continuing movement for the recall of judicial decisions, the somber specter which threatens the citadel of civil liberty, the courts of law."[1] People who were opposed to the limitation of civil liberties had to find support elsewhere.

In 1919, a group of concerned citizens countered the federal government's repression of individual rights with wartime restrictions by forming an organization that would later become the American Civil Liberties Union (ACLU). Its purpose was to "maintain throughout the United States and its possessions the rights of free speech, free assemblage and other civil rights, and to take all legitimate action in furtherance of such purposes."[2] Some of them were lawyers who gave legal aid and counsel to victims of government limitations.

In terms of civil rights there were at least two main organizations which provided legal counsel. In 1909 the National Association for the Advancement of Colored People was formed, and in the 1920s and 1930s focused on anti-lynching legislation and trials.[3] In 1925, the National Bar Association (NBA), an organization of black lawyers, was formed to "strengthen and elevate the Negro lawyer in his profession and in his relationship to his people."[4] This association was the product of legal committees that were set up during the race riots of 1919 in Chicago and Washington, DC. An alternative to the ABA was imperative, since the American Bar Association remained segregated until the late 1930s.

Also in 1925, the International Labor Defense (ILD) was created to serve as a bulwark for all victims of "class warfare," regardless of their political affiliation. The ILD was part of the larger effort from the Communist International to establish a network of legal support. James P. Cannon, a leader of the Communist Party USA, founded the ILD after several meetings with labor leader Bill Haywood in Moscow. While the ILD was founded "under direct inspiration of the Communist Party," it was specifically "dedicated to the principle of nonpartisan labor defense, to the defense of any member of the working class movement, regardless of his views, who suffered persecution by the capitalist courts because of his activities or his opinions."[5] Cannon was in a unique position to work with groups outside of the CP, because of his early years working with the Wobblies and with Eugene V. Debs. He also had deep connections with immigrant labor leaders.[6]

The trial that best epitomized the Red Scare zeal of the postwar was the Sacco and Vanzetti affair. In South Braintree, Massachusetts, on 15 April 1920, a paymaster at a shoe

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1 Percival Roberts Bailey, "Progressive Lawyers: A History of the National Lawyers Guild, 1936-1958" (PhD diss., Rutgers University, 1979), 42–43.

2 Ibid., 47–8.

3 Gilbert Jonas, *Freedom's Sword: The NAACP and the Struggle Against Racism in America, 1909-1969* (London: Routledge, 2007).

4 Quoted in Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976), 211.

5 James Patrick Cannon, *The First Ten Years of American Communism: Report of a Participant* (New York: L. Stuart, 1962), 163–4.

6 Bryan D. Palmer, *James P. Cannon and the Origins of the American Revolutionary Left, 1890-1928* (Urbana: University of Illinois Press, 2007), 18.

factory was shot to death during an armed robbery. Three weeks later, Nicola Sacco, a shoe worker, and Bartolomeo Vanzetti, a fish peddler, were arrested and charged with participation in the crime. Their trial took place from the 31st of May through the 14th of July 1921. According to historian Bryan Palmer, the combination of the poisoned political climate of the times, the nativist antagonism toward foreigners, atheists, and anarchists, as well as circumstantial evidence of the defendants being armed on the night of the robbery, produced the guilty verdict. Felix Frankfurter, one of the founders of the ACLU, led the legal defense team, but the ILD mobilized the defense campaign: they provided lawyers for the courtroom and placed most of its efforts on mobilizing demonstrations — both in the United States and abroad — to demand justice for the two Italians.[7] From the beginning it was a "fractured affair in which communists, anarchists, and liberals carved out their particular stances."[8] The accused were ultimately convicted and executed, however the legal challenges that the defense elicited and the social mobilization that the case inspired, changed the dynamics and debates within the legal profession.[9] After the trial, the ILD grew exponentially. In eight months, the organization expanded from 59 locals to 128. At the end of 1926, the ILD claimed 156 branches with 20,000 members.[10]

The push for non-partisanship was necessary at this point for the Left. Besides facing attacks from the government, they were also tearing each other apart. During the 1920s several of the sectarian splits within the Communist International had quickly and destructively spread into the United States. The labor movement had historically been divided with contentious currents of socialism, anarchism, and communism in different areas and industries. Civil libertarians, who out of principle would defend the right of many activists to speak their mind and assemble peacefully, would not necessarily join any long or short term organizing efforts. Finding spaces and people who could connect these groups was crucial. It was also useful to build networks among different lawyers and activists. However, it wasn't until the 1930s that the promise of this type of unity came to fruition.

Government repression and discrimination wasn't only challenged in radical circles. Law schools and certain pockets of the legal profession were new arenas of confrontation. In the previous decades bar associations and law schools had sought to elevate the standards in order to keep out immigrants — and especially Jewish applicants — out of the profession,

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7 Bailey, "Progressive Lawyers," 49–50. "The ILD took the dogmatic position, consistent with international Communist ideology in the twenties and early thirties, that the courts in a capitalist society were simply an instrument of class rule, and therefore that any expectation that workers or oppressed minorities could achieve justice through the judicial process was a dangerous illusion." Ibid.

8 Palmer, *James P. Cannon*, 274. This kind of trial, with the mobilization and publicity it created strengthened the Communist Party. Several decades later, Cannon admitted that there was an important motive for the CP and for him as a Communist: "My motives were not 'philanthropic' at all. I really believed in the principle of solidarity with all class war prisoners — the tradition in which I had been brought up in the radical movement of the earlier days. To be sure, I was an undisguised communist, and I thought and said that the honest work of solidarity practiced by the ILD would bring, at least indirectly, some credit to the Communist Party." Cannon, *The First Ten Years of American Communism*, 160–1.

9 Ann Fagan Ginger, *Carol Weiss King, Human Rights Lawyer, 1895-1952* (Niwot: University Press of Colorado, 1993), 132.

10 Palmer, *James P. Cannon*, 269.

however the hurdles were not sturdy enough. Cries and lamentations broke out from professional circles of lawyers accusing outsiders of damaging the elitist position of the profession as well as its image of tradition and homogeneity. The historian Jerold Auerbach described it as a "veritable flood of lawyers with foreign names, concentrated in cities." People who often studied in night law schools or correspondence courses "threatened the image of the legal profession as an aristocratic enclave."[11] In 1913 jurist Harlan Stone referred to "the influx to the bar of greater numbers of the unfit," who "exhibit racial tendencies toward study by memorization" and display "a mind almost Oriental in its fidelity to the minutiae of the subject without regard to any controlling rule or reason." Five years earlier, a professionalization committee of the ABA proposed closing the "easy doors" through which unprepared and improperly educated men are entering the profession. The ABA also approved a rule excluding "aliens" from the bar, after which a member stated: "It is a matter of patriotism, and a national and political question."[12]

In law schools professors also began to challenge the infallibility of the legal system and the failure of the profession to address it. Law professors provided some of the most insistent criticism of the Sacco and Vanzetti trial. Karl Llewellyn, of Columbia Law School, launched a petition campaign for a complete review of the case. The dean of Yale, Charles Clark, joined this effort.[13] Perhaps more importantly they began to challenge the nature of law. The laws needed to respond to social realities and not abstract norms and ideals. Under pressure from a younger generation of teachers, law school curricula expanded to absorb courses with social science content. The most striking development in legal thought in a generation, observed another Columbia faculty member, was the growing realization that law was "made by man to serve human interests, and can and should be changed as those interests changed." From Yale, dean Robert M. Hutchins reported that his school was beginning to train students "to see the rules of law in contact with life as it is being lived in the United States today." Jerome Frank, a law professor who later became a federal appellate judge, confessed: "It was not until I had been practicing law for several years that I began to see that I was practicing ethics, political science, and economics." His book, *Law and the Modern Mind,* reinforced the trend towards legal realism in the 1930s.[14]

For many law students these new approaches to the law were pivotal and inspiring. Arthur Kinoy, who later became a prominent member of the Guild, was a law student at Columbia University in the early 1930s. He believed that one of the most valuable lessons in law school stemmed from the analysis of professors like Richard Powell, "who constantly stressed that all concepts of law are in a constant process of growth, development, and change, but nothing in law is written in stone."[15] Powell taught that the art of the lawyer is to

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11 Auerbach, *Unequal Justice*, 107–8.

12 Ibid.

13 However, Auerbach emphasizes that this was a conservative, rather than a radical, critique of the legal profession. They protested against the "silent acquiescence in the failings of [the judicial] process" and plead for the institutional continuity as well as the persistence of the noblesse of a professional elite. Ibid., 148–9.

14 Ibid., 150–1. This school in legal philosophy argues that judicial decisions have more to do with the subjective social, political, and moral predilections of individual judges rather than the strict objective interpretation of the code of law.

15 Arthur Kinoy, *Rights on Trial: The Odyssey of a People's Lawyer* (Cambridge: Harvard University Press, 1983), 47.

understand these dynamics. "By comprehending the processes by which legal ideas are shaped and changed," Kinoy continued, "the lawyer can play an active rather than passive role in fashioning and shaping these concepts." Rather than assume the widely accepted view that the lawyer was a "skilled technician who merely invokes the inflexible principles of an immutable legal structure," in reality, the lawyer was an activist, "shaping the ideas and concepts of bodies of existing law to serve the needs of the forces that the lawyer represents." In the following decade, political and economic circumstances would accelerate the challenges to the supposedly established legal standards, and expanded the landscape of alternative sites for legal practice.

By 1929, the organizations that began in the previous decade were now branching out and frequently working with each other. The ILD became very active with the mass defense of strikers and protesters. They put a lot of emphasis into converting the trials into a continuation of political mobilization. They circulated several pamphlets and published in their periodical, *The Labor Defender*, the lists and numbers of political prisoners. The ILD adopted a policy of continuously reminding their readers about the victims and raising money for them and their families.[16]

Since its formation, the ILD worked to identify and protect the "political prisoner." In the mid 1930s they drafted a proposal for a bill to protect political and labor prisoners. They defined them as:

> A person convicted of any crime arising either directly or indirectly, (1) out of any labor dispute, strike, conflict, or other labor disagreement, irrespective of whether the disagreement is between employers and employees, or employees and employers, or any other parties, or (2) because he holds or advocates a particular social, political, or economic philosophy, opinion, or viewpoint, or an opinion contrary to public order, or (3) where it appears that the conviction arose, either wholly or partly, out of minority or race prejudice.[17]

The bill proposed that in a case or prosecution that involved a "political prisoner" it shall be mandatory upon prison and court authorities that the "confined" is extended a special classification, based upon the following: "There shall be no restriction whatsoever placed upon his reading or writing and the receipt and sending thereof; he shall not be confined to a cell; and he shall be segregated from other prisoners or permitted to remain with them at his own option."

Concerns for the rights of workers increasingly became intertwined with the rights of immigrants. In August 1932 during a meeting of the Unemployed Council in White Plains, New York, police arrested a citizen on charges of unlawful assembly. A crowd of workers attended her trial, but when the case was called forth the judge ordered the courtroom cleared. The police surrounded the workers as they filed out and arrested forty-two people. Immigration Bureau agents questioned them and twelve were not able to produce citizenship papers or evidence of their right to remain in the country. They were immediately sent to

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[16] They created a fund so that $5 was sent every month to each, and on Christmas they raised a special fund for the family. Cannon, *The First Ten Years of American Communism*, 163.

[17] "Proposed Statute for Political and Labor Prisoners," prepared by the International Labor Defense, San Francisco, CA, [undated], Meiklejohn Civil Liberties Institute Collection, Bancroft Library, Carton 182 Folder 16.

Ellis Island to face deportation. On another occasion, in November of 1932, the Labor Department ordered a mass round up of Mexican workers in Detroit; 400 were deported. Carol King, a progressive immigration attorney, responded to all these attacks with a recruitment call for lawyers to join an internationally-minded organization which focused on defending the civil liberties of labor unions and workers, the International Juridical Association (IJA): "Present America offers the example of a country discarding traditions of liberty and freedom, and substituting legislative, administrative and judicial tyranny." She determined that "It is the purpose of the IJA to combat these tendencies." The letter ended with a plea for "not only your financial but your moral support."[18]

Carol King launched the IJA branch in New York City after she returned from traveling through Europe. King was part of a successful New York family of lawyers and — after graduating from law school on the eve of the Red Scare — she joined an office of civil libertarian lawyers. During a trip to Europe in 1931 she met with the head of the IJA in Germany. The ILD, IJA, and the ACLU focused on deportation, especially on those who appealed on the grounds of fearing persecution in their native countries — for example the socialists and anarchists escaping Germany and Italy.[19]

Another organization that focused on immigrant rights was the American Committee for Protection of Foreign Born (ACPFB), which was the brainchild of Roger Baldwin of the ACLU and Joseph Brodsky of the ILD. One of the reasons for the creation of the ACPFB was that there were a lot of committed lawyers but most had little to no idea on the particular rules and regulations of the Immigration Service. The committee began with bulletins and statistics of foreigners in the country. According to the U.S. census for 1930 there were 14,204,149 persons of foreign birth in the US. Fewer than 4,500,000 were non-citizens. Their statistics affirmed that more people had been leaving the country than entering in the Depression years starting from 1931. An IJA Bulletin argued that despite this, "the foreign-born, particularly the non-citizens, are being blamed for poverty, unemployment, and crime in this country." The Committee worked with IJA, ACLU, ILD, and others to propose legislative bills to stop the Labor Department from "deporting people who claimed they would be subjected to political persecution in their native countries, and to permit them to remain in the US indefinitely, even if they had entered illegally."[20]

These organizations also lobbied for comprehensive immigration legislation. In 1932, the IJA drafted a legislative bill proposal, which would allow aliens to seek "voluntary departure" to countries where they wouldn't be persecuted. "There is no reason," the proposal argued, "why the government should care where an alien goes so long as he does not go to foreign contiguous territory from which he could more easily sneak back in the U.S." Congressman Fiorello La Guardia introduced the IJA Bill, but the House passed the Dies Deportation Bill instead, which made membership of the Communist Party grounds for deportation or exclusion of citizenship.[21] The bill was ultimately defeated in the Senate, but the ACPFB continued to work on legislative reform with La Guardia.

Besides the immigration and labor disputes of the 1930s, racial violence also required the attention and mobilization of the progressive legal community. The first major case of the decade involved nine young Black men who were accused of raping two white women

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18 Ginger, *Carol Weiss King*, 138–9.

19 Ibid.

20 Ibid., 195–6.

21 Ibid., 138–9.

on a train in Scottsboro, Oklahoma, in 1931. Both the NAACP and the ILD were eager to organize the defense. The first round was quick and the convictions swift. ILD lawyers appealed the first trial to the Supreme Court, claiming the defendants did not have proper representation. In a 7-2 decision the Court declared the defense was so ill prepared and executed that a second trial was necessary. Joseph Brodsky, an ILD lawyer in New York, got in touch with Samuel Leibowitz, who was considered the best criminal defense attorney at the time. He had defended murderers, gangsters, and kidnappers; out of 78 trials he got 77 acquittals and one hung jury.[22] Even though he was ideologically opposed to the ILD, he decided to take the case because it would heighten his reputation.[23]

The second case took place in Atlanta in 1932. Angelo Herndon, a young Black coal miner who had organized unemployed workers in Atlanta for the CP, led a demonstration of approximately 1,000 whites and Blacks to the courthouse to demand economic relief. A few days later, police arrested him at the post office. They searched his room without warrant and held him for two weeks without charges. Anna Damon, the head staff person for the ILD, called Brodsky and got him to coordinate with Herndon's local lawyers. The ILD also requested the IJA and Carol King to help with legal research. The local grand jury indicted Herndon under a state statute forbidding "any attempt, by persuasion or otherwise, to induce others to join in any combined resistance to the lawful authority of the State." Penalty was death unless the jury recommended mercy, in which case the penalty could be from five to twenty years in prison.[24] Two Black local lawyers represented Herndon: Benjamin J. Davis Jr., and John H. Greer. The latter was the son of a Black Republican leader and recent graduate from Harvard Law School.[25]

In January 1933 Greer and Davis presented three initial motions for dismissal. First, the statute was too vague and uncertain "to put a person on notice as to what political conduct would be held criminal under it." Second, it was based on the 1866 Black Codes, which violated the defendant's right to free speech. Finally, citing the Supreme Court decision on the Scottsboro trial, the jury list did not include names of Black residents. The judge denied all the motions and continued the trial. After that failed, the defense tried to interrogate each prospective juror concerning his or her ability to try a Black defendant without racial prejudice. The judge didn't allow it. At the end of the trial he charged the jury to convict if it appeared "clearly by the evidence that immediate serious violence against the state of Georgia was to be expected or advocated" by Herndon. The jury found him guilty and recommended mercy; he was sentenced from 18 to 20 years. Promptly, Davis and Greer completed the brief for appeal, but they called on the ILD national office to ask for "the assistance of an experienced practitioner in constitutional and civil rights cases to give our

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22 Diana Klebanow and Franklin L. Jonas, *People's Lawyers: Crusaders for Justice in American History* (Armonk: M.E. Sharpe, 2003).

23 Dan T. Carter, *Scottsboro: A Tragedy of the American South* (Baton Rouge: Louisiana State University Press, 2007).

24 Ginger, *Carol Weiss King*, 136–7. Georgia enacted law in 1866 as contribution to Black Codes, to slow down Reconstruction. Only one previous indictment had been returned on that act. Also see Benjamin J Davis, *Communist Councilman from Harlem: Autobiographical Notes Written in a Federal Penitentiary* (New York: International Publishers, 1969).

25 Ibid., 175.

brief the once-over."[26] Carol King and the ILD accepted the assignment. By the time of the verdict of the first trial, Davis had joined the CP.

The Herndon trial was Ben Davis' first lesson on mass defense and political trials. He later wrote that mass defense was "distinct from the reformist methods used by the NAACP, whose leaders saw the legal defense as the be-all and end-all of every struggle." They "would have 'defended' Herndon as an isolated individual victimized by the excesses of an otherwise sound capitalist order, thus objectively sustaining the lynch system of national oppression." Instead, Davis believed that the defense proclaimed "a working class defense policy in the deep South" and presented Herndon's case as "an out-and-out frame-up that should never have been brought to trial" because of the defendant's guaranteed freedom of speech and assembly.[27] Davis argued that the case was an extension of the class struggle and that the rules were set by a system of white supremacy. He wanted to make clear that the real criminals were the administrators and benefactors of that system, and the victims were poor whites as well as poor Blacks.[28]

In both cases the lawyers became politicized with the trial. Prior to Scottsboro, Leibowitz was mostly concerned with high publicity criminal trials. When he began working with the ILD he was outspoken in his opposition to the Communist Party. However, as the trial continued he began attending and speaking at the rallies. Eventually he became more invested in working on civil rights cases. Ben Davis became much closer to the CP and the Left. After the first trial he joined the Party and continued to work with them in the following decades. In 1943 he was elected to the city council of New York City, representing Harlem.[29]

Even though the ILD coordinated and led the defense campaign in both trials, there were important differences. The cases represented two kinds of defendants: the first were young men who were thrust by circumstances into a social and political struggle; the second was an activist who was arrested for organizing. Herndon was politically active and took part in the decision making process during the trial and appeal. Liebowitz, on the other hand, controlled all aspects of the legal defense. In terms of publicity and mass mobilization, however, the Scottsboro case had a broader appeal — both within and outside of the country — perhaps because the case was not specifically political but represented a larger social emergency. The young men in Scottsboro were pleading for their innocence, displaying that they were not threatening; Herdon was asserting his constitutional right to organize and demand economic restitutions. Although the CP claimed a lot of credit for both trials, it was a coordinated effort of ILD, IJA and local lawyers who did the legal work. Evidently there was a need for a single organization or space to bring together different groups and discuss legal strategy.

The National Lawyers Guild: From Government Ally to Target

For the most part, progressive and liberal lawyers supported Franklin D. Roosevelt's New Deal programs. Those further to the left were critical that some of the reforms did not

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26 Ibid., 176–7.

27 Benjamin J. Davis, *Communist Councilman from Harlem,* 97–98.

28 Ibid., 98.

29 Also see Gerald Horne, *Black Liberation/Red Scare: Ben Davis and the Communist Party* (Newark: University of Delaware Press, 1994).

go far enough, but felt there was the potential to push the administration in that direction. The more confrontational critique came from corporate and business law firms. The different financial and banking regulations, federal programs like the National Labor Relations Act, the Works Progress Administration, the Social Security Act, as well as the new political expansion of presidential powers, generated a prompt reaction from the organized bar. The president of the American Bar Association, pronounced in a public address in 1935 that those "who seek dictatorship and the establishment of un-American systems make way on three great bulwarks of American ideals — a free press, an independent and courageous judiciary, and an independent and self-governing legal profession."[30]

Critics on the far left, however, mostly fell in line with the Cominterm's policy of building a "Popular Front" against the spread of Fascism in Europe. Many radicals and progressives began to reach out to the more liberal sectors. The CP in the United States lessened its role as a force of opposition and offered its support to FDR. In the legal sphere, the "Popular Front" ethos brought together groups on the left of the ABA. In 1936 the ACLU reported to its members that the struggle for the defense of civil rights and liberties "was strengthened by the new policy of the Communist Party, which has encouraged the formation of united front defense committees to bring together diverse agencies in common and harmonious activity." Roger Baldwin declared, "Rivalry and antagonism in defense work have practically ceased." Furthermore, Baldwin wrote in *Soviet Russia Today*: "When the power of the working class is once achieved [as in Russia] I am for maintaining it by any means whatever." He convinced John Haynes Holmes, another ACLU leader, against barring Communists from ACLU leadership positions.[31]

Other organizations formed coalitions around specific cases during this period. In 1938 the ILD invited the NAACP and the ACLU to join in creating a Scottsboro Defense Committee. Angelo Herndon, a member of the CP, asked both the NAACP and the Socialists to help form a joint defense committee on his behalf. Carol King collaborated with Charles Houston, general counsel of the NAACP, on elaborating a brief to challenge the Georgia insurrection statute before the Supreme Court.[32]

After the shooting of ten unarmed workers by police in a Chicago protest during Memorial Day 1937, the ILD called for a national conference in Washington, DC. Besides discussing the protest, they held panels on criminal syndicalism, repressive legislation, protection of foreign born and right to asylum, prison conditions in the U.S. and recognition of status of political prisoners, anti-lynching legislation, civil rights, and the situation in Puerto Rico. In August the ILD concluded that a significant feature of the year had been "the cooperation of defense organizations in unified committees for work on single cases or situations" that helped and improved conditions. This included the ACPFB, ILD, and the IJA.[33] Another organization that participated in the national meeting was the newly formed National Lawyers Guild.

There were at least three different strains of legal political thought and practice that came together in the formation of the NLG. On the far left there were the labor lawyers — represented primarily by Maurice Sugar and Harry Sacher. Then there were the lawyers who had formed the Lawyers Security League, many of whom were also radical and progressive

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30 Bailey, "Progressive Lawyers," 139.

31 Ibid., 195–6.

32 Ibid., 97.

33 Ginger, *Carol Weiss King*, 230.

but not necessarily working for the labor movement or close to the CP. Finally, the more liberal strain of Morris Ernst and Frank Walsh, who represented lawyers who were to the left of the ABA but who were very supportive of Roosevelt, many of whom worked in his administration.

During the Depression lawyers, like most of the population, were in a precarious economic situation. Job security became a major concern, especially in urban areas. This brought a stronger drive on various sectors of the legal profession to find an alternative organization to the ABA. They believed the organization was doing nothing to aid or promote independent and unemployed lawyers. The larger effects of the Depression on lawyers were severe: almost half of US attorneys earned less than $2,000 annually — when $2,500 was considered the poverty line for a family of four. Several lawyers got together in New York to form the Lawyers Security League (LSL). Robert Silberstein, the League's first president described its origins: "A small group of lawyers talked about it — left lawyers. There was no bar association that was doing anything about the problem of lawyers getting jobs, or being able to make a living."[34] By 1935 over 1,200 of New York City's unemployed attorneys joined the LSL to pressure the New Deal's Works Progress Administration into providing public employment opportunities.[35]

Labor lawyers were a very active and dominant segment in the formation of the Guild. Maurice Sugar, a lawyer from Detroit, played and important role in the formation of the United Automobile Workers and served as their first chief counsel. He had been attempting to organize something since 1933 when he returned from a tour of the Soviet Union. He met with several lawyers who had concerns about their treatment after defending labor activists and unions. When he returned to Detroit he worked on an outline for a national bar association of liberal, progressive and radical lawyers, with state and local units. It would have a national executive committee, with nationally known legal figures, if only as honorary members — such as Clarence Darrow, Felix Frankfurter, Ezra Pound, and Frank Walsh.

Sugar believed that there would be several benefits flowing from such an association. First, the further development of a united front in anti-Fascist struggles among lawyers of various degrees of political and economic education. Second, lawyers would be brought closer to the labor movement. Third, they would be stimulated in progressive, political activities. Fourth, the ranks of lawyers available for work in labor defense, civil rights struggle, drafting of legislation, and appearance before legislative committees would grow. Fifth, it would provide a national support network for lawyers subjected to oppression in the pursuit of their labor, progressive, and liberal activities. Sixth, it would inspire sympathetic lawyers, who were otherwise isolated and discouraged. Finally, it would promote the utilization of lawyers for effective work in their spheres of influence. "As time went on," he later wrote, "I felt even more strongly that we must have such an association if we were to advance the progressive causes in which we were all interested, and if we were to give effective support to the New Deal measures" which were being " vigorously attacked by big business and their conservative legal representatives — prominent members of the ABA."[36]

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34 Bailey, "Progressive Lawyers," 5–6.

35 Ann Fagan Ginger and Eugene M. Tobin, eds., *The National Lawyers Guild: From Roosevelt through Reagan* (Philadelphia: Temple University Press, 1988), 3.

36 By Maurice Sugar, circa 1933, "The Birth of the Guild," unpublished autobiography, in Ginger and Tobin, *The National Lawyers Guild*, 7–9.

Sugar sent these ideas to colleagues and in the winter of 1935 met with several lawyers in New York to discuss the proposal. They held a survey in the city and found other lawyers who had similar ideas.[37] For instance, Karl Llewellyn, a law professor at Columbia University, had an even more grandiose plan. In 1933 he proposed a "national lawyers guild" to "govern that profession." His colleagues described his plan as socialized law, "intended to reduce the cost of legal services and raise the standards of the profession." Llewellyn claimed that two thirds of the population could not obtain legal services at a reasonable price, and half of the metropolitan bar "was driven to unethical practices because lawyers were unable to make a living otherwise." He believed the guild should have power to control fees and assign attorneys to cases: "It would advertise, develop business for its members, and certify competent lawyers to the helpless public."[38]

Liberal lawyers also wanted to create an organization that would support the New Deal policies and act as a counterbalance to the ABA. Morris Ernst, who was very close to the Roosevelt administration, urged lawyers to form a union — in the same fashion that Heywood Broun and other journalists had just organized the American Newspaper Guild — to organize a new bar association in aid of the president's program and to counter the anti-New Deal, corporate-controlled ABA.[39] He invited a group of lawyers to meet with him on December 1, 1936, to consider the organization of a new bar association. Twenty-five lawyers met at the City Club in New York, including some of Sugar's friends.[40] Among them were: Robert Silberstein, president of LSL; Osmond Fraenkel, of the ACLU and IJA; Joe Brodsky, attorney for the CP and leader of the ILD; John Block, an old time socialist candidate for public office; Felix Cohen, who worked in the Department of the Interior and was devoted to the welfare of American Indians.[41] Despite their political interests and ideological differences, they agreed to form the National Lawyers Guild. The founding convention was set for February 22 of the following year. One of the founding academics, Thomas Emerson later wrote, "The NLG was born in revolt — a revolt that embraced the entire intellectual life of the times."[42]

In the first elections, Frank Walsh was voted as interim president and Mortimer Riemer, of the LSL, as executive secretary. A few days later they issued a call to "American lawyers":

> The history of our nation is, to a great extent, a history of the leadership given by American lawyers. In almost every national crisis, when human rights were in issue, lawyers championed the cause of liberty and justice. In recent times, however, certain groups within the legal profession have done much to block progress and to befuddle the legislative processes. Such activities, although not aided or sanctioned by the greater number of lawyers, have served to bring the profession into disrepute. Where does the profession stand? Will it lead the way or will it bar the way? Thus far

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37 Ibid.

38 "Guild Proposed to Reform Law," *The Washington Post*, 29 December, 1933.

39 Ginger, *Carol Weiss King*, 219.

40 Victor Rabinowitz, *Unrepentant Leftist: A Lawyer's Memoir* (Urbana: University of Illinois Press, 1996), 168–69.

41 Ginger and Tobin, *The National Lawyers Guild*, 10.

42 Thomas Emerson, "The Role of the Guild in the Coming Years," *Lawyers Guild Review*, 1950.

> it has permitted the impression to be created in the public mind that the profession serves as an instrument of obstruction. We believe this impression is fundamentally false. It does a great injustice to the overwhelming majority of American lawyers. We ascribe it primarily to the fact that no unified group of lawyers has undertaken to encourage and to assert progressive leadership and that the reactionary minority within the profession has become articulate to an amazing extent. Through the National Lawyers Guild the overwhelming majority of American lawyers, now inarticulate, will sound their collective voice.[43]

There were two main characteristics to the ideal and conceited role of the "American" lawyer: they had to work against the reactionary and obstructionist elements of the profession; and they had to do so in a collective coordinated manner. It is also worth noting the vague reference to "human rights," which can only be upheld with the cabalistic concepts of "liberty" and "justice."

The call resonated across the country and many local chapters hit the ground running. The larger ones were in the East Coast. New York and Washington became the most significant. But other chapters were not far behind: Chicago, Philadelphia, Boston, Detroit, and even as far south as New Orleans. Ernst and his group sought to control at least the New York and Washington offices. However, in the first elections they were voted out. Although the majority of the lawyers present were at least sympathetic to the Roosevelt administration, they weren't going to be as close as Ernst planned. A reporter described one of the first meetings: "Amid mutual shouts of order, hisses and an occasional parliamentary free-for-all, about 400 lawyers organized last night and elected temporary officers as a New York chapter of the recently launched National Lawyers Guild." Initial disturbance arose after it became evident that Ernst and Walsh had their own list of nominees. Attendees declared that they would not be steam-rolled in the same tactics seen in the ABA. After a few hours of discussion the sponsored "slate" was broken up and a combination of liberals and radicals were voted in — including Paul Kern as president; Walter Gellhorn, of Columbia, and Charles Hamilton Houston, general counsel for the NAACP, as vice-presidents; and executive secretary, Robert Silberstein.[44]

By the founding convention of February 22, the Guild boasted 2,000 members among the 175,000 lawyers in the country. More than one third were from New York. Some states only had one representative, like Alabama, North Carolina, and Rhode Island.[45] The Preamble of the NLG constitution reads:

> The legal profession must necessarily play an important role in shaping our changing legal structure. Having in mind these conditions and responsibilities, the NLG aims to unite the lawyers of America in a professional organization which shall function as an effective social force in the service of the people to the end that human rights shall be regarded as more sacred than property rights. This organization aims to bring together all lawyers 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 and farmers upon whom the

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43 "Liberal Lawyers Form a New Guild," *New York Times*, 16 December, 1936.

44 "Uproar at Session of New Law Guild," *New York Times*, 8 January, 1937

45 Ginger, *Carol King*, 237.

> welfare of the entire nation depends, of maintaining our civil rights and liberties and our democratic institutions, and who look upon the law as a living and flexible instrument which must be adapted to the needs of the people.[46]

While still capacious, the concept of "human rights" was specifically defined as the semantic counterpart of "property rights." The preamble reinforced the general importance of a collective and coordinated effort, however, it emphasized the inclination towards legal realism by rejection traditional notions like precedent and promoting the flexibility and adaptability of the law.

In terms of the relationship with Roosevelt's administration, the Guild endorsed the president's plan to reorganize the Supreme Court. A resolution adopted at the organizations first annual convention, attended by 600 delegates, expressed the belief that a majority of the members of the court, "has fallen behind the needs of the times, has blocked progress and is now out of harmony with the urgent social and economic demands of the people." The Guild "heartily" supported the President's proposal and urged a prompt passage by Congress.[47]

This caused some immediate reaction against the Guild. On February 25, 1937, in a letter to the editor of the *Washington Post*, a peeved critic wrote, "It is opportune to advise the callow guild youths to stop, look around and listen; to study history and the biographies of the illustrious Americans who have made history; also great State papers including the Constitution of the United States." After some "solemn meditation" the "fractious and recalcitrant members of the newborn guild when comparing the American form of Government with its constitutional safeguards with others of the world will decide that ours is the greatest of all."[48] Ernst and his group were satisfied with the organization's support of the main aspects of the New Deal and Roosevelt's actions. Other issues, however, began to create a growing rift within the organization.

Tensions were present from the start. Rabinowitz later explained that tensions within the Guild were present from the beginning, "even before the founding convention met, internal struggles over the policy of the organization arose."[49] This was inevitable due to the ideological variety in the leadership. For example, Harry Sacher represented many of the left-wing unions in the city and "was widely regarded as an influential Party member." Sacher, along with Brodsky and King, all of whom represented or worked closely with Communists, "had little in common with Ernst except that none represented large corporate interests and

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46 Ginger and Tobin, *The National Lawyers Guild*, 11. Many of the founders of Guild had studied under new legal realists and advocates for "disinterested government service." Jerome Frank, Thurman Arnold, William O. Douglas in Yale; Adolf Berle, Karl Llewellyn, and Walter Gellhorn in Columbia; Thomas Reed Powell and Felix Frankfurter at Harvard; Alexander Frey at the University of Pennsylvania; Felix Cohen at the NSSR; and Malcolm Sharpe at Chicago, taught to use the law in the interest of social change. They wanted to move their profession "away the stultifying, inflexible veneration of Supreme Court precedent and to direct Anglo-American common law toward the recognition of US law as a social institution based on the Bill of Rights, Reconstruction Amendments, and acts of Congress." Ibid., 6.

47 "Lawyers Guild for Plan," *New York Times*, 22 February 1937.

48 "The National Lawyers Guild," Jurisprudence, *The Washington Post*, 5 March 1937.

49 Rabinowitz, *Unrepentant Leftist*, 170.

all were to the left of the ABA." Ernst and his group wouldn't tolerate criticism of FDR and his policies. However, for people like Sugar and Sacher, the promises of the New Deal fell short. For example, the completion of a system of social security was high on the program of the "radicals," as was defense of the National Labor Relations Act, while the liberals were willing to compromise with some of these issues. On foreign policy matters, Sacher's group resolutely opposed the Roosevelt policy of neutrality toward the civil war in Spain.

Many of the early Guild lawyers were not only supportive and sympathetic to the Spanish Republicans, at least five of them joined the Abraham Lincoln Brigades to fight on the front line. In the United States thousands volunteered to go, including Max Krauthhamar, a member of the IJA, NLG, LSL, and ILD. He was killed in Madrid in 1937. Guild members Melvin Orsink and Daniel Hutner also died in battle, as did Milton Herndon, brother of Angelo.[50] One of the first cases of the Federal Bureau of Investigations' (FBI) surveillance of the Guild began around 1940; they accused several people close to the Guild of recruiting people to fight in Spanish Civil War.[51]

It wasn't long until these simmering tensions began to boil. The spirit of the Popular Front was gravely questioned when the Soviet Union signed a non-aggression pact with Germany in 1939. Many in the US denounced authoritarianism regardless of its ideological position. Organizations sought to denounce both Fascism and Communism and were determined to get as many of the known CP members and its sympathizers out of the organization — or at the very least out of leadership positions.

In a National Executive Board meeting of the NLG, Ernst and his group proposed a resolution that denounced dictatorships from the Right and from the Left. They wanted the Guild to declare that they are opposed to Fascism, Nazism, and Communism. Most opposed this drive. Judge Patrick H. O'Brien from Detroit said, "When I joined the Guild, it may be I have a very hazy conception, but I thought it stood for the utmost freedom of conscience in the very broadest sense of the term. And I hoped that when I came here I would meet in the Guild and be able to cooperate with men of many different philosophical views." He mentioned that in Detroit the chapter had already faced the same issue. Some New Dealers withdrew and many moved away as they felt the Guild was becoming too "communistic." "We went through that whole business," he continued, "We conquered it, and we now have a number of conservative lawyers who have joined us." He said that the Guild should be willing to welcome anyone, "nothing human is alien to us."[52]

Early liberal supporters of the Guild began to denounce and break away from the organization. Ferdinand Pecora, Justice of the New York State Supreme Court, had defended his acceptance of the presidency of the Guild in 1938 as a means to promote the best interests of the legal profession. He addressed an informal meeting of women lawyers in New York: "I think that the fraternal ties between the bench and the bar should be

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[50] Ginger, *Carol Weiss King*, 233–4. William Kunstler, when he turned 17, went to Europe with friends and ended up driving an ambulance in Barcelona. But he later confessed they never went on ambulance calls, instead "we whiled away our time making love to Spanish girls on the stretchers." William Kunstler and Sheila Isenberg, *My Life as a Radical Lawyer* (Secaucus: Carol Publisher, 1994), 64.

[51] Ernest Goodman and Robert Jackson were involved in their defense. By Michael Krinsky, Jonathan Moore and Ann Mari Buitrago, in Ginger and Tobin, *The National Lawyers Guild*, 36–37.

[52] Ibid., 31–34.

encouraged in every way." He was invigorated by the increase in membership in the organization — up to 1,400 by that point. "There has been no time when the natural rights of equality before the law, liberty of thought and freedom of speech has been so much in need of preservation by those who believe in democratic principles."[53] By the next year, however, he resigned and was followed by several lawyers, mostly those who had positions in the government, including judge Robert Jackson — Roosevelt's Attorney General, later appointed to the Supreme Court — who fiercely defended the Guild and his colleagues against contempt charges but later became an even fiercer anti-communist and demanded the Guild purge its membership from communists.[54] Those sympathetic to the CP closed ranks and those who were civil libertarians believed, regardless of the position of the Soviet Union, nobody should be purged or expelled from an organization that claimed to be broad-based and progressive.

The close ties between the Guild and the Communist Party increased the defection from government lawyers. In the 1940 convention, Robert Kenny, state senator from Los Angeles County and leading member of the Democratic Party in California, became president of the Guild. According to Martin Popper — a "fellow traveler" — Kenny got a call from either Jerome Frank or Adolf Berle, and they said that there were a lot of problems in the Guild. They claimed to represent a lot of very important officials in Washington — where the national Guild office was — including Robert Jackson, Berle, Frank, and Abe Fortas. They said to Kenny, "Look, we have a lot of problems, especially here in Washington, and we are so busy that we can't pay attention to those problems in the chapter particularly, and we think there's a lot of Communist domination in the chapter. What we think we ought to do is resign as members of the chapter and remain as members-at-large."[55]

Regardless of the defection of many government lawyers, the Guild remained mostly sympathetic to the Roosevelt administration. During the War, the Guild accepted the no-strike pledge and voluntary arbitration, but "publicly denounced proposals aimed at regulating unions, arresting strike leaders, or permitting the government to seize defense plants." On February 22, 1941, the National Executive Board Statement of Policy read: "We oppose all attempts to curtail labor's rights to organize and to strike or to impose upon labor any form of compulsory mediation or arbitration. We oppose pending legislation to legalize wire-tapping and the so-called 'model' bills recently introduced in several state legislatures, which under the guise of national defense against sabotage might provide an effective instrument for interference with free speech and labor's rights."[56]

Immigration was one issue were organizations like the ILD and the IJA criticized Roosevelt. During the Hoover presidency, progressive lawyers were very critical of the immigration policies produced by the Red Scare after World War I, which continued

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53 "Pecora Defends Post in Lawyers Guild," *New York Times*, 27 March 1938.

54 Robert Jackson was part of defense of contempt charges against Edward Lamb, who was cited in Ohio while defending against CIO injunctions in 1938. "You suggest that the defense of Lamb proceeds from a desire to break down the judicial system," Jackson said. "We cannot have a worthy judicial system unless we protect the right of advocates to champion the cause of any person who becomes involved in the machinery of the law. I know of no group today that needs competent lawyers to defend it in the courts more than labor." In Ginger and Tobin, *The National Lawyers Guild*, 27.

55 Martin Popper, Oral History Memoir, Meiklejohn, in Ibid., 35.

56 NEB Statement of Policy, 22 February 1941, in Ibid., 42–43.

through the Depression. They provided legal defense for workers and activists facing deportation. However, by 1936 FDR didn't seem to significantly change the direction of the immigration policies. The administration did not openly oppose "anti-alien" bills that were passed in Congress. The Kerr Bill, for example, proposed any employee of the INS could arrest, without warrant, any "alien he had reason to believe is subject to deportation." They could detain that person for up to 24 hours, and deport those arrested during strikes. Another bill would transfer deportations from the Department of Labor to the Department of Justice. Yet another required deportation of "any alien found to be a member of any organization affiliated with Communist International" and required every noncitizen resident in the U.S. to register every year with the government, have their fingerprints taken, and report any change of address. Liberal and left wing organizations fought against these bills. In the end, none of them were adopted.[57]

In 1936, the ILD reported eleven people deported for trade union activity and 35 faced deportation, including nine to Nazi Germany and Fascist Italy. Between the ILD and the CPFB they fought for the right for asylum and none of them had yet been deported.[58] An *IJA Bulletin* appealed to "believers in civil liberties... who regarded the free expression of thought as essential to progress and to good government whether capitalist or soviet," and to "those who have lost faith in democracy under a class society." They could see that "exclusion and deportation of alien radicals stands as a serious menace and warrants unrelenting and active opposition."[59]

Although the Guild maintained a constant effort in the legal defense of labor leaders and political activists facing deportation, and remained critical of the administration's immigration policies, they did not offer any opposition to the removal and internment of people of Japanese ancestry after the attack on Pearl Harbor. The Committee on Immigration and naturalization of the Guild argued against an emergency detention bill that had been debated in Congress a year before the attack, but pronounced the Japanese internment justified. Martin Popper did warn Attorney General Francis Biddle that the "entirely necessary" internment was "creating great hardships for some aliens with anti-Axis sympathies and records." Popper suggested the creation of additional Enemy Aliens Hearings Boards to insure better individualized treatment of internees.[60]

Many on the Left also believed that some of the New Deal reforms had yet to reach their potential. One of the areas that many liberal and progressive lawyers had urged for further reform was in legal services. There were several attempts to create some kind of protection for those who could not afford basic legal services. Lawyers also proposed ideas of how to better serve the community and in what ways they could connect with those who were not only politically marginalized but also economically deprived.

This issue was also discussed and debated in the ABA. In 1937, Mayer Goldman, a member of the Guild and the Committee on Legal Aid Work of the American Bar

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57 Ginger, *Carol Weiss King*, 205–7.

58 Ibid., 208.

59 During the Depression, number of aliens deported decreased from 19.246 in 1932 to 9,195 in 1936; one tenth of those reported decisions involved communists. The number of those allowed to "depart without warrant proceedings" fell, from 10,775 in 1932 to 8,251 in 1936. More aliens left the U.S. in each year than arrived, according to annual reports of the Secretary of Labor. Ibid., 205-7.

60 Bailey, "Progressive Lawyers," 295–6.

Association, celebrated the "rapidly growing Nation-wide movement to establish by law public defenders to represent accused poor persons, so that no one need be denied justice because of poverty," which had just received a great impetus with the introduction of bills from Senators from Kansas and California to establish public defenders in every Federal District Court. He also mentioned that the Guild had unanimously adopted his resolution of forming a special committee. "The inherent justice, efficiency and economy of the public defender plan," he continued, "whereby a pauper defendant, possibly innocent, may be as amply protected by law as the vicious or gangster defendant, probably guilty, is no longer a debatable question since public defenders in Los Angeles, San Francisco, Oakland, Chicago, Hartford, New Haven and elsewhere have amply justified their existence from every angle." He believed it is the duty of the State to insure equal justice; it cannot be delegated to legal aid groups or the organized bar. "The reluctance of the organized bar and many legal aid groups," he concluded, "to conform to a spirit of true progress in the administration of the criminal law, in the proper defense of indigents, still persists, in spite of the modern trend toward State defense for the poor."[61]

The expansion of legal services were also discussed in academic forums. Lloyd Garrison, dean of the University of Wisconsin Law School, pushed for further expansion of legal aid. In the second convention of the Guild — with more than 700 delegates, out of a total membership of 5,000 in 44 states — most members supported Garrison's suggestion to liberalize legal methods and to carry legal aid to the people through the creation of public service offices sponsored by bar associations of metropolitan centers. "The city has changed everything in life and everyone has more or less adjusted to it except lawyers," Garrison said. "We need to create a new kind of law office, specializing on a low cost basis in this kind of small work, sponsored and controlled by the organized bar and judges."[62] The services would be brought home to people by radio, press, or by sharing information in recreation centers.

Lawyers continued to expand on the notion of building a stronger connection with local communities. In 1940, Robert Abrahams, from the Philadelphia chapter, laid out a program — the "Philadelphia Plan." First, lawyers must recognize that in any community there is a large group of people that cannot afford legal services and they will welcome any effort brought to them. The lawyer must become part of the community: "He must participate in the life of his neighborhood in the same way as the lawyer in the small town participates in the life of the town." Economic considerations were important: the poorest neighborhood was the best one for setting up a neighborhood practice. The bar associations needed to tell the whole public of what services are available and where. Finally, they must respect the five maxims of this type of practice: "1) Preventive law is to justice what preventive medicine is to health; 2) It is the dignity of the client, not that of the lawyer, which counts; 3) The lawyer should not be remote from his client either in geography or in understanding; 4) The lawyer who makes a mystery of his fees makes a critic of his client; 5) The lawyer who gives a service earns a fee."[63]

After Roosevelt and WWII many in the Guild continued to push further on certain proposals of legal services. A resolution by the Guild Committee on Professional Problems

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61 "The Proper Defense of Indigents," Mayer Goldman, *The Washington Post*, 6 May 1937.

62 "Legal Aid to Poor Urged Upon Guild," *New York Times*, 20 February 1938.

63 Robert Abrahams, "Neighborhood Law Offices," 1940 in Ginger and Tobin, *The National Lawyers Guild*, 38–39.

stated: "The Supreme Court has already recognized, in criminal cases, that the right to effective counsel is a constitutional prerogative. It cannot be less true, in civil cases, that a person, under a system of laws becoming more complex and intricate each day, who, because of lack of funds, is compelled to dispense with the assistance of a skilled attorney, is denied an equality of treatment with his wealthier opponent." The responsibility to assure the availability of legal aid and advice, and full access to the judicial processes to those who cannot financially provide it for themselves, belongs to the government. They proposed that lawyers should be paid at a fair and reasonable rate; legal aid and assistance should be financed "not by public or private charity, as a matter of grace, but by the government as a matter of right." And most importantly, all legal aid should be administered without discrimination in regard to race, creed, color, or sex.[64]

Regarding civil rights, the Guild lobbied extensively for Black lawyers to serve as commissioned officers in the army and as civilian attorneys in the Department of Justice, the Office of Price Administration, and the War Production Board. They supported the Fair Employment Practices Committee and campaigned successfully for the Chicago Guild leader, Earl Dickerson, to head the Committee. Following the advice of William Hastie and Thurgood Marshall, the committee pressed the President and the Attorney General to prosecute acts of violence against Black soldiers, and further proposed that crimes "against members of the armed forces come under federal jurisdiction."[65] Charles Hamilton Houston, an early member of the Guild, expanded the legal department of the NAACP. When Thurgood Marshall succeeded Houston in 1940 the department became the NAACP Legal Defense and Education Fund (NAACP-LDF, or LDF for short), a separate legal entity which focused mostly on school desegregation cases and grew increasingly independent from the NAACP.[66]

By 1943 unrest and racial tension boiled over in some of the main metropolitan areas. In New York, the Guild chapter cooperated with the Harlem Lawyers Association in investigating the exaggerated reports of the "Harlem Crime Wave." The Los Angeles and Detroit chapters monitored police behavior during the race riots.[67] Protesting against the denial of fundamental rights of defendants involved in the disturbances in Detroit, a statement of the Guild proclaimed that these violations "will not cure the existing cause of racial hatreds and deep-seated prejudices, but, on the contrary, will cause even greater racial tension than heretofore existed." "Under no circumstances should the mob hysteria of the public streets or even an appearance thereof be permitted in the halls of justice," the statement warned. It also made a connection with the lack and need for affordable legal services: "It is important that people preserve their respect for law and order and the proper

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64 They also proposed that no person should be deprived of aid or advise because of economic position; nor should they be denied full access to judicial processes; those who can't afford it should not pay anything and those who can pay some should contribute to costs in proportion to their ability. By Guild Committee on Professional Problems Resolution, 1950, in Ginger and Tobin, *The National Lawyers Guild*, 101–2.

65 NEB Statement of Policy, 22 February 1941, in Ibid., 42–3.

66 For more on the creation of the LDF and its separation from NAACP see Genna Rae McNeil, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* (Philadelphia: University of Pennsylvania Press, 1983); Jack Greenberg, *Crusaders in the Courts: Legal Battles of the Civil Rights Movement* (New York: Twelve Tables Press, 2004).

67 Ibid.

dispensation of justice in the courts; while the Guild cannot hope to attempt a cure of all the ills that attend this nightmarish spectacle, we can contribute in some measure to a more respectful feeling for the orderly process of the courts."[68]

Many Guild lawyers volunteered their services, without charge, to indigents in misdemeanor cases. Patrick O'Brien, honorary chairman of the Detroit chapter, head of the Citizens Committee to investigate the cause of the riot, worked closely with the Wolverine Bar Association, "an association of Negro attorneys" formed in the early 1930s in Detroit.[69] The head of the Los Angeles chapter was monitoring the Zoot Suit Riots. He reported: "The riots were large-scale race riots. They involved wide areas of the city and included riots by service men on virtually every large downtown motion picture theater. Temporarily, the Armed Forces declared Los Angeles 'out of bounds.' Over fifty people were seriously injured and some four hundred Mexicans were jailed."[70]

The targeted violence against African Americans continued to be an essential demand from Black lawyers and activists. William Hastie and Thurgood Marshall issued a report in the *National Lawyers Guild Review*, which read:

> Constitutional guarantees and laws guaranteeing civil rights are worthless scraps of paper to the people who are prevented from exercising these rights by the constant threat of violence. The recent outbreaks of mob violence again emphasize the fact that only federal action will protect us from lynchings and the threat of lynchings. It is significant that lynchings have increased and decreased as the enactment of federal legislation has seemed remote or imminent.

In terms of voting restrictions, "It is up to the U.S. Department of Justice to institute criminal proceedings against the officials who refuse to permit qualified Negroes to vote in primary elections solely because of their race or color."[71]

McCarthyism and the Cold War

In the 1950s, the Second Red Scare destroyed the Popular Front. Both the ACLU and the NAACP expelled known communists and fellow travelers, and implemented loyalty oaths to their membership. Several members of the ACLU, led by Corlis Lamont and Leonard Boudin, denounced the organization's purge and rejected their unwillingness to defend people subpoenaed to HUAC committees. Lamont, In 1951, Boudin and others formed the Emergency Civil Liberties Committee (ECLC), to take on the cases that the ACLU would not.[72] The Guild also defended many before HUAC, however they were losing political strength. The Guild had few, if any, government lawyers left. Thomas Emerson commented, "Out of 35 original chapters, only 14 were still functioning. In Washington,

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[68] Alan Brown and Ned Smokler, Statement on Detroit Riot, 1943, in Ginger and Tobin, *The National Lawyers Guild*, 50.

[69] Ibid.; "Michigan Governor gets Report on Riot Probe," *Afro-American*, 17 July 1943.

[70] Statement on Zoot Suit Riot By Carey McWilliams, President LA chapter, June/July 1943, in Ginger and Tobin, *The National Lawyers Guild*, 48.

[71] By William Hastie and Thurgood Marshall, *NLG Review*, 1942, in Ibid., 44–45.

[72] Ruth Martin, "Operation Abolition: Defending the Civil Liberties of the 'Un-American,' 1957–1961," *Journal of American Studies* 47:4 (2013): 1043–63.

where at one time 400 or more government lawyers had been Guild members, not a single government lawyer remained on the rolls."[73] The Guild not only lost its position and connection with the government but it also lost support and cooperation from their former allies.

The persecution of those accused to be sympathizers of the Communist Party increased dramatically with the passage of the Smith Act in 1940, which made it an offense and crime to advocate or belong to a group that advocated the violent overthrow of the government. In 1949, eleven Communist leaders in New York, among them Benjamin Davis, the lawyer turned city councilman, were charged under the Smith Act for a series of speeches they gave in Foley Square. The judge, Harold Medina, a former Guild member who had become a staunch anticommunist, convicted all eleven leaders and handed down contempt sentences to the defense team, including Harry Sacher and George Crockett Jr., a Detroit labor lawyer and one of the few African American members of the Guild. Crockett served four months in a Kentucky federal prison.[74]

Many lawyers began moving away from labor and political trials with the Smith Act verdicts after seeing how the Justice Department was moving against organizations throughout the country. Others moved away from the Guild. Thurgood Marshall, who was director of the NAACP-LDF, resigned from the Board of Directors of the NLG following the Foley Square trials in 1949. After judge Medina handed down the sentences and the contempt charges to the lawyers, Robert Silberstein, acting as Executive Secretary of the Guild, issued a letter of condemnation against Medina. Marshall, felt that any letter or position of the Guild had to be discussed among the board. While the trial and the sentences are of great interest to the Bar and the Guild, "I, for one, do not intend to be driven by hysteria to one side or the other," he wrote to Silberstein. Marshall wanted to maintain his role of reserving judgment until after examining the record of the case and could not condone any such actions in the future. He tended his resignation of the board effective immediately.[75]

On the other hand, a few younger lawyers were coming together to support militant workers and unions. In 1951 Frank Donner asked Arthur Kinoy, both members of the Guild, if he would be interested in forming an independent law firm with him. "We as lawyers had to be prepared to go wherever the battle called, and the calls were coming from all over," Donner said. The purge of radicals and leftists was happening in all sectors; militant workers were drawn out from factories, as well as government offices, classrooms, hospitals, stages, and publishing houses. "More people," Donner held, "were certain to be rounded up in Smith Act arrests." That resonated with Kinoy who thought that young lawyers should be able to speak out more boldly and develop different strategies; he believed the old tactics were simply not working. Kinoy had only been out of law school two years.

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73 Thomas Emerson in Ginger and Tobin, *The National Lawyers Guild*, 113.

74 Benjamin J. Davis, *Communist Councilman from Harlem,* 181; Steve Babson, *The Color of Law: Ernie Goodman, Detroit, and the Struggle for Labor and Civil Rights* (Detroit: Wayne State University Press, 2010), 191–94; For more on the Smith Act trials and anticommunism, see Ellen Schrecker, *Many Are the Crimes: McCarthyism in America* (Boston: Little, Brown and Company, 1998).

75 Thurgood Marshall to Robert Silberstein, 25 October 1949. Tamiment Library, National Lawyers Guild Collection [Hereafter TAM-NLG], Box 16 Folder 13.

Both lawyers offered their services and the United Electrical, Radio and Machine Workers of America (UE) kept them on retainer.[76]

It was a difficult period to discuss a change in the relationship with the union. The CIO had just expelled UE — for refusing to purge known CP officers — and several of their officers had been subpoenaed to HUAC. Yet the union officials were enthusiastic about Kinoy and Donner's plan to start the new firm. "In the rough days ahead," the officials told Kinoy, "the people's movements, within and beyond the labor movement, would need lawyers whose independence from the establishment and whose integrity were unquestioned."[77] They feared that even committed labor lawyers would be isolated and intimidated by the growing pressure on the labor movement.

The Smith Act and the various committees created a hostile environment for radical lawyers that threatened them with loss of jobs, clients, and possibly convictions — depending on their attitude in the courtroom and hearings. They were also treated with hostility both from the audience. In one instance, as Victor Rabinowitz, who was defending several labor activists in front of the House of Unamerican Activities Committee (HUAC) walked from the back of the room to the front, many people in the audience yelled "Commie lover!" and "Go back to Russia!" One or two "of the gentlefolk in the audience spat at me as I passed by."[78]

At times the lawyers were able to use their position to be antagonistic and confrontational in these committees. In 1952, Ben Margolis, a known labor lawyer in Los Angeles, was asked about his legal reasons on why he wouldn't answer the questions from the subcommittee. "No committee has the right to tell the American people what they can or they cannot think," he responded. "On the contrary, it is the function of the American people to tell their Congressmen how they should or should not vote." He accused them of creating a tyrannical government and he further refused to answer on the grounds of the Fifth Amendment, "[B]ecause I will not aid you in your attempts to persecute me and others."[79]

Charles Garry, also from California, was called to the committee and asked, "Have you advised the community of your membership in the Communist Party?" He responded by referring to the Bible, specifically the Book of Matthew. "Just a minute Mr. Garry," interrupted Congressman Robert McIntosh, a Michigan Republican. "It's not necessary to read the Bible. We have access to it. Just cite the chapter and verse for the record." Garry replied:

> Mr. Garry: Mr. McIntosh, it's the 27th Chapter, 11th verse through the 14th. The passage is: And Jesus stood before the governor: and the governor asked Him, saying, "Art Thou the King of the Jews?" And Jesus said unto him, "Thou sayest." And when he was accused of the chief priest and elders, He answered nothing. Then said Pilate unto Him, "Hearest Thou not how many things they witness against Thee? And he answered to him never a word; insomuch that the governor marveled greatly…"

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76 Kinoy, *Rights on Trial*, 83–85.

77 Ibid.

78 Ibid., 113.

79 Ben Margolis, 1952, in Ginger and Tobin, *The National Lawyers Guild*, 123–24.

Mr. Scherer: Don't the Communist deny that book, the Bible?

Mr. Garry: Mr. Chairman, I happen to be a Christian! My people have been Christians for thousands of years. And I resent insinuations like that from you or anyone like you! What the Communists do with regard to their God is their business, and what I do with regard to my God is my business, and not yours![80]

Some lawyers, however, became friendly witnesses. On December 14, 1955, Mortimer Riemer, first executive secretary of the Guild, appeared before a HUAC subcommittee and gave the names of those who got him involved with the CP.[81]

Within the offices and halls of Guild lawyers, the main debate — both in terms of ideology and strategy — was whether their clients should defend themselves based on the first or fifth amendments. Rabinowitz described the issues he had with taking the Fifth Amendment. Most unfriendly witnesses took the Fifth and walked out of committees free of fear of prosecution, but usually without a job. Although the courts repeated that this didn't mean an admission of guilt, in the minds of the employers and of the general public it was otherwise.[82] Conversely, Kinoy was more supportive on the importance of the Fifth Amendment, "Out of the forgotten past we reminded the Court that, like the grand jury, the Fifth Amendment privilege not to testify was fashioned, in the earliest days of popular resistance to the oppressions of the British Crown, as a 'sword to protect the innocent' from the unbridled power of government prosecutors." The Fifth Amendment privilege was an institution constructed to protect citizens from "inquisitorial power run amok."[83] By upholding the protections of the Fifth Amendment, defendants were saying to the court that the Cold War hysteria had begun to undermine the basic institutions of constitutional democracy.

Most people ended up pleading the Fifth. "If the CP had an official policy on the subject," Rabinowitz wrote, "it was never transmitted to me, but it was clear that it had no objection to the widespread and almost automatic use of the Fifth Amendment, despite its destructive effect on the public perception of the Party." The Party functionaries he represented, and most of the others who testified during this time, pleaded the Fifth and never raised the possibility of an alternative defense. "The history of the committees might have been different had the party urged the opposite approach—an approach that would have been tantamount to civil disobedience," said Rabinowitz. "I hungered after such a policy and argued for it, but I was regarded, perhaps properly, as a romantic or, even worse, an ultra leftist."[84] However, he admitted that he had pleaded the Fifth Amendment the first two times he testified.

The discussion on the amendments changed when the power and effect of the committees began to wane. In 1954, John Watkins, an Organizer for the UAW, testified

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80 Charles R. Garry and Art Goldberg, *Streetfighter in the Courtroom: The People's Advocate* (New York: Dutton, 1977), 68.

81 Morimer Riemer, HUAC Hearings, 1956, in Ginger and Tobin, *The National Lawyers Guild*, 15–17. Riemer emphasized that it was the economic situation of the Depression that drove him and others to join the LSL and then the Guild.

82 Rabinowitz, *Unrepentant Leftist*, 119.

83 Kinoy, *Rights on Trial*, 145.

84 Rabinowitz, *Unrepentant Leftist*, 120.

before HUAC and stated that, although he was not a member of the CP, he was a fellow traveler between 1942 and 1948. When asked about other members he did mention those he knew or thought were still within the Party but refused to discuss those who had left; he argued questions about them were not relevant to the committee's purpose. He was convicted of contempt. However, the Supreme Court reversed conviction in 1957 on a six to one vote. The decision was based on two grounds: First, when First Amendment rights are threatened, the delegation of power to the committee must be clearly revealed in its charter, and the resolution that authorized the committees was "impermissibly vague." The second was in terms of jurisdiction; the questions put to Watkins were not pertinent to any subject under inquiry.[85]

The new court decision forced the lawyers to reevaluate the legal strategies and counsel in HUAC hearings. In New York, a meeting was set up between Harry Sacher, Abe Unger, Dave Freedman, Dave Rein, Joe Forer, Rabinowitz, and Martin Popper. "Although we had no power to direct any of our clients as to how they should testify, nor would we have exercised such a power if we had it," Rabinowitz later reflected, "many of our clients looked to us for political guidance and leadership." The issue discussed was "whether they should encourage clients to refuse to answer on First Amendment and jurisdictional grounds and to abjure reliance on the Fifth, and what kind of reasonable assurance we could give them that they were not running much risk of indictment." Popper and Unger took the position that continued reliance on the Fifth was causing damage to the CP and in a sense legitimizing the committees. They believed the clients should be encouraged not to take the Fifth but they could not be guaranteed that they would be safe relying on First and jurisdiction. Still, the lawyers should point the negatives of a continued reliance on plea of possible self-incrimination, and stress the political advantages of taking the offensive. Forer and Rein disagreed. They were from Washington, DC, and considered to be pragmatic since they were less concerned with political arguments and more concerned with protecting witnesses with as little complication as possible — "Get the witness on and off the stand as quickly as possible."[86] They argued that possible changes in the Supreme Court made relying on the Watkins decision risky. The defendants, however, also influenced these positions.

When Rabinowitz reflected on this meeting, he realized that the types of clients these lawyers defended shaped their attitude towards the possible strategies. For example, Popper, who advocated for the more extreme position, mostly had clients in the entertainment business who could afford drawn-out processes. Unger worked for officials from the Party, who might be vested in making stronger political positions. But Rein, Forer, as well as Leonard Boudin and Rabinowitz, represented the rest of the ranks of radicals: trade unionists, teachers, salesmen, doctors, and government employees, among others. The discussion of legal tactics and the political strategy would vary depending on who the defendant was and, perhaps more importantly, what impact the case could have. This ideological dynamic between the lawyer and the defendant would become increasingly important and complicated in the following decades.

Discussions on legal strategies and the role of the lawyer regarding the politics of the defendant were not new. William Patterson, a Black lawyer and leader of the ILD, wrote in a column of *The Labor Defender*, "It is the worker defendant who uses the court as his forum" to raise social and economic questions "so vital to an exposure of the court as a weapon of

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85 Victor Rabinowitz, *Unrepentant Leftis*t, 121–22.

86 Ibid., 121–23.

class rule." "It is not the lawyer who politicizes the defense struggles" he cautioned, "The courtrooms of the working class are the streets." It is there where workers "pass their verdict of innocence on a class war victim." Patterson did, however, stress the need for legal knowledge and practice. Mass pressure must be supplemented by legal defense, "every legal technicality must be used."[87]

Most of the early discussions on political cases focused on defensive legal strategies. Kinoy argued that the failure to go on the offensive during the Smith Act and McCarthy period was detrimental to the progressive community. He believed that the strategy of the government succeeded. The formula was to establish that the Communist Party was the "conspiracy" and everyone associated with it was a "conspirator," who had to be driven out of public life. The formula was ready to be applied to the rest of the country after the first Smith Act trial ended in September 1949. In October judge Harold Medina held unprecedented contempt charges against five defense lawyers, who were sentenced to terms of thirty days to six months in jail. Two were disbarred in state and federal courts: Harry Sacher and Abraham Isserman. In the Supreme Court, Justice Robert Jackson affirmed the contempt judgment of a temporary disbarment settled by circuit court.[88] Kinoy later warned that because the defense was "unable to convert the trial into a political exposure of the government's real purpose," they,

> [F]ell back into the trap that had been so cleverly laid. Instead of openly championing the nation's democratic and indeed revolutionary traditions, which the government's strategy was in effect burying, the radical defendants and their lawyers began, imperceptibly at first, to reshape their own political doctrines to meet the prosecution's asserted standards of what was permissible to believe. Instead of finding ways to utilize the deep-seated contradiction within the prosecution's own case—that the advocacy of a right to revolution was at the very base of the building of our constitutional system—the defendants sought out ways to soften their own theories of society and social change, in effect accepting the government's assumptions as to the illegality of certain beliefs.[89]

The failure to develop a political counteroffensive during the repressive attacks not only hampered the possibility of reaching out beyond the courtroom to the general public on the checks and limitations of the government. It also discredited the "integrity of radical thought" when the Smith Act defendants responded to the attacks by reformulating their theories to meet the government's ideological framework of the Cold War and their standards of correctness and decorum.[90]

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87 Quoted in Ginger, *Carol King*, 130, 132. For more on William Patterson and his role in the ILD and the civil rights movement, see Gerald Horne, *Black Revolutionary: William Patterson and the Globalization of the African American Freedom Struggle* (Urbana: University of Illinois Press, 2013).

88 Ibid., 124–26. The Association of the Bar of NYC, upheld by the Second Circuit, initiated Sacher's disbarment. In 1954 the Supreme Court held that permanent disbarment was "unnecessarily severe." Isserman was disbarred in both New Jersey and New York.

89 Kinoy, *Rights on Trial*, 81–82.

90 Ibid.

There were, however, some positive legacies of the legal defense of the labor movement. Kinoy noted that one of the most remarkable aspects of the leadership of UE, at a time when they were increasingly attacked, was the creation of the UE legal network, "stretching from one end of the country to the other — a network that helped to solve one of the most devastating problems of people's lawyers, their isolation and lack of resources." Whenever a new problem occurred in one part of the country, all of the lawyers in the network were fully briefed and received copies of all the necessary papers in order to prepare in case the problem spread. This network gave Kinoy an insight into one of the most important aspects of the role of people's lawyers: "the need for new forms of organizing to provide the basis for collective ways of work, overcoming the traditional professional isolation of lawyers who have taken a stand against the corporate and governmental establishments."[91] This understanding would lead him and others to move ahead and search for other forms to meet the pressing needs of social and political struggles.

After the war, there was an increasing determination from the break through the isolation of progressive lawyers across national boundaries. In the first years of the Guild, the faction led by Morris Ernst and Jerome Frank shut down efforts to create an international law committee. They believed involvement in such matters would create heterogeneous statements and practices among the different regional chapters, and ultimately distract the organization from domestic issues. Once that faction left the Guild, Martin Popper led the initiative to incorporate the Guild into transnational legal projects. During a visit in England in 1944, he urged local lawyers to arrange a meeting between American, Soviet, and British lawyers to create a "United Nations Bar Association."[92]

Although the plan was not developed, Popper was successful in lobbying the State Department to include the Guild as a consulting organization in the formation of the United Nations.[93] Popper, in a rather hubristic moment, declared the formation of the International Association of Democratic Lawyers (IADL) was the culmination of the Guild's efforts to create an international bar association.[94] The IADL held its first congress in Paris in 1946, with the continuous and overt support of the Comintern. By this point the Guild had also joined the Inter-American Bar Association (IABA), a recently formed organization of Latin American lawyers, and attended the third convention in Mexico City in 1943.[95]

Guild members were also involved in legal matters abroad in an individual capacity. Royal France, a New York lawyer who was later president of the Guild, traveled to Greece in 1948 to observe and assist in the trial of Tony Ambatielos and 19 other Greek maritime

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91 Kinoy, 114–15.

92 For more on this effort, see Bailey, "Progressive Lawyers," 304-307.

93 Martin Popper. "A New World Born: The Guild at the Founding of the United Nations," *Guild Notes*, Summer 1985.

94 Martin Popper, "The International Association of Democratic Lawyers," *Lawyers Guild Review* 6:4 (Sept-Oct, 1946).

95 The Guild delegation, which included Robert Kenny, Carey McWilliams and Martin Popper, met with Mexican president, Manuel Avila Camacho, to discuss border disputes and discrimination against Mexican workers in the United States. Bailey, "Progressive Lawyers," 306.

workers facing execution on charges of conspiracy. France fruitlessly lobbied the U.S. ambassador, John Peurifoy, to pressure the Greek government to stay the executions.[96]

As an organization, the Guild played a role in some of the important events after the War. In 1945 Robert Jackson, by then the Chief Prosecutor at the International Military Tribunal in Nuremberg, invited two official observers from the ABA and the NLG.[97] President Harry Truman nominated Bartley Crum, a Guild lawyer, to the Anglo-American Committee of Inquiry on Palestine. Crum led a discussion in the Guild that resulted in an official statement to the president, demanding that the U.S. reject the attitude of British government toward Palestine; the immediate lifting of martial law and "restoration of civil rights of the settlers of Palestine"; the immediate issuance of 100,000 entry visas for the United States to displaced persons of Europe; the immediate allowance of unrestricted immigration and land acquisition in Palestine; and the transfer of administration of the Palestine Mandate to the United Nations.[98]

A few years later, the Guild took an even stronger position on the creation of the state of Israel. The 1948 convention of the Guild approved a resolution demanding that the U.S. stop the arms embargo and allow arms sales to the Israelis. Shortly thereafter Bartley Crum, Paul O'Dwyer and other Guild members created the "Lawyers Committee for Justice in Palestine." On April 22, members of the Committee presented the Chief of the United States U.N. Delegation, Warren Austin, with a petition of 4,000 lawyers urging U.S. support for the partition plan. Later on, the Committee demanded the withholding of Marshall Plan aid to Britain, because of the British "obstructionist tactics," and Guild members organized branches of the Committee in several cities in the United States to promote a boycott of British products.[99]

In his memoir, Rabinowitz reflected on the Guild's support for a Jewish state in Palestine. He remembered that before World War II, the more radical segment of Jewish thought was anti-Zionist. However, after the war most progressives favored the establishment of a Jewish state. "I rejected the premise of Zionism in 1932 and in 1995, but not in 1947,"[100] Rabinowitz wrote.

The global politics of the Cold War did create conflicts among the various ideological groups within the Guild. In 1949, Murray Kempton, a journalist of the *New York Post*, denounced Robert Silberstein after he voted in favor of the expulsion of the Yugoslav delegation in the IADL. Kempton described the expulsion as part of a Soviet bloc "vendetta against the Titoist heresy." Silberstein did not mention the expulsion in his report to the Guild.[101] After being reprimanded, Silberstein signed on to a statement from the Guild

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96 Royal W. France, *My Native Grounds: The Autobiography of Royal W. France* (New York: Cameron Associates, 1957), 115. In 1938 Royal France was personally invited by Mexican president Lazaro Cardenas to teach for a summer in the newly created Centro de Estudios de Mexico. The president was impressed by an article France wrote in defense of Mexico's right to expropriate the oil industry. France was also part of a commission of foreign academics sent to observe agrarian reforms in the north of the country. Ibid, 87.

97 Ann Fagan Ginger and Eugene M. Tobin, eds., *The National Lawyers Guild*, 75.

98 Ibid., 80-2.

99 Bailey, "Progressive Lawyers," 349-351; also see correspondence and resolutions in TAM-NLG, Box 12 Folder 5, "Justice in Palestine."

100 Rabinowitz, *Unrepentant Leftist*, 64.

101 Bailey, "Progressive Lawyers," 366.

denouncing the expulsion and demanding the restoration of the Yugoslav delegation.[102] After two years of discussions, the National Executive Board adopted a proposal to disaffiliate from the IADL. Although several Guild lawyers remained independent members of the IADL, many denounced the organization after IADL failed to denounce the Soviet invasion of Hungary in 1956. The Korean War also revealed differences within the Guild. While some in the National Executive Board endorsed a statement denouncing the North Korean invasion, others refused to support the U.S.-led U.N. counteroffensive and called for an immediate cease-fire. A compromise was finally reached wherein the Guild expressed support for the United Nations, but placed responsibility for the conflict on unilateral Cold War policies and denounced the use of U.S. military force.[103]

Although labor and international politics drew a lot of energy and attention within the Guild, the organization maintained a position in favor of the expansion of domestic civil rights. Although it did not have a permanent presence in the South, it continued to attract Black lawyers into their ranks. Among the founders of the Guild were several members of the Harlem Lawyers Association, an African American legal organization formed in the 1920s, whose only white member for many years was Martin Popper.[104] A few the Black Guild members rose to prominent positions both outside and inside the Guild. William Hastie was appointed governor of the Virgin Islands in 1947 and Earl Dickerson, of Chicago, was elected president of the NLG in 1953, becoming the first African American president of the organization.[105] During his tenure the Guild face its strongest attack from the federal government. Attorney General Herbert Brownell announced his intentions to put the National Lawyers Guild in the official list of subversive organizations.

Under Dickerson's leadership, the Guild sought a temporary injunction against Brownell in the US Court for the District of Columbia. Since the mid Forties the FBI had the Guild under surveillance, and several members of the congressional committees on un-American activities had their sights set on Guild lawyers. A long legal battle ensued and finally, in 1958, the Attorney General's office dismissed the proceedings and dropped his intention of putting the Guild on the list.[106] Nonetheless, the effects on the NLG were devastating: thousands of members left the organization, regional chapters were closed down, and several lawyers were effectively blacklisted. The redbaiting also had a long-term impact on the relationship between Black lawyers and the Guild, and seriously damaged the potential collaboration with the ACLU and NAACP.

Victor Rabinowitz, as his firm and colleagues survived the red-baiting of the McCarthy era, played an important role in trying to revitalize the organization and invigorate

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102 Ginger and Tobin, *The National Lawyers Guild*, 94.

103 Ibid., 96.

104 Popper remembered a meeting of the NBA, of which the Harlem Lawyers Association were a part of, in Durham, N.C., where one person said referring to Popper, "He must either be a Jew or a Communist." Oral History Interview with Martin Popper, Interview by Ralph Shapiro. January 13, 1986. In TAM-NLG Box 311.

105 See Gilbert Ware, *William Hastie: Grace Under Pressure* (New York: Oxford University Press, 1984); Robert J. Blakely, *Earl B. Dickerson: A Voice for Freedom and Equality.* (Chicago: Northwestern University Press, 2012).

106 For more on FBI surveillance of the Guild see Ginger and Tobin, *The National Lawyers Guild*. For the legal battles between the NLG and the Attorney General see Bailey, "Progressive Lawyers."

the different regional chapters. He believed that they needed to focus their efforts into different struggles that were attracting students; they had to find a way to get the youth to connect with the Guild. He wrote to Dean Raab, a lawyer in Detroit, lamenting that different meetings were not bringing any new members. Philadelphia also didn't get any new members that year. "Without more members we cannot survive," Rabinowitz lamented. "In fact, if we do not get more members we are not filling much of a need and ought not to survive." The Guild needed to increase their presence in different political issues, and appeal to the youth who are "disturbed about the Negro segregation issue, about our conduct of foreign affairs, about our government's failure to provide adequately for the aged, about the threat of war, we shall continue to be a small group of people."[107]

Nonetheless, Rabinowitz was optimistic. In a letter to John McTernan, a lawyer in California who considered withdrawing from the Guild, Rabinowitz expressed his belief that there was a "somewhat unexpected revival of activity among students and young people generally." They were not only interested in the segregation issue, but in fighting HUAC and joining the growing peace movement, "In many parts of the country they are showing a considerable amount of interest in political theory and in some places even call themselves Socialists." If students are thinking seriously along progressive lines, they should consider the Guild as "his" organization. "If my analysis of the situation is correct, perhaps the Guild should cut out (or at least greatly minimize) activities which are not directed at major political events of the day. I know this is directly contrary to policy in many chapters, but perhaps it requires reexamination."[108]

Rabinowitz then addressed all members of the Guild in a rousing memorandum in 1960. Rabinowitz wrote: "We have had endless discussions… to discuss a new approach to NLG problems. We have worked out an approach which has unanimous agreement. It is particularly a matter of tone and spirit and it is difficult to formulate this in a brief memo," Rabinowitz emphasized, "the new approach says: If we want to rebuild the Guild, we must recapture some of the crusading spirit that characterized us in 1937. The problems of today are more important than they were in 1937 and we must strive to present them to the Bar." These problems revolved around five major issues: peace, colonialism, integration, civil liberties, and social reform.[109]

Deep in the milieu of the Cold War and in the wake of legal battles in defense of political ideologies usually associated with foreign threats, it was domestic issues which revitalized the progressive legal community. As will be described in the following chapter, once the focus of the Left and the Guild turned fully towards the growing Civil Rights Movement, the "crusading spirit" led radical lawyers into the halls, courtrooms, lunch counters, busses, and classrooms of the South.

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[107] Victor Rabinowitz to Dean Raab, 5 July 1960, New York, NY, Bancroft Library, Ann Fagan Ginger Papers [Hereafter BAN-AFG], Box 32 Folder 2.

[108] Victor Rabinowitz to John McTernan, 5 July 1960, New York, NY, BAN-AFG, Box 32 Folder 2.

[109] Confidential Memo Re NLG, Victor Rabinowitz, 13 July 1960, BAN-AFG, Box 32 Folder 2.

Chapter Two
From Norfolk to Santa Monica: Taking the Law to the Streets, 1962-1968

Looking Towards the South

In 1962, the National Lawyers Guild was still recovering from the red-baiting of the McCarthy era. The damaging period of HUAC had begun to wane, but its effects were still visible. Membership in the Guild had gone down; its reputation in law schools had been damaged; aspiring lawyers stayed away from any association that could potentially harm their prospects of getting a good paying job. In the South, particularly, the Guild had been decimated, with only a handful of lawyers as members, and a few others who had unofficial connections with the Guild. This chapter traces the resurgence of the Guild with the civil rights movement and points out the regional tensions it produced. In addition, its national scope and political alignments placed the Guild in a strategic position to intervene in the social and political crises of the late 1960s.

Traditionally, left wing lawyers in the South were scant and wary of any radical political inclinations. Since the labor movement didn't make any considerable advances in the region — especially after the strident anti-labor Taft-Hartley Act in 1947 — most of these southern progressive lawyers focused primarily on civil rights. However, being a civil rights lawyer in the Jim Crow South incited considerable obstacles, including for white lawyers, who feared alienation or provoking the local bar associations. Consequently, they usually stayed away from controversial trials. The Guild only had a few white members in the South: Clifford Durr in Alabama; Joe Coe in Pensacola, Florida; William Higgs in Mississippi; and Bruce Waltzer and Ben Smith, who opened a civil rights practice in New Orleans, and had been active members in the Guild since the late 1950s.[1]

Of course, Black lawyers were in an even more precarious situation. Although there were some law schools in the South, most African Americans had to go north or to the Midwest if they wanted to study law. Not all returned to the South after they graduated. Those who did had to juggle the antagonism of white prosecutors and judges, on the one hand, and Black defendants who preferred to have a white lawyer, on the other — in order to avoid the aforementioned antagonism. Nevertheless, there was a small yet determined group of Black civil rights attorneys in the South. Donald Hollowell formed a very successful law practice in Atlanta that served as a training ground for younger progressive lawyers like Howard Moore and Vernon Jordan. Chevene Bowers "C.B." King set up shop in Albany and created a formidable network with Hollowell, establishing a legal bastion for civil rights organizations in Georgia. Others, like Charles Conley in Alabama and Sam Mitchell in North Carolina, were more isolated yet remained busy. The all-Black National Bar Association (NBA) experienced a slow, albeit significant, growth in terms of membership and lawyers involved in discrimination cases.[2] But most of the civil rights lawyers cooperated with and depended on the NAACP Legal Defense Fund (LDF).

However, for two lawyers in Virginia the relationship with LDF wasn't enough. They believed much more assistance was required and could be obtained from their professional

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1 Steve Babson, *The Color of Law: Ernie Goodman, Detroit, and the Struggle for Labor and Civil Rights* (Detroit: Wayne State University Press, 2010), 293–94; Victor Rabinowitz, *Unrepentant Leftist: A Lawyer's Memoir* (Urbana: University of Illinois Press, 1996).

2 Babson, *The Color of Law*, 293–94.

colleagues in the North. Len Holt and Edward Dawley had a law office in Norfolk, which increasingly took on more civil rights cases throughout the state.

Holt established the most enduring connection between a southern Black law office and the NLG. He reached out to Ann Ginger, who was the editor of the *Civil Liberties Docket*, and had been reporting on civil rights cases since 1955. Aryay Lenske, executive secretary of the Guild, invited Holt to the National Executive Board Meeting on November 12, 1961. Holt met with twenty-nine members — all white, one woman, and one southerner, Ben Smith — and explained their economic hardship, and asked for unrelenting assistance and money.[3] George Crockett and his law partner, Ernest Goodman, continued to develop a relationship with Holt, and Goodman visited Holt in Virginia in late 1961 and met with many activists in Norfolk.[4]

The strengthening communication and contact with Detroit lawyers was no accident. While the rest of the regional chapters were severely weakened or wiped out by the congressional subcommittees of un-American activities, the Detroit office prevailed. The success of the chapter was due, in part, to the legacy of the labor movement in Michigan, and a vibrant NAACP regional office. In addition, the Detroit chapter was one of the first chapters to discuss the issues of the South. Robert Williams, head of a NAACP chapter in North Carolina, spoke at a Guild luncheon chaired by Ernest Goodman in 1959. James Walker, also from North Carolina, went to Detroit two years later and spoke on "The Role of the Negro Lawyer in the South." According to Harry Philo, chairman of the Detroit chapter, these types of events drew in another sixty members between 1960 and 1962. By that year, the leadership of the chapter contained the highest number of African Americans in the Guild, including: Chester Smith, John Conyers, Nate Conyers, Anna Diggs, Myzell Sowell, and Myron Wahls.[5]

In 1951, the surviving members of the Maurice Sugar office — Goodman, Crockett, Mort Eden, and Dean Robb — formed one of the first integrated law firms in the country. It was met with initial skepticism and racism from potential clients. Some would ask to speak to Goodman because they didn't like to talk to a Black man, or because they didn't believe they would have a chance in trial. Conversely, one client told Crockett that he was glad he wasn't sent to one of "those Jewish lawyers."[6] The firm had worked on issues of racial discrimination first on a local level, through union politics and employment discrimination, and then on a larger scale. By the time Holt reached out to them, they were ready to answer.

On the last weekend of February 1962, the Guild held its annual convention in Detroit. Several prominent members of the legal community attended the convention, including the state governor, John Swainson, two local judges, a Michigan Supreme Court judge, and Harold Cranefield, General Counsel of the UAW. The Guild in Detroit had maintained a noticeable position in the judiciary and the labor unions. In the convention, Goodman and Holt outlined their proposal for an ambitious new project: the Committee to Assist Southern Lawyers (CASL). The idea was to set up a network of information and

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3 Holt reached out to the NLG with a plea for help, and described how officials of the Virginia Committee on Offenses Against the Administration of Justice entered their law office in September 1961 and demanded all records on four integration cases. Ginger, Ann Fagan, and Eugene M. Tobin, eds. *The National Lawyers Guild: From Roosevelt through Reagan* (Philadelphia: Temple University Press, 1988), 186.

4 Babson, *The Color of Law*, 294.

5 Ibid, 293–94. Past officers included Judge Elvin Davenport and Edward Turner, president of Detroit's NAACP.

6 Ibid., 186.

technical support. This included conferences and workshops on how to financially maintain a law office and different ways to bring innovative legal arguments into civil rights cases. Holt gave an impassioned speech at the plenary: he insisted that the Guild take an active role and at the end asked everybody to stand up and sing, "We Shall Overcome."[7]

The special committee would be charged with specific responsibilities. First, they had to canvas the membership in order to compile a list of lawyers who could contribute time, skills, or financial assistance. And second, they had to inform southern civil rights lawyers of such assistance; and to undertake other activities, "such as information services, brief banks, handbooks, conferences, as may effectuate the objective of providing adequate legal assistance." The Guild also pledged itself to establish a special fund to support the committee, to cooperate with other organizations.[8]

The committee was established in 1962, and the law office of Goodman and Crockett, who served as the first co-chairmen, was the official address. The two co-secretaries were Len Holt and Ben Smith. The balance between Black and white lawyers in the committee was part of a larger attempt of the Guild to integrate their offices and leadership. Twenty-one young lawyers, three women, and eight African Americans were elected to the executive board. Of the national Guild leaders, eight were women and ten were Black.[9] Goodman later accompanied Holt to promote CASL both to lawyers and activists in the South. Goodman spoke at the Baptist Church in Petersburg, Virginia. He described to the congregation how Holt presented the problem at the Guild convention and by the end had most of the attorneys on their feet singing. "I cannot sing as Len can. I cannot sing at all," Goodman concluded, "But with all my heart, may I say, 'We shall help *you* overcome.'"[10]

The initial reports indicated the positive effect that CASL work had on northern lawyers. Morton Leitson, one of the white lawyers from Flint who handled Sam Mitchell's tax case in North Carolina sent a heartfelt letter to the committee: "I spent thirty one hours in the city of Greensboro, North Carolina, and it turned out to be a most rewarding and gratifying experience to me," he began.[11] "I went to North Carolina thinking that I was to represent a foolish lawyer who couldn't understand the simple language of the Internal Revenue Code… I found instead that Sam Mitchell is truly a lawyers' lawyer, whose biggest fault is that he can't refuse to handle cases where the clients can't afford to pay a fee."[12] Michael Standard, a white attorney from New York, wrote to Goodman and Crockett after returning from Virginia, "I find it virtually impossible to indicate my positive feeling about the minuscule role I played... Such activity seems to me the tithe every Northern lawyer in

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7 Goodman in Ginger and Tobin, *The National Lawyers Guild*, 187–88.

8 Resolution on Assistance to Southern Lawyers, Detroit Guild Convention, 24 February 1962. TAM-NLG Box 12 Folder 36. Ginger and Tobin, *The National Lawyers* Guild, 188.

9 Ibid.

10 Address by Ernest Goodman at the First Baptist Church, Petersburg, Virginia, 28 March 1962. TAM-NLG Box 15 Folder 13. [Emphasis in original.]

11 Sam Mitchell, a black lawyer in the Raleigh-Durham area, was indicted in 1961 for not filing income tax returns in 1956 and 1957. Mitchell took a guilty plea, assuming that he just needed to pay the back taxes and a penalty, however the judge imposed a fine of $7,500, in addition to the taxes and penalties. Unable to pay the fine, Mitchell was prepared to serve a year in prison. Through the committee, several lawyers from Flint, Michigan, agreed to handle the case. Interim Report of CASL, 9 June 1962. TAM-NLG Box 15 Folder 13. Leitson mentioned that Mitchell received a seven month extension of time to raise the fine, and that twenty black lawyers who were present at the hearing pledged $1,100 towards his fine.

12 Leitson to Goodman and Crockett, June 1962. TAM-NLG Box 15 Folder 13.

this country must pay if he is to retain a sense of himself as a human being."[13] James Sharp, a Black attorney from Louisiana, wrote to Crockett and Goodman and told them how their CASL report made him want to join the Guild: "I had known about the Guild before but had never bothered myself to become more closely affiliated with its activities. It is my desire to become a member of the Guild and contribute as much as possible to the program which it sponsors. It is my thinking that I may be able to contribute to the program of the Guild and also that the Guild will certainly be able to help me in some of the struggles that I have as a Southern lawyer."[14]

Despite the initial enthusiasm and optimism, the logistical obstacles continued and the ideological tensions increased — both between the lawyers on the ground and among the leadership of the Guild. The strongest chapter, New York, was beginning to resent how most of the energy and resources of the Guild went south. Since the convention Victor Rabinowitz had his reservations. He was worried the Guild would become a single issue organization and that the rest of its program would be set aside, "while we became the legal arm of the civil rights movement."[15]

Through cautious study and swift improvisation, the efforts in the South began to improve. However, Goodman, Crockett, and Holt realized that they needed more lawyers and resources. Holt's Virginia office, which served as the de facto bastion of the Guild in the South, also went through some financial issues, and the partners were over-stretched and overworked. As a result, the law firm of Jordan, Dawley & Holt sent a memo to CASL announcing the temporary closing of the office.[16] The lack of resources and steady income for local lawyers became an important concern for CASL, and a constant restraint on its efforts. Many Black lawyers in the South had trouble making enough money to make ends meet. They mostly worked on misdemeanors, wills, and occasional divorces. In addition to the pressure of doing civil rights work in the South, the difficult economic situation of lawyers was also a vulnerable point of attack.

The Goodman-Crockett firm believed they had the solution to the financial limitations of their southern colleagues. They offered the model that the firm used back in the 1950s: to devote part of the practice to personal injury and workers compensation. Dean Robb was put in charge of the personal injury caseload, enabling Goodman and Crockett to handle the political cases. The first state statute on workers' compensation was created in 1912 as part of the Progressive era law reforms. While limited, it at least improved upon previous decisions where judges cited nineteenth century principles holding the victims to blame. The new ruling opened the door for lawyers to handle workers' cases, since fees were paid with a percentage of the amount claimed.[17] By the 1960s Robb was an expert on the field and was president of the Michigan chapter of the National Association of Claimants Compensation Attorneys.

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13 Babson, *The Color of Law*, 298.

14 James Sharp to National Lawyers Guild, Monroe, Louisiana, 5 September 1962. TAM-NLG Box 12 Folder 36.

15 Rabinowitz, *Unrepentant Leftist*, 176.

16 Both Dawley and Holt were engaged in work outside of the area. In 1962, they had a caseload of around 150 cases in Georgia, Alabama, Florida, North Carolina, South Carolina, and Virginia. Memorandum, "Civil Rights Law Firm Suspends Local Practice," Jordan, Dawley & Holt. TAM-NLG Box 12 Folder 36.

17 Babson, *The Color of Law*, 37. It gave some compensation to workers but still protected employers from litigation, and there were many exemptions in the category of labor and it didn't cover occupational illness.

The first "Workshop/Seminar for Lawyers on Civil Rights and Negligence Law" was held in Atlanta on November 30 and December 1, 1962. The logistics for the conference were initially problematic. Robb recalled that most venues refused to host the event, including Morehouse College. Only the Black-owned Waluhaje Hotel accepted. Both the Southern Christian Leadership Conference (SCLC) and the NBA co-sponsored the event. Invitations were sent to attorneys throughout the South, and to organizations like LDF and ACLU. Jack Greenberg, director of the LDF, declined the invitation. Two weeks before the event only thirteen Black lawyers had registered. Worried about empty conference rooms, an anxious Crockett pushed invitations through the NBA. A spark of energy hit when in the last minute Martin Luther King Jr. was announced as the luncheon speaker. Almost sixty lawyers, from most southern states, turned out.[18] The workshop was the first integrated legal conference in the South since Reconstruction.[19] The goals of the conference were to make it possible for more attorneys to accept civil rights cases by making their practice more lucrative in other areas of the law, and to provide attorneys with the latest developments and techniques in civil rights law. The emphasis would be on practice rather than theory; as the program pointed out, "It is a How-Do-You-Do-It-Conference."[20]

Despite the success of the conference, there were still many obstacles and limitations that curtailed the legal efforts in the South. In the 1963 annual convention, a year after CASL's formation, there was discussion on the effectiveness of legal strategies and how to proceed. Many considered the case-by-case legal attack on discrimination as inappropriate, and the lack of personnel, funds, time was mentioned as a continuous problem. Furthermore, local courts and federal district judges were successfully delaying cases.[21] The attendees decided on several steps to be taken. First, they should file omnibus suits that challenged the legality of the entire political structure in the South and ensure full and equal participation of its "negro" citizens. Second, file another suit seeking judicial enforcement of Section 2 of the Fourteenth Amendment, which should be brought to the Supreme Court by the Attorney General of a northern state — naming as defendant each of the southern states in which voter suppression has occurred. Finally, the committee sought authorization for a CASL southern field representative and requested that the Guild orient its dues and fundraising efforts towards CASL.[22] This signaled more than a few red flags for some lawyers like Victor Rabinowitz, who already had some reservations regarding the energy and attention devoted to civil rights issues.

The omnibus injunction was an innovative approach to the desegregation struggles in the courts. Instead of filing separate injunctions in federal court against city officials in charge of institutions that have systematically discriminated against and segregated Blacks in public facilities — schools, housing, hospitals, parks, pools, etc. — an omnibus suit bundles them all together and "focuses on the local government's systematic violation of the constitution."[23]

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18 Ibid., 303–4.

19 Although it was the first conference in Atlanta, the local Guild chapter was formed in 1945 and survived with a small inconspicuous presence. Ginger and Tobin, *The National Lawyers Guild*, 192.

20 They had panels on negligence practice; criminal prosecutions and constitutional rights; civil remedies and defense against injunctions; and omnibus injunctions. Workshop/Seminar Program, 1962, TAM-NLG Box 12 Folder 25.

21 Convention Report of CASL, 1963, TAM-NLG Box 15 Folder 14.

22 Ibid.

23 Babson, *The Color of Law*, 299.

On September 14, 1962, Len Holt and the Guild filed an omnibus suit in Lynchburg, Virginia. Three Black plaintiffs brought a class action suit "on behalf of others similarly situated" against the officials of the city of Lynchburg who were in charge of facilities, including the local pool, nursing home, hospital, jail, armory, cemetery, and City Hall building. The claimants sought "to secure a declaratory judgment and an injunction designed to end all racial discrimination and segregation in all institutions and facilities" of the city, which are accorded to them by the Fourteenth Amendment.[24]

Greenberg and the LDF vigorously opposed this strategy. He believed that not only was it a publicity stunt, but it was too big and complex to be litigated. Nonetheless, Holt saw the potential. It would generate publicity, invigorate the local movement and population, and bring "tremendous favorable psychological and sociological advantages for the Negroes in the community." He further explained "the omnibus suit is not strictly a legal instrument... If it does nothing else... it does formalize the urgency and the scope of the demand shouted so long: All and Now."[25]

Protest actions continued to expand throughout the South. Students staged a sit-in protest in the public library of a Virginia textile mill town, Danville, a city of 50,000 along the North Carolina border. They had been inspired by the sit-ins that began with students from A&T College in Greensboro, North Carolina. Authorities closed the library to the public. The leaders of the newly formed Danville Christian Progressive Association (CPA) called Holt for help. He filed an omnibus action to desegregate public facilities. Inspired by Black leaders in Birmingham, the CPA organized a march through the city. The authorities responded with violence and over two hundred arrests.[26]

Local lawyers called for assistance from the Student Non-Violent Coordinating Committee (SNCC) and SCLC, and from the LDF. With the two hundred protest trials pending, the lawyers called Rev. Campbell of the Danville movement leadership and asked whether they had to consult with the NAACP lawyers before any protest or action. Samuel Tucker, of the LDF, responded, "Since the NAACP will be footing the bill, we will want to be able to caution against anything unwise." Campbell then asked whether Holt would be one of the lawyers. Tucker plainly answered, "NAACP money can go only to NAACP lawyers, and Holt is not an NAACP lawyer." The two leaders of the Danville movement gave an answer that, according to Arthur Kinoy, proved a turning point for the movement and for the relationship with the NAACP. The Danville leaders said, "Ol' Snaky is the movement lawyer. If you want to put some people here to work with him, good. Otherwise, we're sorry."[27] Snake Doctor was a nickname affectionately given to Len Holt by civil rights activists.

Holt needed manpower, funds, and to build a relationship of trust with the local lawyers. Notwithstanding the above decision, they remained affiliated with the NAACP. He made two telephone calls: one to Detroit to get help from CASL, and one to New York to Arthur Kinoy's office. "All hell has broken loose here," Holt said. "Get here tomorrow. We need help bad. Bring Bill if you can find him."[28] Kinoy found William Kunstler in Jackson,

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24 Plaintiff's Memorandum in Reply to the Final Argument of Defendants, TAM-NLG Box 15 Folder 14.

25 Babson, *The Color of Law*, 300.

26 Three leaders were charged with violations of the pre-civil war "John Brown" statute, which punished "any person conspiring to incite the colored population to insurrection against the white population." Arthur Kinoy, *Rights on Trial: The Odyssey of a People's Lawyer* (Cambridge: Harvard University Press, 1983), 185–87.

27 Ibid., 188.

28 Ibid., 181.

Mississippi. Kunstler, a New York lawyer who did civil rights work, had been in Mississippi since the summer of 1961. Kunstler was initially invited through the ACLU to help with hundreds of arrested freedom riders.[29] Holt's support from the North arrived on June 15, including Dean Robb and Nate Conyers from Detroit. They discussed how to fight the injunctions and local ordinances on constitutional grounds, and, more urgently, how to deal with the two hundred arrests and prevented the Danville movement from getting bogged down by legal proceedings. Kunstler suggested they file a petition to remove the cases from state court to federal court. "It's an old Reconstruction statute we discovered down in Mississippi a couple of months ago," he said. "Why don't we try it here?"[30] William Higgs, who was working with Kunstler in Mississippi defending the growing number of freedom riders, found the statute. Passed in 1866, the statute protected newly freed Black citizens against unfair criminal proceedings. The defendants could ask to remove those cases from the state courts into federal court by filing an act of removal in both courts. After Reconstruction, local courts attempted to cover up the statutes but were never able to repeal them.[31]

These Reconstruction statutes had significant reverberations not only within the movement leadership; they also shook up court officials. Many judges were caught completely off guard. For example, when two of Kinoy's Danville clients continued to be held illegally in state jail, Kinoy confronted the state judge, Thomas J. Mitchie, stating he had filed the federal writs and his clients should be released immediately on reasonable bail. The judge said that he reserved decisions on all motions. Kinoy continued to argue and the prosecutors responded that it was a gross interference with state's rights. The judge took counsel to chambers, when Kinoy noticed an open statute book on the desk. "I jumped up, walked around the desk," Kinoy later wrote, and "took Judge Mitchie's finger in my hand and placed it directly on the word 'shall' in the statute, saying, 'There it is, Judge. You *shall* sign the writ. That's the law.'" The judge signed the writs.[32]

Greenberg and the NAACP didn't support the removal petitions. One of the local lawyers, Jerry Williams, asked Jack Greenberg about the use of Reconstruction statutes. Greenberg rejected the strategy; it was a crazy idea that amounted to "playing with the courts." When Williams relayed the response to the rest of the lawyers, Holt said, "Let's keep going." Local lawyers found themselves in a tight spot: they didn't want to antagonize the NAACP and the funds they offered. One of the Detroit lawyers proposed a compromise: each lawyer would handle the removal cases separately, rather than in one large action. Holt's defendants went first and this gave time for the rest of the lawyers to figure out their approach and continue to negotiate with the NAACP.[33] Goodman and CASL considered the statutes an effective strategy to use on the immediate cases while the larger court battles were pending. He congratulated Kunstler and Kinoy and said that they should promote Danville as a model in the next Guild meeting in New Orleans.[34]

In late September of 1963, the second workshop in the South was held in the New Orleans Hilton Inn. It was co-sponsored by the ACLU and the Louis Martinet Society — a

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29 William M. Kunstler and Sheila Isenberg, *My Life as a Radical Lawyer* (Secaucus: Carol Pub, 1994), 102.

30 Kinoy, *Rights on Trial*, 190.

31 Ibid., 191.

32 Emphasis in the original. Ibid., 199–200.

33 Ibid., 193–94.

34 Babson, *The Color of Law*, 316.

citywide association of Black attorneys. While still emphasizing negligence and personal injury law, as ways to keep southern civil rights lawyers and law firms fiscally viable, there was also a panel on new strategies on civil rights law, which included Hollowell, Kunstler, Kinoy, Ruth Harvey of Danville, and Leo Pfeffer, general counsel of the American Jewish Congress.[35]

During the first day of the conference, police entered the Hilton Inn and arrested Ben Smith and Bruce Waltzer. Earlier that day, more than a hundred police officers raided their law offices, as well as the office of the Southern Conference Educational Fund (SCEF). James Dombrowski, director of the SCEF, was also detained. The Louisiana state legislature Committee on Un-American Activities ordered the raids and arrests, for failure to comply with the Subversive and Communist Control Act — which considered both SCEF and Guild "subversive" organizations. Under that law, members of these subversive organizations had to register with the state.[36]

For Kinoy and other lawyers who had survived the McCarthy period these were well-known tactics of intimidation. Nevertheless, the success of desegregation cases, the impetus from the Freedom Riders, and the recent developments at Danville emboldened Kinoy and others to take the offensive. On October 25, 1963, Kinoy filed five suits in federal court in order to stop the state criminal prosecution. The final, and most important, suit was based on the 1871 Civil Rights Act, alleging Louisiana statutes were unconstitutional because they violated the First and Fourteenth Amendment guarantees of expression and association.[37] It provided for federal relief against conspiracies that "under the color of state law deprived citizens of equal rights guaranteed to them under the national Constitution."[38] In other words, it claimed the Louisiana Committee and the New Orleans Police Department and district attorney had conspired to use the state anti-subversive laws to conduct raids and seize the property of SCEF in order to harass and intimidate its members so they would abandon their struggle for the recognition of constitutional rights.

James Pfister, chairman of the state legislature committee, called for the immediate indictment of Waltzer, Smith, and Dombrowski. Kinoy and the defendants, fearing the possible repercussions of a successful indictment, filed a federal injunction against any criminal enforcement of state statutes. Until that point, no one had persuaded federal courts to interfere with state court criminal proceedings and stop them. Neither had anyone convinced federal courts, including the Supreme Court, to strike down any of the state anti-subversive statutes as violations of the First Amendment.[39] The case went up to the Supreme Court. In 1965, the decision of *Dombrowski v. Pfister* held that federal courts could enjoin state court prosecutions if there was a denial of civil rights.[40]

The creative use of injunctions and statutes put the NLG in a prominent position within civil rights litigation. Furthermore, the professional development workshops provided

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35 Ibid., 317.

36 Kinoy, *Rights on Trial*, 217. Jack Greenberg filed an amicus brief for suit in federal court against Louisiana's legislature: "While we have no connections with Smith and Waltzer... if the files of our legal staff... may be subjected to the same lawless invasion... the cause of civil rights will be most severely prejudiced." Babson, *The Color of Law*, 319.

37 Ginger and Tobin, *The National Lawyers Guild*, 199.

38 Kinoy, *Rights on Trial*, 219.

39 Kinoy, *Rights on Trial*, 225.

40 See Kinoy and Doron Weinberg and Martin Fassler, *A Historical Sketch of the NLG in American Politics, 1936-1968*. National Lawyers Guild Booklet. New York, NY. TAM-NLG Box 66 Folder 7.

many law offices in the South the skills and expertise to be profitable while working with civil rights organizations. The results, however, were still limited. The Guild wanted to find a way to offer direct and continuous support in the South. Red-baiting and pressure from the FBI and local authorities continued to obstruct coalition building with other legal organizations. On the other hand, civil rights groups became increasingly defiant. They not only sought new avenues of protest but also demanded a more active role in the legal decisions and processes. Accordingly, the Guild began to offer more seats at the strategy table.

Moving to Mississippi

When SNCC and the Congress of Racial Equality (COFO) announced Freedom Summer in 1964, many in the Guild wanted to increase their level of involvement. Other organizations also declared their support. A whole wave of northern students and lawyers was about to descend on Mississippi. However, the strong support within the NLG for Freedom Summer was not met with unanimous support in the Guild. The issue created a heated debate and increased regional tensions in the National Executive Board meeting in New York on November 10, 1963.[41] The position from Detroit was to increase its emphasis on civil rights and expand its presence in the South. Goodman proposed they cut the budget of the national office and direct the majority of funds and fundraising to support a new Guild office in the South. "All the Guild resources were necessary if we were to make an impact in the South," he said.[42]

Harry Philo of Detroit suggested that the following convention be replaced with a conference, and to temporarily eliminate the national office, as well as the position of executive national secretary, and instead place a working president to call for occasional meetings. He also recommended the establishment of a strong CASL office in the South in New Orleans and the development of CASL activities in the North. Ben Smith seconded Philo and argued the Guild needed to involve itself in the South, or they will miss the opportunity to "grow with the revolution. The Negro revolution will eventually involve itself in all of the other social needs."[43]

Although the Red Scare had seriously damaged the New York chapter, it was still the biggest chapter — with over three hundred members — and held the most sway over the national office, located in Manhattan. Rabinowitz, recently elected president of the chapter, feared the Guild was forgetting about other issues: its focus on labor, the remaining Smith Act trials, social legislation, violations of the First and Fourth Amendments, foreign policy in respect to Cuba, and nuclear war. "No one wanted to drop civil rights issues," he later wrote, "but we were not prepared to give up everything else."[44] Rabinowitz believed all the issues

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41 Goodman later reflected, "We also probably reacted with a certain degree of resentment that Guild Midwesterners had held for many years with respect to the New York Chapter's dominant role. We felt that many very able New York Chapter members looked down on us, and we were not about to accept the view that the New York Chapter and officers had all the answers to the problems of society and the Guild." Ernest Goodman, "Stormy National Executive Board Meeting in NY," *NLG Practitioner*, Winter, 1981.

42 Babson, *The Color of Law*, 328–29.

43 Minutes from Meeting, 10 November 1963, in Sugar Papers, MCLI. In Ginger and Tobin, *The National Lawyers Guild*, 200–202.

44 Rabinowitz, *Unrepentant Leftist*, 177–78; Babson, *The Color of Law*, 329.

were interrelated, and that it was wrong to separate civil rights from concerns of unemployment, imperialism, and disarmament.

Bella Abzug, one of the two women at the executive board meeting, agreed with Rabinowitz. She asserted that the success of racial integration could only be possible with the understanding that it was connected with other problems in the country. The "basic problem lies in economic accomplishment." She believed that unless there was healthy and equal economic development, lawyers could not fulfill their function. Hence, she argued that the Guild should not only focus on CASL, but also provide leadership on issues of peace, poverty and international law.[45]

Unlike Detroit, the New York chapter had serious internal divisions, both ideological and generational. Some of the younger lawyers agreed with the increased focus on civil rights and resented how their older colleagues made decisions in the New York office. Betty Elder said, "As young lawyers we resent the top-heavy structure of the New York Guild."[46] John Silverberg added, "It is self-evident that there is today a social revolution and very obvious that the New York Guild has not become a part of it. We are... useless because we do not participate."[47]

The ancillary critique of the New York chapter was the lack of diversity in the law firms and leadership, pointing out their failure to incorporate young Black lawyers. Since the formation of CASL, both Conyers and Crockett had been pushing for integration of offices and chapters. Crockett admonished the chapter for not actively reaching out to Black lawyers and not integrating its own ranks. He insisted that if they can't have an active growing and integrated chapter, "the Guild is simply a paper organization. We must have a revitalized New York chapter."[48]

Eventually, in a final effort to conciliate, Martin Popper, a prominent lawyer with close ties to the CP, proposed that the "primary emphasis of Guild and national offices shall be devoted to fight for equality throughout the country." The motion was carried eight to six, with several abstentions from New Yorkers. The annual meeting was moved to Detroit and with it the leadership of the Guild.

In 1964, there were significant adjustments in the Guild. The convention was held in Detroit during the weekend of February 21. The theme was "The Legal Revolution: Challenge to the Legal Profession." The Detroit chapter gained substantial support from the delegates: the office was transferred from New York; Goodman was elected president; and, both the executive secretary and the treasurer were also from Detroit. The Guild now focused primarily on the South, although local chapters were given the flexibility to work on other programs.[49] In a report on CASL activities, Goodman wrote, "The Guild is *not* a civil rights organization. It is a national bar association of attorneys, professionally and personally committed for the past twenty-seven years to the defense of the civil rights and liberties for all people." "The distinction is important," Goodman clarified, "because it explains why the

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45 Ginger and Tobin, *The National Lawyers Guild*, 200–202.

46 Ibid., 200–202.

47 Babson, *The Color of Law*, 329–30.

48 Ginger and Tobin, *The National Lawyers Guild*, 201.

49 Ibid., 205; See also, Babson, *The Color of Law*, 331–34.

Guild itself cannot become an integral part of a lay defense organization or association of such organizations."[50]

As the Detroit group gained enough support within the Guild, they passed a motion for a revamped version of CASL. It became the Committee for Legal Assistance in the South (CLAS). The proposal was to expand the support and provide a full-time staff, while encouraging offices in the North and West to help finance and coordinate some of the federal legal efforts. The committee would support the students and volunteers who were going to the voter registration drive in Mississippi. There were only three local Black attorneys in the state willing to take civil rights cases. "Our concern in the Mississippi project," Goodman pointed out to Guild members, "is to attempt to redress the lack of available lawyers in Mississippi ready, willing, and able to handle civil rights cases."[51] The committee required two types of attorney volunteers: ones who would stay and work on general cases and the others who would take on special cases but not have to be in the field. In a press release the committee described themselves as a "Lawyers Peace Corps" going into Mississippi.[52]

The committee also wanted to improve the logistical complications of coordinating legal efforts from a distant office. The Guild opened their first office in Jackson, Mississippi, on June 9, 1964. The decision at the convention was to place Crockett and Smith as co-chairs of the committee and Holt and George Downing as co-secretaries. They shared the building on North Farish Street with the Medical Committee for Human Rights, which also expected volunteers for the summer.[53] From there they would coordinate the influx of lawyers and law students, as well as handle the legal cases and distribute the budget. Shortly thereafter, other organizations opened up offices on the same street.

The Guild had a distant, yet usually amicable, relationship with the ACLU. As mentioned in the previous chapter, the ACLU filed an amicus brief in the Guild's lawsuit against the Eisenhower's Attorney General, Herbert Brownell, when he tried to put the Guild on the list of subversive organizations. Many of the early leadership of the Guild were also board members of the ACLU — like Osmond Fraenkel. In 1963, CASL hosted a dinner conference with Mel Wulf, the legal director of the ACLU, as the guest speaker.[54] In the spring of the following year, Goodman was in contact with Wulf in an attempt to encourage the ACLU to participate in Freedom Summer, and in particular to help with the necessary coordination of legal efforts. "It seems to me that there is room both for lawyers who are willing to accept professional responsibility on behalf of a bar association, and those who may prefer to work with a civil rights or civil liberties organization," Goodman wrote. "And there is no reason why we could not cooperate in every possible way to avoid duplication, to exchange experience and for other purposes."[55] Goodman believed that if the various civil rights organizations in Mississippi were able to unify, this would mean finding acceptable and useful means of cooperation.

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50 Report to Guild on Mississippi and CLAS, 15 April 1964. TAM-NLG Box 12 Folder 37. [Emphasis in the original document.]

51 Ibid.

52 Press Release, 23 April 1964. TAM-NLG Box 12 Folder 37.

53 Babson, *The Color of Law*, 338–39.

54 Dinner/Conference Program, "The Role of lawyers, Bar Associations and Government Agencies in Achieving Civil Rights in the South," hosted by CASL in cooperation with the Civil Rights Committee and NBA. 8 June 1963, New York. TAM-NLG Box 15 Folder 15.

55 Goodman to Wulf, 25 April 1964. TAM-NLG Box 50 Folder 16.

Mel Wulf and the ACLU had worked several on cases in the South — mostly capital punishment cases. In 1962 he began working with Charles Morgan in Birmingham and with R. Jess Brown in Mississippi. He later recalled how after hearing about the Guild's project of enlisting lawyers around the country to go south he thought it was a wonderful idea and believed the ACLU should do it as well. They couldn't do it in conjunction because "The ACLU, institutionally, always kept its distance from the Guild."[56] After seeing how CASL operated, Wulf told Jack Pemberton, the ACLU general director at the time, "Let's start our own group and enlist ACLU related lawyers… and start an organization to bring lawyers down south for Mississippi Summer." They hired Henry Schwarzschild to be the executive director and they invited other organizations to join the Lawyers Constitutional Defense Committee (LCDC).

In order to ameliorate the violence and reaction in the South the federal government was also interested in creating a legal bulwark. In 1963, the Attorney General, Robert Kennedy, called a meeting in the White House with 244 lawyers from across the country — mostly from the South — to begin discussions on establishing the organization and setting up a functional mechanism. Several lawyers from the Guild were invited — especially from Detroit — along with many prominent members of the ABA.

The first meeting was held on June 21, 1963. Guild lawyers immediately expressed their "sharp disappointment" with the event. Conyers Jr. reported the meeting left the "inescapable impression that the White House does not, even at this late date, fully comprehend either the magnitude or the intensity of the mass action presently sweeping the nation." Crockett agreed. There was a clear indication from the administration that civil rights legislation would only go through if mass mobilization ceased.[57] Regardless of their initial dissatisfaction, the Detroit lawyers still believed the meeting with Attorney General Kennedy was an improvement over previous administrations. As a result of the meeting, the Committee for Civil Rights Under Law, commonly known as the President's Committee, was founded in 1964. However, it did not become significant and visible until the following year, when they also opened an office in North Farish Street.

The LDF continued to have a strained relationship with the Guild. Although LDF was not very sympathetic to SNCC, they agreed to join the Mississippi Summer project and increased their work with mass arrests. Nonetheless, red-baiting was prevalent. Mel Wulf remembered how Jack Greenberg and Joe Rauh, of the UAW, tried to get him fired from the ACLU. They brought in Jack Pemberton to a meeting in Atlanta, and they explicitly said, "Wulf is too close" — both to SNCC and to the Guild.[58] Allard Lowenstein, former dean of Stanford, urged his students to withdraw from Freedom Summer after SNCC refused to disavow its relationship with the Guild.[59]

Before the summer, the Louis Rabinowitz Foundation gave a grant to SNCC for their voter registration drive. The editor of the *Atlanta Constitution*, a liberal newspaper, pointed out that Victor Rabinowitz was in charge of the foundation and was "registered in

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56 Mel Wulf, Interview by author, New York, 9 November 2015.

57 Press release on White House meeting, 24 June 1963. TAM-NLG Box 15 Folder 16.

58 "Of course we resisted it and it was an outrageous attitude, particularly of the Auto Workers — I would have thought better of them. I was not surprised of Jack Greenberg, who was the apologist for corporate America in the Civil Rights Movement." Mel Wulf, Oral History Interview.

59 Babson, *The Color of Law*, 335.

Washington as an agent for the Castro government."[60] The editor then wondered if SNCC was getting Havana money. Rabinowitz later described how both Allard Lowenstein and Joe Rauh, "fancying themselves contemporary Paul Reveres," shouted down the streets of Mississippi: "The Lawyers Guild is coming! The Lawyers Guild is coming!"[61]

The Guild Jackson office coordinated around 125 lawyers during Freedom Summer. Half of the volunteers pledged up to forty hours, writing briefs and pleadings; the other half did one-week stints in Mississippi providing direct representation.[62] The logistics from the office were chaotic: many left before the work was finished, while others had to figure out how to pick up the pieces. The experience, however, was momentous for all involved. Rabinowitz described that most of the lawyers had not been south of Washington D.C before. To them Mississippi, Alabama, Georgia, and the Carolinas were more foreign than European countries. "To some the experience was a turning point in their lives; none have forgotten it."[63]

One of the products of the political organizing in Mississippi was the creation of the Mississippi Freedom Democratic Party (MFDP). Fannie Lou Hamer and the COFO leadership challenged the segregationist Democratic Party in Mississippi and sought to replace them in the Democratic National Convention in Atlantic City. Joseph Rauh, the Washington D.C. counsel of the UAW, seen as a potential bridge between the civil rights movement and the Democratic establishment, negotiated with the Johnson administration and the Democratic leadership. Rauh was adamantly against any Guild participation. In a meeting called by the Council of Churches on September 18, attended by representatives of the organizations that participated in Mississippi, Rauh said he "would like to drive out the Lawyers' Guild" because it was "immoral to take help from Communists."[64] The leadership was divided. Andrew Young suggested they call another meeting so that it would include the absent SNCC leaders. Gloster Current of the NAACP said the leadership should decide, "not the grassroots."[65] The Mississippi chapter of NAACP withdrew its support of the MFDP.

In turn, the leadership of the Freedom Party fired Rauh and hired Arthur Kinoy, Ben Smith, and William Kunstler. After finding another Reconstruction statute, which would allow the MFDP to serve notice of challenge of the Mississippi congressional delegation, "armed with federal subpoena power to 'collect depositions on the forcible exclusion of black voters.'"[66] This push persuaded Crockett and Goodman to re-open the Jackson office,

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60 The Rabinowitz-Boudin firm represented the Cuban government in several cases regarding property disputes after the Cuban Revolution. See Rabinowitz, *Unrepentant Leftist*.

61 Ibid., 181.

62 Babson, *The Color of Law*, 341.

63 Rabinowitz, *Unrepentant Leftist*, 179. Donald Jelinek, an ACLU lawyer, described it as the "Mississippi high": "the intoxication felt by white middle class civil rights workers who suddenly found themselves thrust into the idealism of the civil rights cause. Most had had hardly any prior contact with blacks, with the poor, even less contact with danger and little experience with selfless action. That euphoria served to keep civil rights workers in the South, induced others to come... and made it difficult to retreat to normal living afterwards." Donald A. Jelinek, *White Lawyer, Black Power: Civil Rights Lawyering Through the Black Power Era in Mississippi & Alabama* (Berkeley, [Self Published], 2015), 33.

64 Kinoy, *Rights on Trial*, 263.

65 Babson, *The Color of Law*, 351.

66 Ibid., 351.

which they had briefly closed after the summer ended.[67] Morty Stavis, from New York, joined in organizing around 150 lawyers to go into Mississippi to take depositions. Out of this collective effort, Kinoy, Kunstler, Smith, and Stavis developed the idea to create the Law Center for Constitutional Rights (CCR), a tax-exempt organization that could work independently.[68]

On October 18, 1964, at the national executive board meeting of the Guild, Crockett reported on CLAS's activities over the summer. Although he mentioned that there were logistical problems, he emphasized the successes, including fundraising and publicity. He suggested to re-open the Jackson office "on a permanent basis" and nominated Claudia Shropshire as the director of the regional office. Shropshire was born in Detroit, but her family came from Mississippi. She graduated from Wayne State Law School and joined the Goodman firm in 1960. During Freedom Summer she worked at the Jackson office with Crockett.[69] "Women lawyers were not part of the Mississippi landscape in 1964 and black women lawyers was almost inconceivable," Rabinowitz wrote. "Miraculously, she was able to earn the respect, if not the affection, of the local legal establishment."[70] According to Don Jelinek, an ACLU lawyer who was sent to operate the LCDC Jackson office, when the Guild office re-opened on North Farish St, under the direction of Shropshire, it became "the first full-time civil rights law office in Mississippi; the first in the Deep South headed by a black lawyer; and the first anywhere headed by a woman."[71] Working closely with the MFDP office, across the hall from the Guild office, Guild lawyer Morty Stavis coordinated the first wave of volunteer lawyers from across the country to collect depositions to continue the electoral challenge.[72] For the MFDP, and for SNCC, this episode marked the difference between the liberal lawyer, who compromised with the establishment, and the radical lawyer, who worked hand-in-glove with the "grassroots."

Between late 1964 and early 1965 the other legal organizations opened offices on North Farish Street. LDF had been renting a space since the summer. The LCDC — which now formalized into a volunteer organization of rotating teams of lawyers, and included ACLU, CORE, the American Jewish Congress and the American Jewish Committee — got an office what was colloquially known as the "North Farish St Bar" in early 1965. The President's Committee joined in the spring.[73]

Although there were tensions between the leadership of the organizations, on the ground they found ways to coexist practically if not always harmoniously. For example, in

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67 For more on the MFDP challenge, see Kinoy, *Rights on Trial*, 263; Babson, *The Color of Law*, 351–1; Jelinek, *White Lawyer, Black Power*, 105–9.

68 For more on the origins of the Center for Constitutional Rights see Albert Ruben, *The People's Lawyer: The Center for Constitutional Rights and the Fight for Social Justice, from Civil Rights to Guantánamo* (New York: Monthly Review Press, 2011); Kinoy, *Rights on Trial*; and Marlise James, *The People's Lawyers* (New York: Holt, Rinehart and Winston, 1973).

69 Babson, *The Color of Law*, 353.

70 Rabinowitz, *Unrepentant Leftist*, 180.

71 Jelinek, *White Lawyer, Black Power*, 19.

72 153 lawyers, paying their own fares, spent on average a week in Mississippi and put together over four hundred depositions. It's important to point out an increase of lawyers from the West Coast: forty-six from the Bay Area and twenty-eight from San Jose and southern California — seventy-nine from New York, Michigan, and Illinois. From Stavis, "The MFDP Challenge" in *MCLI Journal*, 1983. In Ginger andTobin, *The National Lawyers Guild*, 213.

73 Babson, *The Color of Law*, 334.

June 1965, in a protest against amendments to state voting laws, almost a thousand MFDP supporters were arrested. Shropshire and Carsie Hall, of the NAACP, went to the jail to get their release. LCDC raised around $45,000 for bail, and one attorney from the President's Committee joined an LDF lawyer in a federal suit to block the city from using a parade ordinance to charge protesters.[74] After that, the President's Committee lost the endorsement of the Mississippi Bar Association. There were, however, big differences in terms of funding. In 1965, the Guild only had $34,000, while the President's Committee had $200,000.[75] The latter had four full-time staff lawyers, the former only one.

The summer of 1965 saw the last drive of CLAS in the South. Working directly with MFDP, they pushed for a new project, focusing on filing omnibus cases. However, the MFDP's focus was continuing the campaign to unseat the Mississippi Democrats. The cost of litigation for the omnibus cases, and the support for MFDP's organizing took a heavy toll on the Guild's finances and capability. Furthermore, The civil rights movement expanded dramatically, notably outside Mississippi. In particular, voter registration drives and desegregation efforts proliferated throughout the Deep South. Shropshire suggested they move the office to the Delta region, since Jackson already had four operational legal organizations. The direction of the Guild was also changing, as chapters began to shift towards integration efforts in the North, as well as focusing on specific local issues. The National Executive Board voted to close the office in the spring of 1966 and transfer the remaining cases to the LCDC.[76]

The different organizations also began to split up and branch out. The relationship between locals and foreigners, Black and whites, lawyers and activists began to change drastically. There were tactical and ideological divisions within the civil rights movement. After Carmichael proclaimed "Black Power" and SNCC voted to expel whites from the organization in December of 1966, SCLC and NAACP distanced themselves and Fannie Lou Hamer resigned in protest. However, Jelinek, who was working as legal counsel to SNCC, was not asked to leave. Carmichael called for some whites to work on a "volunteer contractual basis" in white communities in the South. The first Selma SNCC law office had an all-white staff.[77] Nevertheless, the new directions and the new approaches to racial dynamics compelled organizations like the Guild to evaluate what path to follow and how to expand its operational capability.

Despite causing friction, the regional tensions in the Guild wrested political and logistical control from the New York chapter. Members from the Midwest, and gradually the West, became more involved and committed to bolstering Guild presence across the country. With the civil rights movement, the Guild set the groundwork for a broad legal network and provided a platform for strategy discussions — while still limited by the constraints of funding sustained campaigns. This regional expansion, however, also had

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74 Ibid., 359.

75 Burke Marshall, former Assistant Attorney General, became co-chair of President's Committee in 1965. The next year they got funding from the Ford Foundation and got brand new cars donated by the big three automakers. Babson, *The Color of Law*, 361.

76 Ibid., 364.

77 Jelinek, *Black Power, White Lawyer*, 161. When chastised for having a "live-in" white lawyer Carmichael wrote: "It is our position that black organizations should be black-led and essentially black-staffed, with policy being made by black people. White people can and do play very important supportive roles in those organizations. Where they come with specific skills and techniques, they will be evaluated in those terms... [such as] white lawyers who defend black civil rights workers in court…" Ibid., 168-9.

effects on the activities in the South. Guild chapters wanted more involvement in local civil rights and anti-discrimination efforts. Much of the energy now turned towards economic rights and the latest poverty programs pushed by the Lyndon Johnson administration. Moreover, the radicalization of universities and law schools pushed the energy towards civil liberties issues of free speech, freedom of association, and, especially freedom to dissent and refusal to take part in the increasing U.S. military presence in Southeast Asia.

Working with the Youth

By 1965 the divisions among civil rights organizations were apparent. Under the leadership of Stokely Carmichael and James Forman, SNCC advocated a militant brand of Black Power — empowering Black communities through political, economic, and cultural self-determination. In the North and on the West Coast there was a growing protest movement centering on issues of economic as well as racial inequality in urban areas. The student movement, the escalation of the war in Vietnam, and the defense of conscientious objectors contributed to a rising anti-war movement that began to dominate the political debates and public spaces.

The changes in focus and locality were also affecting the NLG. In a memorandum on Guild programs in the South, Claudia Shropshire outlined the problems of operating the office in Jackson. She assessed that volunteer lawyers handling long cases were unsuccessful in following through. She suggested local counsel, not volunteers, should handle the larger desegregation cases. The Guild should fall into a support position. In order to continue operating in the South, she recommended moving the office outside of Jackson because there were already four legal groups operating there. Instead, she suggested moving the Jackson office to the Delta region. Furthermore, Shropshire believed the issue of poverty warranted far more attention from the Guild precisely because of its national reach. Consequently, she proposed the Guild set up neighborhood law offices, especially in the South, through the Office of Economic Opportunity. Finally, Shropshire emphasized that the Guild had failed to tap into an increasingly important resource: law students. Volunteers were clearly invaluable to the summer projects, and she urged the Guild to continue to recruit and hire as many as they could.[78]

Public legal services significantly increased in the 1960s. The Supreme Court decision of *Gideon v. Wainwright* of 1963 expanded the defendant's right to counsel in state and federal courts. It guaranteed the right to counsel for indigent defendants in felony proceedings as a matter of constitutional right.[79] However, the number of cases far exceeded the number of lawyers. The issue remained similar to what the Guild had described in the previous decade: the government needed to provide and fund legal services for the disadvantaged. Liberal lawyers within the ABA were instrumental in pressuring Congress for a legal services program. The National Conference on Law and Poverty, sponsored by the Department of Health, Education, and Welfare, provided a platform for a legal services provision in the Economic Opportunity Act of 1964.[80] The legislation established the Office of Economic Opportunity (OEO). The first director, Sargent Shriver, had an initial budget of $800

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78 Claudia Shropshire, Memorandum on Guild Programs, past and present, for 1965 convention committee. TAM-NLG Box 24 Folder 26.

79 Jerold S. Auerbach,*Unequal Justice: Lawyers and Social Change in Modern America (New York: Oxford University Press, 1976)*, 269.

80 Marlise James, *The People's Lawyers*, 44.

million, most of which went to grants for locally organized community action agencies in poor neighborhoods across the country.[81]

The OEO included a Legal Services Program (LSP), which became an important institutional space for many of the politically active law students and young lawyers. It provided some financial stability; the jobs did not have high salaries, but enough to support a young attorney. Primarily these LSP-funded positions created an opportunity for lawyers to address their own ideological concerns and engage with economically deprived communities. Increasingly, it became a point of contact where lawyers met like-minded colleagues. The California Rural Legal Assistance (CRLA), founded in 1966 in southern California, quickly became the biggest legal services office in the country. They worked closely with Cesar Chavez and the United Farm Workers (UFW), which attracted many young lawyers and law students from Los Angeles and the Bay Area, and even the East Coast.[82]

People in the Guild were immediately attracted. Simon Rosenthal, who had worked for the Legal Aid Society in Alameda County, California, believed there was great potential with legal services. "This is an exciting thing," he wrote. "Perhaps it is not as dramatic as going down South and fighting for civil rights; but it is fighting for human freedom in another sense." "I think we should not be describing OEO Legal Services Program as a program," he concluded, "Rather, it is a revolution — a legal revolution both for attorneys and for the people."[83]

The agitation of the civil rights movement continued to echo in colleges and universities. After the sit-ins and the Freedom Rides gained attention, a growing number of students became politically active. Soon after, other political organizations invigorated college campuses. The Student Non-violent Coordinating Committee was founded in Shaw University in North Carolina in April 1960 and by 1963 had many active chapters in the South and increasingly across the country.

Student activism in the Bay Area predated the Free Speech Movement. According to Michael Tigar, a graduate of UC Berkeley, by the late 1950s some students began to organize in support of farm workers' rights, disarmament, peace, and freedom of expression. He was involved in sympathy pickets and boycotts of chain stores in the Bay Area that denied service to African Americans in solidarity with the sit-ins in the South.[84] Tigar helped organize first year law students against the loyalty question on the California bar exam, which demanded the applicant declare whether they currently belonged or had ever been members of the Communist Party. Tigar told officials he was not going to sign. After discussing his decision with a professor, the latter called the general counsel of the California bar and told them that the Supreme Court had already ruled that the question denied due process because it was too vague. The bar eventually conceded.[85]

Paul Harris, another Berkeley student, also remembered in late 1963 and early 1964 how thousands sat-in at Mel's Drive In, the Sheraton Palace Hotel, and Auto Row in San Francisco to protest discriminatory hiring practices. "[I]n 1964 we had no understanding of the law," he said, "Our role was to break the law; to engage in civil disobedience without

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81 Maurice Isserman and Michael Kazin, *America Divided: The Civil War of the 1960s* (New York: Oxford University Press, 2000), 104.

82 For more on the CRLA see James, *The People's Lawyers*.

83 Simon Rosenthal, "Pioneer's Report on Poverty Law," *Guild Practitioner*, 24:4, Fall, 1965.

84 Tigar, *Fighting Injustice*, 28.

85 Ibid., 44–45.

allowing the fear of jail to deter us. We relied on our lawyers to educate us to our options, and then to step back and allow us to make the decisions. If those decisions meant that we would be prosecuted, we looked to our lawyers to protect us." Harris first met Frank McTernan, a prominent labor lawyer, during those actions. McTernan defended and counseled the students.[86] Afterwards Harris enrolled in Boalt Hall and joined the Guild. Dennis Roberts, also a Boalt student, was incredibly bored and disappointed with law school before he met with Ann Ginger, editor of the *Civil Liberties Handbook*, and joined CASL's summer volunteer program.

Ginger sent many student volunteers to law offices in the South. C.B. King, in Albany, Georgia, selected Roberts to work for him during the summer of 1963. Roberts returned again the following year and worked with King for almost two years. "C.B. was bold," Roberts said. "He was the bravest man I ever met. He wasn't afraid of them. They poisoned his dog, they shot up his house a couple of times, but he was just going to keep doing it."[87] He described how after going to a jail in Americus County the deputies poured battery acid in the driver's seat of the car and it ate through his pants.

The civil rights movement, and the need for attorneys able to represent the large number of people arrested, drove a lot of politicized college graduates into law schools. Even before Freedom Summer, law students organized around civil rights issues. In 1963, law students, mostly from Ivy League universities and coordinated by William Higgs in Harvard, formed the Law Student Civil Rights Research Council (LSCRRC). There were able to get limited funding, but it was basically a volunteer organization. Dennis Roberts, one of the founders of the council, worked from Georgia for $5 or $10 a week.[88] The LSCRRC began as a supplementary research force for SNCC. Although many members did not consider themselves radicals or even progressives, they nonetheless provided funds for students to work with civil rights lawyers, mostly in the South.[89] Bernadine Dorhn, a law student at the University of Chicago Law School, chaired the local LSCRRC. Jeffrey Haas, originally from Atlanta, began law school in Chicago and remembered Dorhn matched him with the firm of Don Hollowell and Howard Moore Jr. in Atlanta.[90]

The Guild supported a motion to build a better relationship with LSCCRC after Mississippi Summer.[91] However, when SNCC voted whites out of the organization, LSCRRC began to lose its prominent role. It managed to survive until 1967, but soon thereafter its role as a platform for students to meet and connect with other political students and organizers diminished.

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86 Paul Harris, SF Chapter Honoring Frank McTernan (1983) In Ginger and Tobin, *The National Lawyers Guild*, 214.

87 Dennis Roberts, Interview by author, Oakland, 29 November 2016.

88 Ibid.

89 According to Marlise James, LSCRRC was formed to "channel law students' energy both when they were in the south and when they returned to school." James, *People's Lawyers*, xix.

90 "Most of the work I did was on Howard's paying civil cases to free him up so he could do his civil rights work." Jeffrey Haas, *The Assassination of Fred Hampton: How the FBI and the Chicago Police Murdered a Black Panther* (Chicago: Chicago Review Press, 2009), 21. The law students also assisted in civil rights efforts in the North. In Port Chester, New York, they joined Kunstler as he spearheaded an effort to enjoin the New York State Welfare Commissioner for indirectly supporting high rents in low-income homes. Columbia students helped in the legal challenge of construction-site picketing and union discriminatory practices in Malverne, New York. LSCCRC report, [no date, ~1963]. TAM-NLG Box 12 Folder 35.

91 NEB Minutes, 18 October 1964. TAM-NLG Box 57 Folder 1.

The "anti-anti-Communism" position of the Students for a Democratic Society (SDS), adopted in 1962, signified an early change in political positions within college campuses. However, SDS wasn't alone. Other groups, like the Du Bois Club and the Young Socialist Alliance, offered students of different left-wing orientations a space and community through which to develop politically and engage in activism. Similar to the lawyers and law students who went south with CASL, CORE and Freedom Summer was a pivotal point to students and youngsters who still didn't know where they belonged or what they could do.

Karen Jo Koonan enrolled in UCLA in 1963. She had been exposed to some civil rights organizing through the Du Bois Club. She later joined SNCC and went to Mississippi. The inflection point for her was after the night they bombed the freedom school where she taught. During the night they saw a car full of people outside of the house where several of them lived. Her mother called John Doar at the Justice Department and asked him to help. They sent two FBI agents, two white Mississippians. After they questioned them about the threats, and said that if there weren't any direct blatant threats on their life, there wasn't much they could do. Later, as they were sitting in their car, another car came by, full of white guys, some of which jumped out of the car and started beating up one of the civil rights workers. When the FBI agents refused to intervene because it was "not in our jurisdiction," Koonan saw that as a turning point in her life: "That was where I went from 'Let me teach some poor Black people how to read and vote' to 'There is something wrong with the whole system.'" While in Mississippi she only went to court once. Along with some colleagues she went to a federal court in Greensville where they were challenging voter registration restrictions. She remembered how white people sat on one section and Black people on the other. The civil rights workers then sat on both sides, forcing the white folks to move back and forth trying to avoid any proximity to any Black person, local or foreign. "It was theater, but that was my first time in court. That came to be important to me later."[92]

In 1965 the violence and the attention moved away from the South. California and the nation had been shocked with the five-day long riot in Watts. The Los Angeles chapter of the NLG issued a statement declaring the riot occurred not due to a Black problem, but to a white problem. "White America," they maintained, had been "deaf to the American Negro's legitimate claim of equality, and blind to his suffering and oppression." "It is therefore Pecksniffian," the statement continued with a Dickensian tone, "for those who have broken the law to speak of 'guilt', 'blame', and 'punishment'. In the profoundest legal and moral sense, those men, women and children were revolting against injustice. It is more fitting that the community accept responsibility for the injustice, and demand amnesty for those Negroes who are its victims." According to the local chapter, the mass arrests and indictments were concrete evidence for the local chapter that there could be no due process. The repression of the Watts insurrection also showed that there needed to be a better response from organizations like the Guild. The first step they demanded from the authorities was to grant general amnesty: "Los Angeles or the nation cannot survive half slave half free."[93] However, the Guild did not have the resources or the logistical capacity to respond appropriately. The local chapter was over flooded with work and weren't able to provide legal assistance or successful litigation to the majority of the arrested.

The southern programs of the Guild had left the organization in a precarious economic position. Goodman accepted that it was hard for him to concede a change in the

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92 Karen Jo Koonan, Interview with author, San Francisco. 29 June 2016.

93 Policy Statement of the NLG on Watts Revolt, Irving Rosenfeld, (no date). TAM-NLG Box 24 Folder 26.

national program. By 1965, the debt of the organization was over $10,000.[94] Local chapters were starved for resources and attention from a national office that focused largely on the South. At the end of the summer he decided to step down as president at the convention in November. However, in the following months, convinced both by colleagues who encouraged him, and by the staggering growth of membership, he decided to run again. In the past two years the organization grew to 950 members — a hundred more than the previous year, and almost double the numbers from 1960.

Heartened by these numbers, but finally accepting the necessity of a change in direction, in the convention call he wrote, "Our program in the South has highlighted that growth but we must move on."[95] The convention would address the growth of the organization, stemming from the southern program, but the new discussion was going to be on how to expand the legal services programs, and how to address the growing concern over the war in Vietnam. James Lafferty underlined these concerns in the "Report on the State of the Guild" before the convention. He pointed out that more students were coming in, as well as young politically radical lawyers. Interest had grown on how to provide legal assistance to those who had been drafted and those in the military who refused to fight. He also pointed out the growing importance of community legal work through the legal services programs.[96]

For the convention in San Francisco, the panels had expanded beyond civil rights and professional development. Among the new themes were legal services, draft and military law, as well as a panel on the legality of United States' actions in the Dominican Republic and Vietnam, with panelists from international law organizations (both from the U.S. and the U.K.) discussing the Nuremberg trials. A whole day was devoted to the "lawyers' role in relation to the movement for social change."[97]

Similarly, another speech at the convention marked the change in the Guild's political commitments and emphasized the shift of its geographic scope. Ben Smith, of New Orleans, was awarded the FDR Award. In front of the five hundred attendees, he stated,

> But what has started as a revolution for Negro rights cannot remain only that. It is the first, small opening of the door that leads to a truly constitutional society. Those that protest segregation now denounce the war in Viet Nam that threatens to erase the gains of the Negro revolution. Wars always have as their first victims the rights and the lives of the poor people who fight and pay for them. Our work now, as lawyers, is to preserve, on the one hand, the hard-won gains of the Negro revolt and to extend them to other Negroes and to the poor whites; and, on the other hand, to protect the right of protest against the scourge of war in Viet Nam which is the counter-revolution of our times. Unless we can do this we shall fail… Those, it is said, who cannot recognize history are condemned to re-live it. We cannot re-live Mississippi 1964 — we must enter Oakland in 1965.[98]

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94 Babson, *The Color of Law*, 362–63.

95 Convention Call, November, 1965. TAM-NLG Box 24 Folder 27.

96 State of the Guild, Report by Lafferty, 10-14 November 1965. TAM-NLG Box 24 Folder 26.

97 Convention Program, 11-14 November 1965. TAM-NLG Box 24 Folder 26.

98 Ginger and Tobin, *The National Lawyers Guild*, 220–21.

Smith was referring to the Vietnam Day Committee protests in Oakland. Bay Area lawyers helped the committee obtain a federal court injunction allowing the extension of an anti-war protest in Oakland, and then handled dozens of arrests following the march. The Guild increased its presence and activities in the Bay Area in 1964 and 1965. Not only were its services useful in anti-war protests and sit-ins, but Edward Dawley, who had just moved to California from Virginia, and Martin Stender, a San Francisco labor lawyer, co-edited the new official publication of the NLG, *The Guild Practitioner*.[99] The convention was fruitful and invigorating. Members pledged almost $20,000 to help Goodman adjust the national and local finances.[100] Although he believed that the surge of membership was a sign that young lawyers wanted to continue to work on the South, he agreed to expand the focus of the Guild to cover the three main issues: a continued (yet downscaled) effort in the South, expanding the War on Poverty, and defending protest movements. Concerning civil rights work, the national program committee agreed there should be a sustained presence of the Guild in the South. Indeed the Guild's collateral objective of "making the American Bar aware of the need for representation" for the southern freedom fighters had been accomplished.

The next year, following the recommendations of Lafferty and Shropshire, the Guild increased its law school outreach. The national office hired a recent graduate from Boalt, Ken Cloke, to fill the new position of student coordinator.[101] Cloke had been active in the Free Speech Movement on the UC Berkeley campus. There was also a significant geographic reorganization of the Guild. The national office moved back to New York — much to the satisfaction of Rabinowitz. He thought the move to Detroit had been, "in organizational terms," a disaster. There was no leadership beyond civil rights in the South, the work had limited follow-up, and the finances were left in terrible shape. By 1966 there was a general agreement to move the national office back to New York. "Here my East Coast chauvinism appears again, but I was right," he later reflected.[102] Rabinowitz rightly believed the New York chapter had more experience administering the affairs of the Guild on a national scale.

The relocation was not an indication of a diminished role for the Detroit chapter, however. On the contrary, Detroit became an even more critical hub of left-wing legal activity. The Goodman firm grew considerably, once it had achieved its fame as a leading civil rights firm. In 1966 Crockett Jr. was elected Judge of the Recorder's Court of Wayne County.[103] John Conyers Jr. had been a congressman for two years.[104] Wayne State Law School continued to provide a steady stream of eager, progressive young lawyers. Moreover, Detroit became a testing ground for the potential capacity and efficiency of the neighborhood law offices. After the Jackson office closed in 1966, Claudia Shropshire became the first director of the Neighborhood Legal Services Centers in Detroit. Most of the work was around landlord-tenant cases, credit and repossessions, misdemeanors, and indigent clients. She hired James Lafferty to head the project's civil division. Lafferty also

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99 Weinberg and Fassler, *Historical Sketch of the NLG*.

100 Babson, *The Color of Law*, 364.

101 NEB Minutes, 22 May 1966. TAM-NLG Box 57 Folder 2.

102 Rabinowitz, *Unrepentant Leftist*, 183.

103 Other lawyers close to the Guild, like Damon Keith and Mike Wahls, became federal judges a few years later.

104 Apart from working closely with the Guild, especially regarding civil rights issues, he was a past president of the Wolverine Bar Association of Michigan.

opened Free Legal Clinics in 1966.[105] In the summer of 1967, when the city erupted in an urban rebellion, there wouldn't be a similar legal vacuum to what occurred in Watts two years earlier.

The size and role of the Guild had expanded considerably. Not only had the NLG survived McCarthyism but it became a prominent player in the civil rights movement. The use of injunctions, omnibus suits, and statutes put progressive lawyers in an offensive position; affirmative litigation was a crucial tool in the fight for civil rights. However, they could not rely on sympathetic federal courts — like the Fifth Circuit Court — or on Reconstruction statutes — for instance, the Supreme Court blocked the Removal statute in 1965. Lawyers and social movement organizations needed to figure out new strategies and legal approaches, especially regarding the War in Vietnam and urban unrest. Nonetheless, the period between 1962 and 1965 was one of continuous mobilization and growth in the radical legal community. Because of revitalized local chapters, energized young lawyers and law students, and through the budding Legal Services Program, the Guild sprouted from a mostly single-issue, single region focus to an organization with a national reach, intent on handling multiple and simultaneous issues.

In the following years, the Guild was at its zenith. Their presence in law schools grew exponentially, they handled individual draft cases across the country, developed technical challenges to the Selective Services System, participated in multiple courts martial, and, perhaps most significantly, organized and effective and coordinated response to the mass arrests at anti-war protests. All these activities put the Guild at the forefront of radical social movements. In this position, lawyers and law students began to question and develop the relationship between the lawyer and "the movement." This, however, brought forth regional and technical limitations, as well as generational and ideological tensions, that would play into the political and social crises of the late Sixties and early Seventies.

Working Against the War

In the 1965 Guild convention, there were several resolutions concerning the military involvement of the United States abroad. There were determined condemnations of the military actions in the Dominican Republic and a larger discussion on the status of Puerto Rico.[106] Vietnam, of course, garnered the most discussion. Max Dean, from Detroit, submitted a resolution on the need to recognize that "the movement to secure constitutional rights for all Americans requires the unity of American people in respect for human rights and rule of law everywhere." Because lawyers and bar associations "have been in the forefront of the people's efforts to be free of foreign domination, colonialism, and economic exploitation," they should lead in the movement to foster peace through the rule of law. The resolution called on all members to recognize the essentially just character of the revolutionary war of the Vietnamese people to be free of all foreign domination, illegal interference, and to determine their own destiny." It urged the U.S. government to return to principles and procedures of the U.N. and an immediate withdrawal of all troops.[107]

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105 Babson, p. 372. NEB Minutes 1966. TAM-NLG Box 57 Folder 2.

106 "The population of Puerto Rico, with its broad array of political positions, had the right of self-determination. The US government, conversely, needed to re-evaluate its possession of colonies, at a time when it was presenting itself in the international community as the promoter of freedoms." Resolution on Puerto Rico, Convention Resolutions, 1965. TAM-NLG Box 24 Folder 31.

107 Resolution on Viet Nam, San Francisco Convention, 1965. TAM-NLG Box 24 Folder 31.

In commemoration of the twentieth anniversary of the Nuremberg Tribunals, the Guild organized a conference. The goal was to find ways to connect the legacy of Nuremberg to the situation in Vietnam. Goodman coordinated with other organizations like the Central Committee for Conscientious Objectors, based out of Philadelphia.[108] To set up the conference, Goodman relied on Mary Kaufman, a leading Guild member in New York, who had served as a prosecutor during the tribunals. Kaufman, however, believed there were several important differences between Nuremberg and Vietnam, which highlighted the limitations of comparing the two. "The problem is," she wrote to Goodman, "of what value are the Nuremberg principles in dealing with a strong undefeated aggressor? As history has demonstrated, particularly that of the United Nations, countries are not likely to yield up their sovereignty to submit themselves to punishment for the crimes enumerated in the principles if they believe their military power is invincible." "Any solution to the problem of aggression, short of military defeat, depends, of course, upon the strength of the opposition to war by the people." In short," Kaufman concluded, "a political solution arising out of political action."[109] According to Kaufman, the possible forms of political action derived from Nurnberg were the dissemination of information, especially the acts defined as criminal, and "broadcasting that individuals have the right to refuse to commit an international crime and therefore can resist illegal national orders."

One of the first steps taken was to challenge the procedural rules for deferrals, especially for conscientious objectors. At the 1965 convention, members were urged to become familiar with the statutes, case law, and regulations pertaining to the Selective Service System, and those who had religious, moral or political objections to participating "in an aggressive war."[110] They began challenging the composition and members of the draft boards. The following year, in Los Angeles, Ben Margolis' firm, a well known progressive and labor law office, subpoenaed every member of the draft board, every member of the appeals board, and every Army major who had been in charge for twenty years of Selective Services processes in southern California. Across the country, Guild lawyers organized around anti-war activities and discussed new legal strategies to address the new challenges.

Besides challenging the Selective Services System and the local draft boards, there were also challenges in the criminal courts. Conrad Lynn, a Black socialist lawyer from New York, took on one of the first draft resister cases. He was not a full member of the Guild, but was sympathetic to the organization and worked closely with other members — especially after several antagonistic encounters with the NAACP. He took part in the first Freedom Ride organized by CORE in 1946, and during World War II he worked closely with pacifists who introduced him to draft-resistance law.

In 1965, Lynn took the case of Davit Mitchell in New Haven. Mitchell, a graduate of Brown University and a member of the End the Draft Committee, had been trying to get out of the conscription system since 1961, instead of just asking for a college deferment. Lynn argued the case on constitutional grounds — there shouldn't be a draft in a period of undeclared war — and under international law — individuals had the right to question whether they wanted to sign up for war and face a possible charge of war crimes. Mitchell, however, thought the defense was too legalistic. He wanted to politicize and challenge the

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108 Arlo Tatum to Goodman, 2 September 1966. TAM-NLG Box 24 Folder 34.

109 Kaufman to Goodman, 31 August 1966. TAM-NLG Box 24 Folder 34.

110 Resolution on Selective Services, San Francisco Convention, 1965. TAM-NLG Box 24 Folder 31.

proceedings. Lynn insisted it was best to continue with the legal strategy. Disagreement between the two increased, but the judge denied Mitchell's petition to change lawyers.

Lynn argued that there was a certain logic behind disrupting trials: essentially if one knew that they weren't going to get any justice. But, he insisted, it should be a last resort. The main objective was to use every opportunity to "win converts to the dissident's point of view." In Lynn's assessment, the best political trials — Sacco and Vanzetti, Tom Money, Bill Haywood gained sympathy and a place in history "by using the state's machinery to deliver their messages."[111]

Regardless, Mitchell continued to disrupt the proceedings. The judge found him guilty and sentenced him to the maximum: five years.[112] Even though they disagreed with Lynn's approach, the End the Draft Committee sold thousands of copies of the compelling brief he prepared. Indeed the popularity of the brief encouraged him to write a paperback manual for draft resisters. In 1966 Grove Press published *How to Stay Out of the Army*, which became one of the first widely distributed legal manuals for draft resisters.

Michael Tigar, in his first year of law school at Boalt, he got a job at the Meiklejohn Civil Liberties Library, run by Ann Ginger. Along with Dennis Roberts — and later joined by Ken Cloke and Paul Harris — they summarized briefs and pleadings on civil rights and civil liberties cases collected from lawyers across the country. After graduating he went to work in Washington D.C. At the end of 1967, along with four other lawyers decided to edit a "guide" to draft law and Selective Services procedures: The *Selective Service Law Reporter* — inspired, in part, by the model of the *Docket*. "Our job," he later wrote, "was to inform lawyers, draft counselors, and even registrants about the options that they faced in the draft."[113] In the end of 1967, the Guild published its third full book, *The New Draft Law: A Manual for Lawyers and Counselors*.[114]

The convention of 1967 reflected the Guild's change of direction and its growing commitment to the escalating national mobilization against the war. Goodman, though still devoted to the primacy of civil rights, finally acknowledged that all the issues were connected. In the convention call, he wrote, "This 29th Guild convention comes at a time when the interrelationship between the war in Vietnam, the racial conflict within our country and the existence of large areas of poverty in the affluent society, has finally become generally apparent. No more can we consider each of these problems in isolation. Each affects and, in turn, is affected by the other." When debating the legal aspects of the three issues, he stressed the importance of considering the role of the law and the lawyer. It is imperative for Guild members to translate "legal idealism into a working force for the betterment of humanity." He ended with an appeal towards the youth: they can now call on law students to contribute their "sharpened sense of historical urgency."[115]

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111 At that time the courts would not even allow them to testify in public trial about their reasons for opposing war. Conrad J. Lynn, *There Is a Fountain: The Autobiography of Conrad Lynn* (Brooklyn: Lawrence Hill Books, 1993), 86, 108-9.

112 The case was eventually reversed in appeal level on grounds Lynn didn't have enough time to secure another counsel — the judge had finally accepted Lynn's requests to be excused. William Kunstler came in for the re-trial. He followed the client's instruction and the judge again sentenced him to five years. Ibid., 193–94.

113 Tigar, *Fighting Injustice*, 99.

114 In 1967, the national office printed nine thousand copies. Ginger and Tobin, *The National Lawyers Guild*, 228.

115 An example of one of the panels, "Alienation: Mass Movements, the law student, the lawyer, and the bar." 1967 Convention Program. Tam-NLG B24F35.

The convention was held in the Biltmore Hotel in New York. Goodman asked Rabinowitz to succeed him as president. Rabinowitz was initially hesitant but was quickly convinced. "I'm not at all sure I would have acceded to Ernie's request if I had been able to foresee the next few years," he later reflected. "It turned out that I wasn't part of the solution of the guild's problems — I was part of the problem."[116]

Membership continued to grow, especially among young lawyers. However, the surprise was an increase of law students who sought a more active role. A young member of the Boston chapter introduced a resolution to incorporate students as full voting members. Delegates, especially from the well-established chapters of Detroit, Los Angeles, and San Francisco, rejected the resolution. Their main concern was the need to remain a professional organization with a professional perspective. Both Michigan and California had an integrated bar, which meant that every lawyer had to join the state bar association and in return the local bar associations — including the Guild — could participate in state bar policies (procedures for admission to the bar, ethics and disciplinary regulations for lawyers, and other measures). Goodman and Ben Margolis, of Michigan and California respectively, argued if the Guild accepted non-lawyers it could lose its status as a "bar association" and therefore lose potential influence in the state bar.[117]

The delegate from Boston insisted that lawyers could exercise influence even if they were not part of the state bar. After a brief exchange both the debate and the resolution were postponed until the following year. The convention indicated two significant changes. First, despite the inclusive political analyses, the focus was going to be on the war and draft resistance.[118] And second, the youth and students were now demanding a prominent role in that struggle, as well as within the Guild itself.

"Never in the history of the guild," lauded Rabinowitz, "had we, as an organization, been so busy and so successful."[119] As the program veered towards the anti-war movement, regional chapters and the national office sponsored conferences on draft and military law, held meetings at law schools, advised over two thousand Selective Service registrants, and distributed more than twenty thousand pamphlets with detailed instructions on how to try a draft case. The lawyers were also required to be available for the mobilizations and protests, and had to be capable of dealing with mass arrests.

The increase in student membership and participation in the Guild continued throughout 1967. Requests didn't only come from urban and coastal areas. In June, a law student from the South Texas College of Law expressed interest in becoming a student member of the organization. "Your goals are compatible with my opinions. It is important that the trend in authoritarianism be stopped, and I believe that lawyers are the ones who can accomplish this."[120] The creation of a national Committee on Student Organization was approved at the convention. Rabinowitz wrote to Kinoy, who by then was a professor at Rutgers Law School, suggesting he co-chair the committee with Father Robert Drinan, dean

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116 Rabinowitz, *Unrepentant Leftist*, 183.

117 "The guild, particularly in California, had for many years exercised a much greater influence at the state bar association than the number of its members would suggest and it had a significant voice in making state bar legislative policy." Rabinowitz, *Unrepentant Leftist*, 166–67.

118 Even the old constitutionalist lawyer, Sam Neuberger, urged the national executive board in May that there couldn't be any progress in the area of civil rights "until there is an end to the illegal and immoral war in Vietnam." Ginger and Tobin, *The National Lawyers Guild*, 244.

119 Rabinowitz, *Unrepentant Leftist*, 184.

120 William Pabst Jr., to NLG, NY, 15 June 1967. TAM-NLG Box 45 Folder 1.

of Boston College Law School. They would work alongside the newly hired national student organizer, Bernadine Dohrn.[121] The goal was to hold conferences and meetings with law students to help set up student chapters throughout the country.

Lawyers across the country sought the Guild's national office for counsel and advice. Edward Donlon, an attorney in Wellesley Hills, Massachusetts, asked for any pamphlets, brochures, mimeographed memoranda, that they might have had prepared on the problem of draft classification.[122] Draft resisters also requested information. Kurt Gayle from Norfolk, Virginia, wrote to Ken Cloke asking for suggestions on one or more lawyers who may reside in his area or nearby, and who might possibly take an interest in his case, if he is charged with either "mutilation" or "willful non-possession" of his draft card. He was among those who burned their draft cards in Central Park on April 15, 1967.[123] Another young man from West Virginia wrote to Dohrn asking for advice on how to apply for Conscientious Objector status.[124]

The flow of advice and information did not stay within national borders. Two co-chairmen of the American Deserters Committee in Stockholm wrote to Cloke asking for information and advice on being able to obtain U.S. passports: "It doesn't appear that there are any precedents for this, but neither does it seem that there are any legal obstacles."[125] Lawyers of the Guild also sent questions and petitions to European attorneys. Frank Wolff, of Frankfurt and part of the SDS-German American Vietnam Committee, answered the New York office of the Guild on whether or not draft resisters could go to West Germany. "As far as we are informed," he replied, "there is no possibility for draft age Americans to immigrate to West Germany. The American draft resisters and deserters in Europe live in France or Sweden." "To your second question," he continued, "usually draft resisters and deserters do not contact the [German] SDS because they are afraid after Overseas Weekly reported that SDS is closely watched by CIA. Anyway, we could not help them if they want to stay in Germany."[126]

Cloke set up a referral directory of offices and lawyers across the country who were available and capable of taking draft cases. He requested from Mel Wulf a list of cooperating ACLU lawyers who wanted to be included in the directory. "It is manifest that such a list is greatly in need," Cloke wrote, "But any list could not be complete without ACLU participation." If the attorneys preferred they could have "ACLU" placed opposite of their name — and avoid being directly linked to the NLG.[127] Wulf agreed, and sent the list of the

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121 Rabinowitz to Kinoy, 4 May 1967. TAM-NLG Box 45 Folder 3.

122 Edward Donlon to NLG, New York, 23 August 1967. TAM-NLG Box 45 Folder 1.

123 Kurt H. Gayle to Ken Cloke, New York, 18 April 1967. TAM-NLG Box 45 Folder 1.

124 She answered by saying, "Your chances of getting a C.O. status are not great, but probably as good as anyone's…. It is quite possible to have the C.O. form be a combination of personal ethical beliefs and political beliefs as long as your position asserts conscientious objection to participation in war in any form, and includes a commitment to a force (set of values) higher than that owed to individuals — in other words, to values which occupy a place in your life similar to the place of a Supreme Being for people who believe in God." Dohrn to Bob Haskin, West Virginia, 11 March 1968. TAM-NLG Box 45 Folder 8.

125 Bill Jones and James Dotson to Ken Cloake (sic), New York, no date. TAM-NLG Box 45 Folder 9. In another letter, a Swedish attorney who was assisting the resisters living in Sweden asked for information and advice on how to prepare their cases, as the question of an eventual amnesty had arisen. Bertil Torbrand to Ken Coates (sic), New York, 29 October 1968. TAM-NLG Box 45 Folder 9.

126 Frank Wolff to Mr. McClellan, New York, 23 July 1968. TAM-NLG Box 45 Folder 9.

127 "The interests of both of our organizations can only be furthered by this kind of cooperation." Cloke to Wulf, 11 January 1968. Tam-NLG Box 56a Folder 29.

ACLU affiliates with the appropriate contact person, favoring direct organizational coordination: "we prefer that all cases be assigned through the affiliate office rather than directly to the cooperating attorneys."[128]

Mass arrests soon followed mass mobilizations, which required mass defense. In Oakland, anti-war protesters organized Stop the Draft Week in October 1967, and one day shut down the induction center. After a violent confrontation with police, hundreds were arrested and the alleged ringleaders were singled out. Karen Jo Koonan was involved in the steering committee; her responsibility was to contact the lawyers. Someone had suggested she begin with contacting local Guild lawyers. Dick Hodge was one of the first. Then came Charles Garry and Malcolm Burnstein. They became the three main lawyers for the leaders, the Oakland Seven.[129]

Koonan held meetings for the protests, mostly at Boalt in Berkeley, to organize legal observers. "It was the first time, I think, that legal observers were organized for Stop the Draft Week." She remembered holding a mass meeting with all the defendants and telling Terry Hallinan — the son of the renowned labor lawyer Vincent Halinan — "You gotta get up there and tell them what's going to happen." Soon after the Guild opened a permanent office in San Francisco. They hired Koonan and a young lawyer, Peter Haberfeld, to run the office. "When they hired me, they were thinking they were hiring a lawyer and a secretary. I ended up leaving because I didn't want the pressure to be a secretary. By that point I was just like, 'I'm an organizer.'" She left after nine months. By then she had written the first *Mass Defense Handbook*, along with Peter Franck, and created forms for people to fill out "so we could keep track of who was arrested."[130]

The next Stop the Draft Week action resulted in hundreds of arrests in New York. Mary Kaufman spent most of the year traveling and lecturing on Nuremberg. She was in December at the time of the protest and, with the New York chapter of the Guild, set up the first Mass Defense Office. Although she also worked directly with the trials and representation, "fundamentally, I assumed responsibility for training many of the volunteer lawyers who defended people," Kaufman acknowledged. "Because of the number of arrests that ensued," she later recalled, "the committee became an institution."[131] In the spring of 1968, students occupied several buildings at Columbia University. The authorities responded with heavy repression. Hundreds of students were arrested. By then, the Mass Defense Office included a long list of lawyers. They had a 24-hour on-call system, where they would contact lawyers to be ready at the site of the protest or at the jails. They also helped the parents set up an office to handle fundraising for bail money. Many of the lawyers and law students who trained with Kaufman and the office continued to do political work.

The young attorneys shared more than a generational affinity and identification with the protesters. Often these lawyers had also participated in protest and activism during college or law school. In addition, many were skeptical of the political and judicial institutions as possible tools for social change. There had been a budding detachment from the techniques of the civil rights movement. A joint statement by Guild members declared in May of 1967,

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128 Wulf to Cloke, 17 January 1968. Tam-NLG Box 56a Folder 29.

129 Although Koonan later remembered that she was very insulted, because there were two women on the steering committee and they weren't indicted. She remembered giving a speech after the indictments came challenging the government to include her. Koonan, Oral History Interview.

130 Ibid.

131 James, *The People's Lawyers*, 94.

> In the past, the movement in the area of 'civil rights' attempted to gain justice for the black man through legislation, the courts, and massive non-violent demonstrations. The peace movement has also employed these techniques. Today, some activists representing peace, student, and community organizations feel that these techniques brought no more than token success. Many are seeking new approaches — which look toward basic structural changes in society… Lawyers who wish to use their skills effectively to aid these movements must take cognizance of the goals, tactics, and philosophy of the individuals and organizations active in these struggles. Traditional legal representation alone is frequently not adequate to meet the problems created by current social struggles.[132]

The generational and political divisions within the different movement organizations were murky and complicated, yet the differences became more visible and the debates more vehement. In the Guild they reached a highpoint in the heat of the summer of 1968.

In March of 1968 an invitation was sent out to the regional chapters of the Guild. The convention committee wanted to secure the maximum possible attendance "because we believe that this will have as its principal objective the broadest possible discussion of the role of the lawyer as well as of the specific activities of the Guild in dealing with the most critical problems of our time." The convention was held in the Miramar Hotel in Santa Monica, California, on the 4th of July weekend. Rabinowitz said in the opening remarks: "The convention of the NLG comes at a time of great crisis in the history of our country. Seldom have the fundamental principles upon which our society rests been threatened as seriously as now. Seldom have our problems seemed so difficult and our future so uncertain."[133]

The *Guild Practitioner* printed several sections of the *Report of the National Advisory Commission on Civil Disorders* — also known as the Kerner Commission. That report declared that two societies had emerged in the U.S., one Black and one white — "separate and unequal." Rabinowitz described it as "one of the most significant documents to be prepared by a government agency in our lifetime." He encouraged heads of the local chapters and bar associations to get as many copies as possible, to study and organize talks about it. "Members of our profession," he concluded, "have throughout history, been at the forefront of social change in the birth of the nation, in the abolition of slavery, in the extension of economic security, and in the expansion of due process of law to the poor and disadvantaged. Once again it is necessary for us to play this catalytic, responsible role."[134]

More than fifty students arrived at the Miramar hotel. They formed a caucus and were allowed representation on all convention committees. Rabinowitz, who for years had been working to get more students in the Guild, was now struggling to control them. In his report to the convention, Ken Cloke mentioned that one of the main problems of recruiting younger members was that they saw the Guild as being too conservative. They were cynical as to whether they would ever be able to change that conservatism. There were several discussion among the young radicals, including Cloke and Dorhn, on whether they should

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132 "Convention Scores War, Foes of Social Change," *Guild Notes*, May, 1967.

133 1968 Convention Journal, TAM-NLG, Box 24 Folder 37.

134 "A call to the Bar" by V. Rabinowitz, *Guild Practitioner*, 27:2, Spring 1968.

join the Guild and influence its direction from within, or rather establish a new radical legal organization.[135] The consensus was to do the former.

In his report on the state of the Guild, Cloke emphasized the role that he and Dorhn played. In order to prepare the younger radicals to engage the Guild, they had "the responsibility of preparing the younger people to assume leadership of the entire organization. We had to de-emphasize tradition, but not scrap it. We had to jostle the Guild, and try not to break it, convince people of the necessity of change and prepare them for the slowness of it." Personally, Cloke did not believe that the Guild would survive this rupture, but he did insist that they should not mistake the conflict to be purely generational, but rather intensely political. "Priorities and style," he contended, "are always political."[136]

At the time, it was hard to break away from the generational paradigm. Michael Smith, a Detroit lawyer who was a member of the Socialist Workers Party, a Trotskyist organization, described the convention as a "spectacle in contrast, both in style and politics, as the New Left vied with the Old Left for leadership." In his account, the latter were mostly west coast Guild members who were quite well to do and had been in or around the Communist Party. Smith noted "they wore suits, acted like the skilled professionals they were, and politically could be described as progressive friends of the Soviet Union." He then described the New Left as Maoist, "if anything," in their politics, who "dressed casually to make a political point, and didn't have much legal experience or success."[137]

Other rifts erupted during the weekend. Milton Henry was a graduate of Yale Law School and a member of the Michigan Bar. He was also Vice President of the Republic of New Afrika (RNA). The National Black Conference had been held the previous year in Detroit, and Black nationalists from around the country decided to form the new nation.[138] At Santa Monica, Henry addressed the Guild convention on the 4th of July. He explained that the proponents of the new nation based their claims on the Thirteenth Amendment and the "Law of Nations," which provided that, on manumission, the former slaveholder would lose the right to dictate anything further regarding the former slave's life. The RNA claimed that their national territory occupied the states of Mississippi, Louisiana, Alabama, Georgia, and South Carolina, and demanded that the U.S. relinquish sovereignty over those areas.[139] This, Milton argued, was the most feasible and inexpensive solution to the "race problem." The alternatives were either the continuation of expensive welfare or the horrors of guerrilla warfare. Indeed, the resolution that caused the most heated controversy within the Guild was the proposal to create a special sub-committee of the International Law Committee "to prepare and publicly disseminate a memorandum of law setting forth the legal authority for the establishment" of the separate Black nation.

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135 Doron Weinberg, Interview by author, San Francisco, 25 August 2016; Dorothy Shtob, Interview by Ralph Shapiro. New York. 29 April 1987. TAM-NLG Box 311.

136 "Report of the Executive Secretary to the Convention" by Ken Cloke. TAM-NLG, Box 24 Folder 38.

137 Michael Steven, *Notebook of a Sixties Lawyer: An Unrepentant Memoir and Selected Writings* (Brooklyn: Smyrna Press), 1992, 29.

138 They elected their government officials: Robert Williams (a black nationalist who had advocated for civil rights since the 1930s) was president and H. Rap Brown (the last chairman of SNCC) was Minister of Defense. Dean Robinson, *Black Nationalism in American Politics and Thought*, 2001, 61-62. Milton Henry was also the treasurer of Revolutionary Action Movement, another black nationalist organization, when it was formed. Muhammad Ahmad, *We Shall Return in the Whirlwind*, (Chicago: Charles H. Kerr Pub. Co., 2007), 123.

139 Milton Henry "Black Separation: New Africa," *Guild Practitioner*, 27:4, Fall 1968.

The program adopted at the convention demonstrated the Guild's growing attempt to become a more involved and more radical organization. It declared the Guild "a bar association, but one which faces squarely the need for radical change in the structure of our political and economic system." The legal system was a creation of society and the goal was to change that society. "If we are to make any contributions to this movement" the program read,

> It must be to use our professional skills to advance it. This, of course, means the development of our skills in the courtroom, but more than that, it means the utilization and development of our skills in the large arenas of activity outside the court room — in the analysis of political and legal problems, in the development of legal doctrine to support radical activities and in the exercise of our professional skills wherever legal issues may be relevant. Such activity may not only call for a new style of operation, but also requires a deep involvement by Guild lawyers in the political aspects of the problems we consider and not merely their legal aspects.[140]

Among the resolutions passed, the first was to work for amnesty for all those who resisted the efforts of the U.S. government to engage in wars "reflecting policies of imperialism and racism," such as the war in Vietnam, "and who continued to resist that government action within and without the military, by expatriation, desertion, or by allowing themselves to be jailed by illegitimate authority." Amnesty should also be extended to "Black liberation fighters imprisoned by the government because of their struggle to free their people from the system of oppression and exploitation." They also expressed opposition to gun registration legislation and gun permits laws. However laudable anti-firearm legislation may be in principle, the Guild resolved that "such laws completely fail to deal with the basic cause of violence and instead tend to divert attention from the real problems […] Such laws are merely repressive in nature and designed to be used against those of the Black, Brown, and other poor ghettos of our land."[141]

Rabinowitz was very critical of the racial dynamics in the Guild in this period. He condemned and regretted what happened in Santa Monica. He didn't find the resolution in favor of Milton Henry's call for a separate Black nation, which he vigorously opposed, surprising, "since large numbers of members assuaged their guilt by supporting any radical black doctrine."[142]

A few days later James Herndon, a Black attorney from the Bay Area, wrote to Doris Brin Walker, head of the San Francisco Guild chapter, elaborating on the objection of those similar to Rabinowitz'. He mentioned a meeting he attended on February 1st, in Los Angeles. Around a hundred Black lawyers had met to discuss how they could relate better to the radical Black activists movement. They determined: "The Black liberation struggle is not simply what ten Black lawyers and their white allies at the Guild Convention or the Black Panthers define the struggle to be." "Our struggle," he continued, "includes radical political activities as well as the daily social problems each black lawyer has to handle… It also includes the black lawyers' daily struggle against racism in society and the judicial processes,

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140 Program of the NLG, adopted in LA Convention, July 4-6, 1968. TAM-NLG. Box 24 Folder 40.

141 Resolution on Amnesty, 1968 TAM-NLG. Box 24 Folder 40; Resolution on gun control TAM-NLG, Box 24 Folder 40; Resolution on a separate Black Nation, 1968, TAM-NLG, Box 24 Folder 40.

142 Victor Rabinowitz, *Unrepentant Leftist*, 189.

along with his struggle for a living — a problem many white radicals do not face." Herndon argued that the Guild's program had nothing to offer the Black community, nor would it generate support from Black lawyers. He concluded by saying, "A Guild program for Black liberation and for black lawyers must flow out the struggles of black lawyers; our program cannot be imposed upon the black community by a small, insignificant group of advanced political thinkers who do not see the realities of black life."[143]

Similarly, George Crockett Jr. also wrote to Brin Walker saying, "I've reluctantly concluded that whatever hope existed for making the Guild a truly interracial bar association died at its last convention."[144] Crockett temporarily resigned from the Guild.[145] Since the formation of CASL, six years before Santa Monica, the Guild developed a vibrant yet inconsistent relationship with Black lawyers. While Len Holt and Edward Dawley worked closely with the Guild, others had to keep a distance — either to avoid the stigma of the Red Scare, or to prevent tensions with the LDF. Through the Guild, law students continued to clerk for C.B. King well into the late Sixties. He was comfortable working with Guild lawyers, but never officially joined. Howard Moore welcomed collaborative efforts, but preferred the political and strategic flexibility of non-affiliation.

However, as the strategic and theoretical divisions grew between civil rights organizations and Black Power groups so did the racial (and generational) tensions within the Guild. White lawyers defending militant groups like SNCC, and, increasingly, the Black Panther Party, only exacerbated those tensions. Over the next decade there was a persistent pressure within the radical legal community regarding racial dynamics. Guild members' growing attention to groups like the Panthers also facilitated the shift the location of activity to urban areas.[146]

The importance of strengthening regional coordination was also established at the convention. Following the recommendations of Cloke, the national office set up different regional coordinators to organize legal assistance to local organizations and to respond quickly in case of arrests. Most of the hired coordinators were young lawyers, among them Dennis James, or were fresh out of law school, like Marc Kadish. They were both working in Detroit, through different community law offices. Joan Andersson, another recent graduate, replaced Dohrn as national student organizer. The goal was to increase the activity from established "political" law firms, instigate the establishment of new offices, and motivate students to form chapters in their law schools. In a little over a month, events in Chicago would test the new program and strategies.

The Chicago chapter was severely affected by the McCarthy period. Although they had initially a formidable presence — Earl Dickerson was the Guild's first Black president in 1953 — by the late Fifties and early Sixties it had diminished considerably. After the 1962 convention in San Francisco, which issued an invigorating call for the restoration of weakened chapters, Irving Steinberg and Leo Berman helped in Chicago and held it together

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143 James Herndon to Brin Walker, 28 February 1969. TAM-NLG, Box 45 Folder 11.

144 Judge George Crockett to Brin Walker, 13 February 1969, TAM-NLG, Box 45 Folder 11.

145 The backlash continued well into the next year. In the Denver chapter, Rudy Schware had to replace the former director, Sam Menin, as head of the Chapter. Menin quit the Guild, "because of the national stand on the Black question." Rudy Schware to Rabinowitz, 8 January 1969. TAM-NLG, Box 45 Folder 11.

146 The complicated relationship between Black and white lawyers, and the problematic association between white lawyers and Black activists continues to plague the Guild. In the following chapter, I will discuss the issue further.

for a few years.[147] However, by 1967, when Rabinowitz corresponded with several of his colleagues around the country inquiring about the condition of the chapters, asking them to organize a local chapter meeting to revive the local Guilds, Steinberg, responded with urgent distress. "Your letter had the effect of rain on parched land," he wrote, "I am the last of the 'political' practicing old timers left and am surrounded by a multiplicity of problems." He mentioned that there was a legal aid vacuum in the city, which must be filled.[148]

In August 1968 hundreds of protesters were arrested during the Democratic National Convention in Chicago. In the spring, some local lawyers had coordinated with each other during the riots following the assassination of Martin Luther King Jr. Several more came together as the protests outside of the International Amphitheater turned violent. In response they formed the Chicago Legal Defense Committee. Although many Guild lawyers arrived as the action was unfolding and immediately tended to the arrest proceedings, the overall management of the cases was quite chaotic. Instead of assisting, the high number of lawyers hindered effective proceedings.

Moreover, there were tensions between the local leadership and the outsiders trying to take control. Joan Andersson, the newly appointed student organizer, found herself functioning "more like an interloper/dilettante than an organizer/coordinator."[149] Dan Lund, a Guild organizer from California, later reflected on the initial shortcomings of taking on a large endeavor without having a better understanding of local situations and lacking a long-term perspective:

> Guild organizing around the mass arrest defense was designed to help reactivate the Chicago Chapter, as well as meet the direct needs of the arrested demonstrators. However, much of the organizing was done by outsiders who did not always understand the local situation. They were often seen as lone rangers riding into town, concerned that the Movement got its cases handled, and then riding out again in a cloud of dust — somewhat before all the work was done. The local legal workers, law students, and lawyers who had to clean up after the national action were not inspired by the work they saw the Guild doing. Therefore, reformation of the Guild Chapter in Chicago, as in other cities later on, was probably retarded rather than encouraged by our inexperience and short-sightedness as organizers.[150]

After the experience in Chicago, the organizing approach of the Guild had to change. In her report to the National Executive Board in October, Andersson outlined the focal points that needed reconsideration. There needed to be permanent national staff in each regional division. Organizers could not be racing city to city; rather there should be close and continuous work in each region to develop Guild growth. Movement offices will

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147 Steinberg to Cloke, 7 February 1968. Tam-NLG Box 51 Folder 4.

148 He used a recent example to show that in a city of that size there wasn't a channel or avenue of defense for the most elementary political protest. Twenty-five students of the University of Chicago sat down outside the Continental Bank protesting loans to South Africa. After arrests they turned to the only legal organization they knew, the Civil Liberties Union for Defense. One of their young lawyers pleaded them all guilty of trespass and paid a $50 fine for each one. His client was the only who did not plead guilty. Irving Steinberg to Rabinowitz, 24 March 1967. Tam-NLG, Box 45 Folder 4.

149 Report of the Organizer/Coordinator, Joan Andersson, to N.E.B., 19 October 1968. Tam-NLG Box 74 Folder 3.

150 Dan Lund quoted in Ginger and Tobin, *The National Lawyer Guild*, 267.

not "spring up like magic mushrooms." She emphasized that it was better to build half a dozen good chapters in each region, as opposed to having dozens of "paper Guild groups which topple in the first strong wind." Finally, it was crucial for the organizers to take the job of organizing seriously and the focus should be local.[151] The national board agreed to the new approach: each area would be determined by the local struggles, and, the national office developed materials and expertise on mass defense and military law, primarily, and also topics of community controlled institutions, political repression and legal education.[152]

The role of the Guild had expanded considerably. The ambition and urgency of the younger members made many of the old guard nervous. Although the new program and strategy of the Guild was leaning heavily towards organizing, most lawyers remained dedicated to their legal role. The debate was no longer whether or not to become the "legal arm of the civil rights movement," but rather how to be an effective "legal arm of the Movement" — casting the net as broadly as possible. From being almost wiped out in the 1950s, the Guild became a fast-growing legal organization with national reach and expanding resources. By the late Sixties it was at the forefront of protest politics: they defended the most radical groups and were present at the more militant actions. As the concentration left the South and crept into the main urban areas of the country, New York once again became the bastion of left-wing lawyering. However, the intensifying radicalism of the San Francisco Bay Area, as well as Los Angeles, surged alongside a substantial legal complement. Unlike Detroit, where Old Left radical labor politics continued to dominate the scene, chapters like Chicago were revitalized under the aegis of New Left ideologies. The proximity of the new members and organizers to increasingly militant groups as well as the incorporation of the writings of Mao and Che Guevara, forced new debates and reconsiderations from the older Guild folks.[153] Besides creating a generational rift, the stage was set for a contentiously drawn-out debate on the function of the legal system in a period of social and political crisis, and what role the radical lawyer should play.

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151 Report of the Organizer/Coordinator, Joan Andersson, to N.E.B., 19 October 1968. TAM-NLG Box 74 Folder 3.

152 Dennis James to Cloke, 5 November 1958. TAM-NLG Box 45 Folder 7.

153 In a letter to Ken Cloke, Dennis James described the new regional platform as recognition of "the need for in depth organizing at this time in a few strategic areas (2, 3 Many NYs) rather than wide-spread but brief contacts over broader areas." Dennis James to Cloke, 5 November 1968. TAM-NLG Box 45 Folder 7.

Chapter 3
In Defense of the Revolution: Bringing the Movement into the Courts, 1969-1974

In January 1968, five men were indicted for conspiracy to counsel, aid and abet draft resistance. Among those charged were the famous pediatrician Dr. Benjamin Spock and the Reverend William Sloane Coffin, the chaplain of Yale University. Unable to arrive at a consensus on the defense strategy, each of the defendants ended up with different attorneys, each with a different civil libertarian approach to the charges.[1] All five were found guilty.[2] A few months after the Boston 5 case, William Kunstler convinced the nine clergymen indicted in Catonsville, Maryland, to plead "not guilty" to the charges of entering a Selective Services office in May, removing draft records and burning them with napalm. Dan Berrigan, one of the leaders of the defendants, told Kunstler that they don't want a jury trial, "That would make it look as if we think the legal system is legitimate." Kunstler insisted on having a jury since they would give them an audience and a chance to "educate" the country. Kunstler and Berrigan worked out a compromise. They would have a jury trial but would not participate in the selection or challenge any of the prospective jurors. They were declared guilty and the sentences ranged from three to six years in prison. The initial failure to develop a combined legal/political strategy narrowed the scope of the legal defense and limited the political potential of the trials. By the end of the year, however, the ideological and pragmatic relationship between the lawyers and defendants lifted the restrictions and brought in new challenges to the courts.

This chapter looks at the theoretical formulation as well as the practical implementation of the concepts of a "political trial" and a "radical lawyer." Rather than following a strictly chronological narrative, the chapter has a thematic structure that will occasionally move back and forth temporally and geographically in order to analyze and exemplify the role the National Lawyers' Guild sought to play and the practical dynamics between the lawyers and social movements between 1969 and 1975. This period is often considered the "Bad Sixties" in the Long Sixties framework because of the confrontational — and frequently violent — tactics of different political groups.[3] Recently, scholars have described the nuances of the politics involved in this period, and how communities sought to find spaces to organize and manifest potential political and social power.[4] The lawyers and law offices close to movement organizations played a significant role in the development of these alternative spaces and politics.

"Necessary Cogs in the System": Political Trials, Radical Lawyers, and Revolutionary Movements

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[1] For a description of the different strategies discussed see Michael S. Foley, *Confronting The War Machine: Draft Resistance During The Vietnam War* (Chapel Hill: University Of North Carolina Press, 2003), 283-4; For a more descriptive narrative of the trial see Jessica Mitford, *The Trial Of Dr. Spock: The Rev. William Sloane Coffin, Jr., Michael Ferber, Mitchell Goodman, And Marcus Raskin* (New York: Vintage Books, 1970).

[2] William M. Kunstler, *My Life as a Radical Lawyer*, 189.

[3] Todd Gitlin, *The Sixties: Years of Hope, Days of Rage* (New York: Bantam Books, 1993); Bryan Burrough, *Days of Rage: America's Radical Underground, the FBI, and the Forgotten Age of Revolutionary Violence* (New York: Penguin, 2015).

[4] Alice Echols, *Daring To Be Bad: Radical Feminism in America 1967-1975* (Minneapolis: University of Minnesota Press, 1989); Peniel E. Joseph, *Waiting 'til the Midnight Hour: A Narrative History of Black Power in America*, (New York: Henry Holt and Co, 2006); Daniel S. Lucks, *Selma to Saigon: The Civil Rights Movement and the Vietnam War* (Kentucky: University Press of Kentucky, 2017); David L. Parsons, *Dangerous Grounds: Antiwar Coffeehouses and Military Dissent in the Vietnam Era* (Chapel Hill: University of North Carolina Press, 2017).

After 1968 the effervescence of social unrest was reaching a tipping point. The anti-war movement was growing, becoming more militant, and in some cases more violent. The Black Power movement also expanded. By 1969, the Black Panther Party, the most prominent organization of the Black Power movement, had headquarters in the major urban areas of the country. Other movements were also emerging: the Chicano movement in California and the Southwest; the farm workers struggles had already conducted several successful boycotts and legal battles; the Native American movement also became more militant with the formation of the American Indian Movement and the takeovers of Alcatraz and Wounded Knee; George Jackson and Angela Davis brought attention to prison conditions and prisoners rights. With the election of Richard Nixon in 1968, the Supreme Court and the federal courts quickly became more conservative and restrictive of civil rights litigation. The FBI'S Counterintelligence Program (COINTELPRO) hounded activists more vehemently and violently. In response, movement organizations became more militant and vigilant.

In the Guild, the older members were still standing after the tremors of the last conventions of the Sixties, but were left with little footing when the full force of the first convention of the Seventies hit. The law students who had caucused in Santa Monica in 1968 had now graduated and become full-voting members of the Guild. The new generation had two goals for the convention in Washington, D.C.: the admittance of law students as full members; and, the election of the first woman president. Doris Brin Walker, a well-known labor lawyer from the Bay Area, was elected president and, with numbers now strongly in their favor, law students were admitted into the Guild.[5]

The younger generation were defining themselves as egalitarian: anti-sexist and anti-elitist. Both of these issues caused tensions with the older established members, but the latter caused the strongest reaction. For the older lawyers, their young colleagues' questioning on and attacks of the hierarchical status of the lawyer led them to question whether their young colleagues were interested in being lawyers or in the legal profession at all. Rabinowitz later wrote about this generation: "They were boisterous and lacked the flannel-suit solemnity many of us saw as typifying a lawyer. We also had doubts as to whether they knew or cared much about the law; certainly they didn't act the way we expected lawyers to act. I had heard more serious consideration of legal issues at trade union conventions than I did at that meeting of the guild."[6] He recalled several young folks with a button that read, "Law is Bullshit." The youth argued that while they didn't rule out the necessity to develop the skills necessary to be a good lawyer, they needed to repudiate the other aspects of the "professional" to be able to build an organization that not only served the movement but that also reflected it. The culmination of this struggle was to admit legal workers as full members of the Guild. At the time, the broad definition of a legal worker was "a person who does legal work or legal support work, but does not hold a bar card and is not presently enrolled in law school."[7]

In preparation for the next convention, older lawyers and law firms sent out a variety of statements on why they should remain solely a lawyer (and law student) association. The main "professional" reason was that in states with an integrated bar — where local bar associations participate in decisions on state bar policies, including questions of bar admission and disciplinary

[5] See Victor Rabinowitz, *Unrepentant Leftist: A Lawyer's Memoir* (Urbana: University of Illinois Press, 1996); *A History of the National Lawyers Guild, 1937-1987* (New York, NY : National Lawyers Guild Foundation, 1987).

[6] Rabinowitz, *Unrepentant Leftist*, 187.

[7] Programs and Resolutions Submitted by the Women's Caucus, 1972. BAN-AFG, Box 35 Folder 2.

measures for lawyers — the Guild would lose its status as a "bar association" if it admitted non-lawyers.[8]

Stoking the flames of an already heated debate, Fay Stender, a prominent lawyer in the Bay Area who had become one of the main figures of the prisoner's rights movement, argued that the next logical step to the admission of legal workers was to include jailhouse lawyers. These are prisoners who either took correspondence classes or were self-taught legal advocates for themselves and their fellow prisoners.[9] Again, with the youth and law students now in the majority, both motions passed. As another signal of the generational transition, the new president was Catherine Roraback, a New Haven lawyer who defended Black Panther Erica Huggins and was part of the small middle generation that came of age during the McCarthy era.[10] Although this was an attempt to maintain a middle ground, the composition of the Guild was clearly shifting.

When the Guild declared itself the "legal arm of the movement" the declaration signified both an ideological commitment but also a structural adjustment. Starting in 1969 the Guild began establishing regional offices. Previously, the regional and city chapters of the Guild had no permanent office space. The idea was to establish a physical base for Guild lawyers and programs. The first regional office was established in the Bay Area; others soon followed. A new regional structure came out of the Santa Monica convention, where "regional vice-presidents" were in charge of setting up local and law school chapters in specific areas, and mobilizing Guild efforts to respond to local legal needs and deepening ties with different movement organizations. The Guild was able to expand but also gave members and offices the flexibility to operate without a constant back-and-forth with one central office. Specific programs and projects of the national office also developed in this period — which will be discussed below. Due to this growth and expansion, the Guild and its members were involved in practically every prominent political trial during the Nixon administration.

The first high profile political trial to take place involved the leader of the Black Panther Party. In late 1967, Huey Newton was charged with the murder of a police officer after a late-night shootout. Beverly Axelrod, a respected lawyer in the Bay Area who already had a relationship with the Panthers, brought in Charles Garry, a leftist criminal defense attorney. Garry put together a legal team, with Fay Stender and Alex Hoffman, which, after constant consultation with Newton, developed a three-prong strategy. The first, purely legalistic, was to push a "diminished responsibility" defense, where they argued that Newton, after being shot in the stomach, was in a state of unconsciousness and therefore not fully responsible for his actions. The second, a combination of a legal and political argument, pointed out that with the existing jury system Newton would not receive a fair trial. The defense team first challenged the racial composition of the grand jury and then the mechanism for selection of the trial jury, from which minorities and low-income workers were systematically excluded resulting in a skewed jury pool against Newton. Finally, the third defense emphasized the politics of the case. Newton was on trial because of his political activities and positions. The courtroom would be used as an educational platform to explain and

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[8] Statement of the Detroit Chapter on Legal Workers, 1972. BAN-AFG Box 35 Folder 2. Also see Rabinowitz, *Unrepentant Leftist*, 166-7.

[9] For a more detailed description of the different aspects of the prisoner rights movement see Dan Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era*, 2016. For a history of Fay Stender and her role in the prison movement see Lise A Pearlman, *Call Me Phaedra: The Life and Times of Movement Lawyer Fay Stender* (Berkeley: Regent Press, 2018).

[10] Dan Lund in Ann Fagan Ginger and Eugene M. Tobin, eds., *The National Lawyers Guild: From Roosevelt through Reagan* (Philadelphia: Temple University Press, 1988); *A History of the National Lawyers Guild, 1937-1987*.

promote the ideals of the Black Panther Party and expose the systemic racism in the country.[11] "White America, listen," Garry concluded in his closing argument, "the answer is not to put Huey Newton in the gas chamber… The answer is to wipe out the miserable conditions in the ghetto so that black brothers and sisters can live with dignity."[12]

The challenges to the jury system weren't successful and Newton was found guilty, albeit of the lesser charge of involuntary manslaughter. However, the trial gained national, and international, attention and the demand to "Free Huey!" became a widely recognized rallying call.[13] Ultimately, in 1970, the District Court of Appeals reversed the decision on the grounds that the trial judge did not properly instruct the jury about "involuntary unconsciousness" and its role in the "diminished responsibility" defense and ordered a retrial. The second trial ended in a hung jury and the prosecutor eventually refused to try the case a third time.[14]

The defense approach taken a year later in Chicago was much more confrontational. In 1969, the attorney general brought charges against eight leaders of the anti-war movement. They were charged with conspiring to cross state lines to incite a riot. Rather than present a legal defense to prove they were not part of a "conspiracy," the defendants wanted to use the courtroom to explain why the protests outside the DNC were necessary, question the legality of the war in Vietnam, and to demonstrate that the police were responsible for the violence. Kunstler and Leonard Weinglass, his co-counsel, dropped the legalistic civil liberties defense and argued that their clients were on trial solely because of the radical politics and life-style they represented.[15] The trial became a public spectacle: Phil Ochs, Allen Ginsburg, and other left-wing celebrities took the witness stand; the shouting matches between Kunstler and Judge Hoffman were transcribed and reproduced in both the mainstream and underground press; and, most striking, the image of Bobby Seale gagged and chained by order of Judge Hoffman became an emblem for the Left in its denunciation of the repressive and racist nature of the courts. The jury brought guilty verdicts on the charges, but they were reversed at the appellate level on technical grounds due to failures on the part of the judge — chief among them he suppressed two petitions from the jury saying that they were deadlocked.

These trials stoked a series of discussions within the legal and activist communities on how to properly conduct a political trial. The lawyers were well aware of the longer history of political and high-profile trials — Sacco & Vanzetti, Scottsboro, and the Smith Act trials were frequently evoked — but now there was an emphasis on a goal beyond keeping the client out of jail. Political trials should be an important part in the process of the "demystification of the law," whereby the legal system, particularly, and the capitalist system, generally, would be exposed for what they truly are: unjust and unequal.[16] The idea was to use the courts, with all its procedures, agents, and

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[11] For Frank Bardacke, a prominent activist in the Bay Area, Garry turned the Newton trial "into a teach in on racism and self-defense." Frank Bardacke, "Oakland Seven," in Jonathan Black, (ed.), *Radical Lawyers: Their Role in the Movement and in the Courts* (New York: Avon, 1971).

[12] Gilbert Moore, *Rage*, (New York: Carroll & Graf, 1993).

[13] Joel R. Wilson, *"Free Huey": The Black Panther Party, the Peace and Freedom Party, and the Politics of Race in 1968*, 2002; Joshua Bloom, *Black Against Empire: The History and Politics of the Black Panther Party* (PhD diss., Berkeley: University of California Press, 2013).

[14] See a more detailed description of the trials and the defense strategy see Charles R Garry and Art Goldberg, *Streetfighter in the Courtroom: The People's Advocate* (New York: Dutton, 1977); Lise A. Pearlman, *The Sky's the Limit: People v. Newton : The Real Trial of the 20th Century?* (Berkeley: Regent Press, 2012).

[15] Langum, *William M. Kunstler.*

[16] For several essays on this subject see Gerald Lefcourt, (ed.), *Law Against The People: Essays To Demystify Law, Order, And The Courts* (New York: Random House, 1971). As Robert Lefcourt described it, demystification was meant to "unlace the

regulations, to demonstrate that the scales of justice were systematically tilted towards a racist, patriarchal ruling class. Because of the intrinsic racism of judges, grand juries, and jurors, the influence and resources accessible to the wealthy parties in an adversarial system, as well as the power and impunity granted to the government, the courts could no longer be considered a bastion of justice. However, this did not mean that they should be completely disregarded. "It is naive, perhaps, to imagine that ultimate revolutionary victory can ever be achieved except on the streets," wrote Jonathan Black in his introduction to *Radical Lawyers*, "But at this moment of struggle, the courts are a battleground that cannot be abandoned."[17] Rather, the courts should be considered a platform of radical education and political agitation.

As the mobilization against the war strengthened so did the legal strategies. A more coherent interaction between lawyers and activists began to change the debates amongst the defense teams and the arguments in the courts. In early 1968, seven alleged leaders of the anti-war movement in Oakland, California, were indicted on conspiracy charges for organizing the Stop the Draft Week protests in October of the previous year. When the accused met with Charles Garry they laid out what kind of defense they wanted. Garry, who was already working in the Newton trial, agreed to take on the case and joined the defense team along with Malcolm Burnstein and Dick Hodge.[18] While Garry argued the First Amendment protected the defendants' speeches and actions, the main argument was to demonstrate that there was no conspiracy. Indeed, there were more than forty defense witnesses who testified as to the "righteousness" of their actions. More to the point they also testified that they were under no direct orders from the defendants. The trial became a "teach in on free speech, police brutality, and the war in Vietnam."[19] All seven were acquitted. Frank Bardacke, one of the defendants, compared this case with Dr. Spock, the Boston 5, and concluded that the "radical" strategy of incorporating the politics of the defendants was the reason for the different outcomes. Jessica Mitford, who had attended and chronicled the Boston trial, came to the same conclusion.[20]

Incorporating the politics and legality of the war depended on the judges. Julius Hoffman in the Chicago conspiracy trial and Roszel Cathcart Thomsen in the Catonsville trial adamantly rejected any arguments or witnesses on the war. There were, however, notable exceptions. In 1971, twenty-eight members of a left-wing catholic association broke into and raided a draft board office in Camden, New Jersey. After the indictments came in, the defendants pleaded guilty but asked the jury to "nullify the laws" and acquit them as a means of protest against an "illegal and immoral war." While the judge, Clarkson S. Fisher, asked the jury not to decide verdict because of the defendants' position towards the war, he did allow witnesses like Howard Zinn to discuss the illegality of the war, and the mother of one of the activists to testify on the death of her other son in Vietnam. The defense also argued that the action would not have happened without the reassurance and support of a self-admitted FBI informant. He encouraged and gave tools (bought with FBI money) to the group just as they were about to abort the mission. The judge informed the jury that even though the defendants had pleaded guilty, they could acquit them if they felt that government participation had been significant. He added, however, that although it was in their power, it would not be proper

shroud of infallibility, remove the mask of authority and expose concepts like 'fair trial', 'due process', and 'rule of law' as part of the problem." Ibid., 11.

17 Black, *Radical Lawyers*, 13.

18 See Frank Bardacke in Black, *Radical Lawyers*; Garry, *Streetfighter in the Court*.

19 Bardacke, "Oakland 7," 188.

20 Ibid.; Mitford, *The Trial of Dr. Spock*.

to decide the verdict on the issue of the war. After deliberating for three days, the jury found the twenty-eight not guilty on all charges.[21]

This wasn't the only trial that successfully relied on highlighting the illicit activities of government agencies. In May 1972, the acquittal of twenty-one members of the New York Black Panther Party from charges of conspiracy to murder police officers and bomb police stations exposed the excessive amount of police infiltration and agitation toward violence.[22] Also in 1972 Arthur Kinoy argued in front of the Supreme Court that illegal wiretaps used in grand jury indictments were a clear violation of the Fourth Amendment. The case, *US v US District Court*, began with a federal conspiracy charge against leaders of the White Panthers — an organization modeled on the BPP that worked with poor white communities in Detroit — which relied on warrantless phone wiretaps. When the defense made a motion to suppress the evidence, the prosecution refused and argued that since it was a matter of national security they weren't required to procure warrants from a judge. The case was brought in front of the 6th Circuit Court judge, Keith Damon.[23] He ruled in favor of the defense: the exemption to the Fourth Amendment did not exist and the evidence could not be introduced. The government took the case up to the Supreme Court. Kinoy successfully argued that political dissent was protected by the Constitution and that unauthorized government surveillance was a threat to society.[24]

Although they had different outcomes, these trials exemplified a new type of strategy that pushed politics to the forefront of the courtroom. These trial lawyers continued to use technical aspects of legal defense, but pushed the boundaries of what could be introduced in the court proceedings. The character of the court and the judge changed, both in the minds of the lawyers and in the legal arguments. The ultimate goal was no longer solely to obtain the release of the clients, or the victory of the case, but rather to expose the system itself, to shift the onus of the charges towards the government, to put racism (police surveillance or the Vietnam war) on trial, and to move beyond constitutional grounds towards political and moral grounds. While they still used the civil rights model of employing statutes and constitutional defenses and relying on federal courts to reverse or support their decisions, the focus began to turn towards challenging legal procedures — grand jury indictments, jury selection, evidence motions — and a combative attitude towards judges and the prosecution.

The growing struggles in the courtrooms forced another examination within the legal community. In order to construct an image and praxis of radical lawyering, the concept of "radical" needed to be defined within the legal and political context. Between 1971 and 1974 several books

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21 *The Camden 28 [Videorecording*]. Anthony Giacchino and Pelin Levend-Giachinno, United States : First Run Features, 2007.

22 For more on the New York Panther trial see Peter L Zimroth, *Perversions of Justice: The Prosecution and Acquittal of the Panther 21* (New York: The Viking Press, 1974); Murray Kempton, *The Briar Patch: The Trial of the Panther 21* (New York: Da Capo Press, 1997).

23 Damon Keith was a well-known progressive lawyer in Detroit, he participated in the Committee to Assist Southern Lawyers of the Guild (mentioned in the previous chapter) and, along with George Crockett Jr. and Claudia Morcom, served on the bench for many years.

24 Kinoy, Kunstler and other lawyers saw this decision as a critical deterrent against government overreach. The administration was using this case to argue that the president had "inherent power" to disregard constitutional limitations when it came to issues of "national security." Kinoy, *Rights on Trial.* According to Kunstler, when Nixon knew of the decision he ordered the bugs removed from the DNC headquarters at the Watergate hotel. Kunstler, *My Life as a Radical Lawyer*, 209. The Supreme Court decision set the precedent that a warrant had to be obtained for any type of electronic surveillance, regardless of domestic security threats. This, however, did not apply to "foreign" intelligence or operations. In 1978 the Foreign Intelligence Surveillance Act was passed; the law set up a different set of procedures to collect information.

explored the subject.[25] Generally the term was used to differentiate themselves from liberal and civil libertarian lawyers. Broadly, the radical lawyer had a progressive position that challenged the political and economic status quo. The term also redefined the relationship with clients: a radical lawyer worked with defendants because of their politics, not despite of them.[26] Furthermore, the radical lawyer had to subvert the hierarchy in this relationship and leave political decisions to their clients. In turn, the clients became more involved in the legal decisions.[27] For Beverly Axelrod, a lawyer in the Bay Area, being a radical lawyer meant that she was not concerned with "getting better laws enacted, or improving the legal system — that is meaningless within the context of American society." The radical lawyer, she argued, had one specific skill, which could be used in revolutionary activities: "The job of the radical lawyer is to keep his friends on the street, where they can take care of business."[28]

However, "radical" wasn't a universally accepted term. Others preferred movement lawyer or people's lawyer, arguing that it was either ambivalent or contradictory to define a lawyer as a radical. "There is no such thing as a radical lawyer," wrote Henry Di Suvero, who later would become president of the NLG, "in the sense that lawyers working within a legal framework can perform radical actions."[29] Outside of the court they can participate in radical actions, but not as lawyers. Movement lawyers, on the other hand, "are lawyers who are at the beck and call of the movement and service every legal need it has." They share objectives with the movement and work on its behalf. Kenneth Cockrel, a young Black lawyer from Detroit who was deeply involved in the Dodge Revolutionary Union Movement, didn't relate at all to the notion of the "radical lawyer." He believed that the notion of the young radical lawyer was romanticized, "It's a hip thing to be, like it's hip to be a rock artist… There's this whole stereotype — this white dude, with long hair, wire frames, colored shirts, boots, all that shit — and there are all kinds of people interested in adopting it." He thought they were not serious and committed enough. "To be a radical lawyer is important," he said, "but I think they have to take it a step further. A revolutionary lawyer is a person who is a member of a revolutionary organization who happens to be a lawyer."[30] Others, like Arthur Kinoy or Marlise James, as she traveled through the country interviewing lawyers, simply preferred the term "people's lawyers," to use in a broader, less contentious, category. Although this caused the occasional debate on semantics, the labels of "people's," "movement," "radical," and progressive lawyers were mostly interchangeable.

For some, to be a radical lawyer meant challenging not only the courtroom and the legal system but also defying the traditions of the legal profession. "Among radicals and revolutionaries, there is mounting contempt for the courts and the legal system," wrote Jonathan Black in his edited volume. "The courts, they say, are the courts of the capitalist system. They uphold the law — written and unwritten — of that system. It is a fantasy to place faith in the bright beacon of the Supreme Court, or to invest in the hope that a single judge with 'integrity' can check the ineluctable

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[25] Black, *Radical Lawyers*; Lefcourt, *Law Against the People*; Marlise James, *The People's Lawyers* (New York: Holt, Rinehart and Winston, 1973); Ann Fagan Ginger, *The Relevant Lawyers: Conversations out of Court on Their Clients, Their Practice, Their Politics, Their Life Style* (New York: Simon and Schuster, 1972).

[26] "All lawyers choose their clients, and this choice reflects the lawyer's views of society." Lefcourt, *Law Against the People*, 4.

[27] According to Jonathan Black, on a broad level it means that clients should "probably" make the political decisions. The lawyer may be good technical advisor, but usually worst decision-maker. "[The lawyer] must learn that clients are more qualified than he is, he is their pupil and not vice versa." Black, *Radical Lawyers*, 14.

[28] Beverly Axelrod, "The Radical Lawyer," in Ibid., 70.

[29] Henry Di Suvero, "The Movement and the Legal System," in Ibid., 56–57.

[30] James, *The People's Lawyers*, 151.

flow of the system."[31] "The courts," Black concluded, "are the realm of the enemy." There was also a growing contempt around the limitation and influence judges had on lawyers. Carol Goodman, a legal worker in New York, commented on the conservative nature of lawyers and the profession in general. She that traditionally, "the lawyer stays within the bounds laid out for him by an old, dyspeptic, impotent, racist, honky pig dressed in a black nightgown that should be a sheet, known fondly as the Court, the Bench, the Judge."[32]

The attitudes of the lawyers in the courtroom varied, but there was a growing animosity toward judges, especially among the young attorneys. Many stopped referring to the judge as "Your Honor" and simply used "Judge" or "Sir."[33] Depending on the judges assigned to their cases, they often tried to be strategic as they pushed the envelope and asserted the zealous defense of their clients. At times an open confrontation with the judge was a part of the political strategy of the trial. The most famous example of this was Kunstler engaging in shouting matches with Judge Julius Hoffman in Chicago. At the end of the trial, the defense team and the defendants received 159 contempt charges.[34] However, many of the excesses of judge Hoffman, including the evidence suppressed and the numerous defense motions he overruled, were grounds for reversal of the charges at the appellate court level.

Judges continued to hand down heavy contempt sentences to disruptive lawyers while bar associations began to look into the "morals" of certain practicing attorneys. Conservative members of the profession suggested that these disruptive lawyers should be charged with a felony.[35] "Good character" was used as a flexible test to exclude aspirants whose politics displeased bar admission committees. The Arizona bar denied a petition for admission of an applicant who refused to state whether she had belonged to the Communist Party. In Ohio, applicants were asked to list every organization they had joined after the age of 16.[36] Although pervasive, these efforts were not as widespread and especially not as successful as they were during the McCarthy era.

There was a growing suspicion lawyers were instigating violence in the prisons. The failed attempt to free George Jackson in Marin County in the summer of 1970 and his subsequent fatal breakout attempt sparked prison riots and rebellions across the country. Prison officials were becoming increasingly suspicious of lawyers in jails and several were openly accused of inciting riots. Steve Bingham, Jackson's attorney, had to go underground after he was suspected of smuggling a gun to Jackson before his failed escape.[37] In an article in the January-February edition of *Case and Comment*, a legal periodical, warden Louis Nelson and associate warden James Park of San Quentin expressed serious concern from those "few attorneys who profess to be advocates for radical social-political movements. These doctrinaire, rigid, violently oriented individuals use the prisoner and his discontent in the pursuit of their political philosophies." San Quentin staff believed that the attempted jailbreak of August 21, 1971, which resulted in the death of three officers and three inmates, was caused by the intervention of Marxist revolutionaries, among whom there was at least one attorney. "There is greater concern about lawyers than about other extremists in other

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[31] Black, *Radical Lawyers*, 11.

[32] Carol Goodman, "On the Oppression of Women Lawyers and Legal Workers," in Ibid., 250.

[33] Michael Deutsch, Interview by author, Chicago, 14 & 17 September 2015.

[34] Langum, *William M. Kunstler*, 118–19.

[35] James, *People's Lawyers,* xxi.

[36] Both cases were challenged and reached the Supreme Court by 1971, and were overturned by a bare majority. Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976), 291-292.

[37] See Paul Liberatore, *The Road To Hell: The True Story of George Jackson, Steve Bingham, and the San Quentin Massacre*, 1996; and Dan Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era* (Chapel Hill: University of North Carolina Press, 2016).

professions because of the greater access attorneys have to prisoners," the staffers wrote. "There is little doubt in our minds that radical lawyers have utilized their rights to confidential communication to plan disruptive legal situations."[38]

Judges and court officials also began to respond with increasing mistrust and belligerence. In August of the previous year, Jonathan Jackson and others stormed a Marin County courthouse and took several people hostage in an attempt to exchange them for his brother, George. Most of the captors and one of the hostages, Judge Harold Haley, were killed in the shootout that followed. A few weeks later, the judge of Monterey county Superior Court, Judge Lawson, was upset and violent during an arraignment. After a brief disruption things calmed down but then the defense attorney, Gordon Lapides, saw Judge Lawson brandishing a pistol and waving it at the assemblage. He announced that he had no intention of "going the way of Judge Haley."[39] There were other instances of angry and violent reactions towards lawyers. Michael Deutsch remembers how in a case of a group of Puerto Rican *independistas*, the Fuerzas Armadas de Liberación Nacional (FALN) the judge was enraged when they declared that they did not recognize the jurisdiction of the court and demanded to be treated as prisoners of war, he brought them out gagged and tied. Their lawyer, Mara Siegel protested vehemently until the judge held her in contempt and immediately had her detained. Deutsch, Siegel's partner in the People's Law Office, went into this chamber to demand her release. "So I went into the chamber and I said, 'I want her out, I want to get bail for her.' And he said, 'You're responsible for all this' and he got out of his chair and started to come at me and said, 'I'm going to throw you out the fucking window!'" as the officers held him back.[40] In another conspiracy trial of activists in 1970, the "Seattle 8," Michael Tigar was the attorney for Susan Stern, a member of the Weather Underground. After the judge continued to interrupt her statement and demanded she sit down a guard grabbed her from behind. Tigar lost his temper and tried to pull the deputy off Stern. "He tossed me against the wall," Tigar wrote, "and my head snapped back against the unyielding paneling. As I opened my eyes, the deputy sprayed something in my face. I got dizzier and my eyes burned." Two deputies carried him out of the courtroom. He was later charged with contempt of court.[41]

A sense of solidarity amongst lawyers as targets of political and professional persecution grew. During the pre-trial hearings of the Chicago conspiracy case, Judge Hoffman ordered the arrest of the four defense lawyers for failure to appear before the court. All four lawyers — Michael Tigar, Dennis Roberts, Gerald Lefcourt, and Michael Kennedy — were arrested. About 150 lawyers picketed Judge Julius Hoffman's office until he removed the contempt citations against the lawyers. According to William Mogulescu, the New York Guild chapter held a press conference and issued a call for lawyers to congregate in Chicago.[42] He had held them in contempt on a Friday, and over the weekend lawyers from throughout the country began pouring into the city to demonstrate against his actions. On Monday morning, lawyers from New York, San Francisco, Washington, Boston, and

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[38] "Prison News" in *The Conspiracy*, v. III, No. 8, May 1973, p. 6-7. Bancroft Library, National Lawyers Guild Papers [Hereafter BANC-NLG] MSS 99/280 cz, Oversize Box 8. An alleged NLG 'prison organizer' in San Luis Obispo told a reporter of *The San Francisco Chronicle* that he had been coordinating with the San Francisco Guild Chapter to put together demands and prepare the prisoners psychologically for the ensuing strike. "Lawyers group linked to men's colony strike" by Ed Montgomery, *San Francisco Sunday Examiner and Chronicle*, 16 December 1973, p. 2, Section A. BANC-NLG MSS99/280 cz., Carton 58 Folder NLG-SF Chap 1972-3.

[39] "Heavy Caseload," in *The Conspiracy*, 2:3, November, 1971. BANC-NLG MSS99/280 cz, 1.3, OS Box 8.

[40] Michael Deutsch, Oral History Interview.

[41] Michael E. Tigar, *Fighting Injustice* (Chicago, : Section of Litigation, American Bar Association, 2002), 190–91.

[42] William Mogulescu, Interview by author, New York, 3 & 24 November 2015. Although, according to Gerald Lefcourt, the press conference was originally Abbie Hoffman's idea. Gerald Lefcourt, Interview by author, New York, 29 October 2015.

other cities, as well as a delegation representing thirteen faculty members at the Harvard Law School, were protesting.[43] According to the Bay Area Guild Chapter, 200 lawyers marched in San Francisco in solidarity. A couple of weeks later, on October 13th, they rallied against the use of law as an instrument of oppression and against the charges against the Chicago 8 lawyers. An invitation to the event stated: "We have seen all the arms of the law link together in order to strangle those who would dissent and seek their own bases of power by transforming the relationships of power within the society." "Lawyers" the invitation read, "are necessary cogs in this system." They not only participate in the system but also pride themselves as special elements of it because of their status and their knowledge. The invitation continued,

> It is our responsibility as lawyers and public men to break with our general style of elitism and cozy acquiescence (even in legal dissent) and to speak before the entire community we serve about the legal hobgoblinism now going on. This has reached the point where we can no longer adequately represent our clients in the courtroom alone: we must take to the streets with them and by doing so, say to the nation that equal and fair justice does not exist in this country.[44]

Criticism of the growing protagonist role of lawyers came from the left and the right. Lawyers in or close to the Guild were especially critical of what they called the "star system," where high profile lawyers like Garry and Kunstler would take on a trial, bring media attention to it, and often leave for the next big case and leave the rest of the defense team, or the local lawyers, picking up the pieces. Michael Tigar praised Kunstler as a brilliant lawyer, who often recruited him to work on several cases that ended up creating a schedule conflict at the last minute for Kunstler, "so I was left to fend for myself."[45]

Many also rejection of the lawyer-directed strategies of organizations like the NAACP, ACLU, and the incipient consumer right's movement with Ralph Nader and his "Nader's Raiders."[46] These strategies relied on the organizations going through various case studies in order to find the one that would establish the most encompassing precedent. However, the decisions were often only discussed among the lawyers who would present the case on purely legalistic (as opposed to political) terms. The growing critique, among the radical legal community, was that, beyond an ideological affinity, lawyers and law offices were still unable to create a tangible, lasting relationship with communities and radical organizations. Although NAACP-LDF did establish close relationships with different Black communities it frequently imposed it own terms on the legal strategy and the participation of certain lawyers.[47] All these criticisms raised questions regarding what

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[43] Including Harvard Law professor, Alan Dershowitz. "Judge drops contempt citations against 4 defending the 'Chicago 8," J. Anthony Lukas, *The New York Times*, 30 September 1969.

[44] "All power to our clients" Invitation to the October 31st, 1969, march in San Francisco. BANC-NLG 99/280 cz, Box 58, Folder "1969 SF Chapter"; James, *People's Lawyers*, 226-227. In the spring of 1970, after the Chicago trial verdict came out, they called another rally and 3,000 people showed up. "Toward a Solution" BANC-NLG MSS99/280 cz. Ccarton 58. Folder: 1969 SF Chapter.

[45] Tigar, *Fighting Injustice*, 166. There were constant complaints, especially against Kunstler for leaving trials prematurely. Earl Tockman, Interview by author, New York, 14 October 2015. Dennis Roberts, Oral History Interview.

[46] Nader published his seminal book on the car industry, *Unsafe at Any Speed* in 1965. By the summer of 1968 he had already established the 'Nader's Raiders', a research group focused on consumer rights issues, and in 1970 established the Public Interest Research Group. For more on Nader and his politics and strategies see James, *The People's Lawyers*, 72–84.

[47] This is discussed in the previous chapter.

tangible roles individual lawyers and law offices could play and what concrete relationships could be developed between organizations like the National Lawyers Guild and social movements.

Since its inception the Guild had kept a close relationship with organizations in labor and civil rights struggles. But how would that change after 1968 when it declared itself the "legal arm of the movement"? For some of the older lawyers this was a puzzling statement. Rabinowitz continuously asked for a definition of "the movement," but was left with the sense that it was one of those indefinable concepts.[48] For those who proposed this new direction of the Guild being the legal appendage largely meant building a stronger relationship with movement organizations. This tighter relationship encompassed strengthening ideological connections, assuming a committed role in the mobilization and organizing activities of movement organizations, showing solidarity with protest actions, and being available for any immediate and long-term legal needs for movement organizations.

Perhaps the most significant and revealing relationship the Guild developed during this period was with the Black Panther Party. Charles Garry became Huey Newton's lawyer through his connection with Beverly Axelrod. Axelrod had developed an early relationship with Eldridge Cleaver and the Panthers. Her correspondence with Cleaver in Folsom prison was the basis for the latter's bestseller, *Soul on Ice*.[49] In New York, Gerald Lefcourt recalls how when he took on an early Panther case in the summer of 1968, he and Kunstler had to go through a gauntlet of off-duty cops, who chanted "White Tigers eat Black Panthers!" as they kicked and cursed them out.[50] He later became the lead counsel for the Panther 21 trial. Fred Hampton, the chairman of the Black Panthers in Chicago, was instrumental in the formation of one of the first legal collectives, the People's Law Office (PLO). Fred Hampton wanted to recruit two local attorneys, Skip Andrew and Don Stang, to be Panther lawyers, however they were working through Legal Services and therefore could not take on criminal cases. Dennis Cunningham, who worked with Andrew and Stang, met with Hampton who said they really needed lawyers and should form an independent law firm. Cunningham proposed forming an office, "If we want to do this," he told the rest, "We can handle the Black Panther Party as our clients."[51]

Guild lawyers became the de facto in-house counsel for the Panthers. They led the defense teams in the big leadership trials, but were also on-call for any arrests or indictments of Panther members. With the murder of Fred Hampton, the PLO began a decades long legal effort to implicate and in turn prosecute the FBI and local police in the assassination.[52] As police departments and FBI agents raided more Panther headquarters, lawyers tried to become a buffer between the Panthers and the police. Joan Andersson remembers how, after the Hampton murder, she was in the Los Angeles Panther office with other lawyers, including Dan Lund, receiving medical training from a local doctor when the police surrounded the building. "I remember Geronimo [Pratt] hung Dan

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[48] Rabinowitz, *Unrepentant Leftist*, 186.

[49] Melanie Margaret Kask, "Soul Mates: The Prison Letters of Eldridge Cleaver and Beverly Axelrod" (PhD diss., University of California, Berkeley, 2003). The picture of Huey Newton sitting in the wicker chair with a rifle in one hand and a spear in the other was taken in Axelrod's living room. Pearlman, *The Sky's the Limit*, 209. A few years later Fay Stender edited her correspondence with her client, George Jackson, and published them in the radical bestseller, *Soledad Brother*. However, there was a growing rift between the two as Jackson accused Stender of taking too many editorial liberties. For more on this see Lise A Pearlman, *Call Me Phaedra: The Life and Times of Movement Lawyer Fay Stender* (Berkeley: Regent Press, 2018).

[50] "Interview with Gerald Lefcourt" in Black, *Radical Lawyers*, 309-10.

[51] Dennis Cunningham, Interview by author, San Francisco, 5 July 2016. For more on Fred Hampton and the People's Law Office see Jeffrey Haas, *The Assassination of Fred Hampton: How the FBI and the Chicago Police Murdered a Black Panther* (Chicago, IL : Chicago Review Press, 2009).

[52] See Ibid.

out the window to talk to the cops."[53] They were able to negotiate and the cops left. However, they returned a week later and shot and ransacked the office.

The most successful effort was in the San Francisco Bay Area. After the shootout of the Los Angeles headquarters, the Guild's regional office met in San Francisco. Doron Weinberg, the president of the Bay Area Guild chapter remembered the discussion, "We have the national headquarters of the Panthers here in the Bay Area; we have the newspaper produced here; we have the Richmond office, an Oakland office, What's our responsibility? What's our role?" One of the lawyers said, "Well, I think we should sleep in the Panther offices." "Think about it," he continued, "We announce to the police that if they attack a Panther office they should be aware that there is going to be Guild lawyers sleeping in that building when they do, every night in every one of the three offices." The rest agreed and around 98 lawyers ended up sleeping in Panther offices for two months. "We had a chart; we had coordination," Weinberg recalled. "And people felt so good, they felt like they were really putting themselves on the line, literally, and doing something."[54] The Bay Area headquarters were the only Panther offices that were not raided.

The lawyers also served as regional intermediaries and relayed messages between Panther leaders who were in prison. This role was critical when the Cleaver and Newton split began to shatter the BPP. For the lawyers involved, this was an example of how they could work closely with an organization without affecting the leadership or direction. Andersson recalls how she would bring Panthers close to Newton into prison, as legal workers, to try and convince folks who were in the Cleaver camp.[55] Even when the split became violent and Panthers were charged with killing members of the other faction, lawyers maintained a neutral position. "We didn't take sides in terms of that," said William Mogulescu, a lawyer in New York. "It just so happened that we had a relationship with somebody and now they were charged... Panthers being charged with murdering another Panther, but we had already had a prior relationship with them. It was not a question of: 'we are going to be critical because they are charged with killing another Panther.' We did not get involved."[56] Even as some of the factions turned towards violence, and although lawyers would disagree with some of their positions and especially their violent tactics, they remained close and served as defense counsel in the actions of the Black Liberation Army, an armed revolutionary group formed mostly by ex-Panthers, in the late Seventies and early Eighties.

Local chapters and affiliated firms handled the Panther cases, but the Guild, as a national organization, was also able to respond and coordinate legal responses to specific events. The two most successful efforts were first set up in the 1973 national convention. In the aftermath of the Attica prison uprising and the Native American occupation of Wounded Knee, at the convention plenary a literal line was drawn on the map. The line went along the Mississippi river: all those east of the Mississippi would work and support Attica; and all those west of the line would do the same with Wounded Knee.[57]

When news broke of the rebellion in Attica prison on September 9, 1971, Dorothy "Dotty" Shtob, staff person of the New York City NLG chapter received a call from an activist in Attica. Shtob then called Lewis Steel, the president of the chapter, and he immediately traveled to the prison.[58] The inmates also called for William Kunstler. Both Steel and Kunstler were part of the

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[53] Joan Andersson, Interview by author, Woodstock, 31 July 2016.

[54] Doron Weinberg, Interview by author, San Francisco, 25 August 2016.

[55] Andersson, Oral History Interview.

[56] Mogulescu, Oral History Interview.

[57] Jeffrey Kupers, Interview by author, Oakland, 11 October 2016. Daniel Alterman, Interview by author, New York, 11 November 2015.

[58] Lewis M Steel and Beau Friedlander, *The Butler's Child: An Autobiography* (New York: St. Martin's Press, 2016).

negotiation team with the prisoners before the State Troopers stormed the prison. The New York Guild chapter and then the National Office immediately sent out calls to lawyers throughout the East Coast and Midwest. In Chicago, the PLO sent two people to Buffalo.[59] Other lawyers from the ACLU and Legal Aid Society also went to Attica and together they all formed the Attica Defense Committee. In December 1972 the state prosecutor brought 1,289 criminal charges against sixty-two men.[60] The judge ruled that every one of the defendants had to have their own lawyer. In order to get more lawyers involved, the Guild issued a call in its 1973 convention. They formed the Attica Brothers Legal Defense Committee (ABLDC), rented a house in downtown Buffalo, and helped set up support offices across the country.[61]

Still, the different political positions, legal strategies, and personal egos created tensions in the first cases. William Kunstler and Ramsey Clark, who represented the two inmates charged with the murder of the prison guard William Quinn, relied on a predominantly political defense and they got two convictions. The trials that came in later, however, handled by Detroit lawyers including Ernest Goodman and his son, William, developed a more legalistic approach and focused on the jury selection process and the failures of the Grand Jury.[62] After several acquittals and political pressure from different groups aimed at New York governor Nelson Rockefeller, the state decided to grant a general amnesty. There was also an offshoot effort from lawyers in New York who filed a civil lawsuit in 1974 against Governor Rockefeller and the State of New York.[63] The case lasted for decades until 2000, when the State agreed to pay $8 million to the plaintiffs to settle the case.

The Guild was also involved in the aftermath of the occupation of Wounded Knee in South Dakota. The Wounded Knee Legal Defense/Offense Committee (WKLD/OC) was established in March of 1973, after the Native American Legal Defense Fund disagreed with Russell Means and the rest of the leadership who rejected the negotiating terms from the government and decided to continue the occupation.[64] The Guild helped bring in lawyers and set up support committees across the country, focusing on fundraising. When the occupation ended and charges were brought against the leadership, the WKLD/OC focused their efforts on proving racism tainted the jury pool. They initially caught the prosecution and judges off guard when they used a little-known South Dakota statute that allowed challenges to prospective jurors by bringing in witnesses to contradict their statements. There was a bus driver who claimed he had no "bad feelings" towards Native Americans. "We start calling the passengers on his bus to repeat some of the things he was saying, just out loud on the bus," Jeffrey Kupers, a California Guild lawyer, recalled. "And the judge was absolutely flabbergasted. He couldn't believe that this man was sitting there and committing straight up perjury."[65] The WKLD/OC successfully convinced judges in South Dakota that it was impossible for the defendants to receive a fair trial in the state, and the cases were transferred to Iowa, Nebraska, North Dakota, and Minnesota.[66] Eventually, most of the trials ended in acquittals.

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[59] Cunningham, Oral History Interview; Haas, *The Assassination of Fred Hampton*.

[60] For more on the Attica uprising and the trials see Heather Ann Thompson, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy* (New York: Pantheon Books, 2016).

[61] Donald A Jelinek, *Attica Justice: The Cruel 30-Year Legacy of the Nation's Bloodiest Prison Rebellion, Which Transformed the American Prison System* (Berkeley: Donald A. Jelinek, 2011); Thompson, *Blood in the Water*.

[62] Alterman, Cunningham, Deutsch, Oral History Interviews.

[63] Martin Stolar, Interview by author, New York, 19 October 2015.

[64] WKLDOC Newsletter, 1974. In TAM-NLG, Box 260 Folder 3; Kunstler and Isenberg, *My Life as a Radical Lawyer*, 239.

[65] Kupers, Oral History Interview.

[66] Wounded Knee Legal Defense/Offense Committee Collection Finding Aid, Minnesota Historical Society.

Other Guild committees also expanded their scope and capacity. Although the most active offices of the Mass Defense committee were in New York and the Bay Area, these Guild offices set up referral lists in other major cities like Chicago, Washington D.C., Philadelphia, and Boston. Geographically, the most far-reaching project was in relation to the growing GI movement. By the first years of the Seventies, several legal groups were working closely with soldiers who were court martialed and with the different GI coffeehouses that were set up near the military bases.[67] There was the Lawyer's Military Defense Committee and the GI Civil Liberties Committee, which was independent from the Guild, but was staffed by notable Guild members like Leonard Boudin and Michael Smith.[68] The Guild set up its own committee, The Military Law Project, and in 1971 they opened an office overseas. Initially they were in the Philippines for fifteen months, but after the Philippines President Ferdinand Marcos declared martial law in September of 1972, the local police arrested Guild lawyer Doug Sorensen. After several legal efforts to release him, Marcos finally expelled Doug and the other Guild lawyers.[69] They later settled in Japan, where they continued to defend court martialed GIs for refusing deployment, insubordination, and fragging, and also joined the Japanese anti-war movement as they fought against the US military base in Okinawa.

Other legal projects developed in this period, which were also closely related to Guild activities and lawyers. For instance, out of the Attica and Wounded Knee work, the National Jury Project was founded in 1974. Jay Schulman, a sociologist from New York, joined forces with David Kairys and Beth Bonora, two lawyers involved in Attica, to create a national organization that would provide consulting and assistance with jury issues, including "representativeness, juror questioning (voir dire), selection techniques, change of venue because of prejudice, protection of jury as an institution."[70]

On a national scale, the Guild also remained deeply connected with the anti-war movement. Draft cases were the main income source for many Guild firms. And the Guild, as an organization, continued to devote its resources and energies to building a national support network. They opened draft-counseling centers across the country, held seminars and workshops in law schools and community centers. The Mass Defense Committee continued to coordinate with anti-war protests to have on-hand legal assistance.[71] The Guild also maintained publications on draft law and military

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[67] Parsons, *Dangerous Grounds*.

[68] ACLU lawyers and others, including Burke Marshall who was part of the Kennedy administration, formed The Lawyers Military Defense Committee in 1970. Charles Nesson & Burke Marshall, "Lawyers Military Defense," *The New York Review of Books*, 1 June 1972. Boudin and Smith worked on the Fort Jackson 8 case in 1969 in South Carolina. Michael Steven Smith, *Notebook of a Sixties Lawyer: An Unrepentant Memoir and Selected Writings* (Brooklyn: Smyrna Press, 1992), 76, 146. Michael Kennedy, when he was working with the NECLC, was part of the defense team in the Fort Hood 43 case — where Black GIs refused to go on riot duty during the 1968 Democratic National Convention. James, *People's Lawyers*, 199. Fred Cohn, of the New York Law Commune was involved in the Fort Dix 38 case. For more on other important courts martial see Tim Coulter, "The Lawyers in the GI Movement," and Maryann Weissman, "Courts-Martial," In Black, *Radical Lawyers*.

[69] "The Guild Military Office in the Philippines," Howard DeNike, quoted in Ann Fagan Ginger and Eugene M. Tobin, eds., *The National Lawyers Guild: From Roosevelt through Reagan* (Philadelphia: Temple University Press, 1988).

[70] David Kairys, *Philadelphia Freedom: Memoir of a Civil Rights Lawyer* (Ann Arbor: University of Michigan Press, 2008); David Kairys et al., *The Jury System: New Methods for Reducing Prejudice: A Manual for Lawyers, Legal Workers, and Social Scientists* (Cambridge: National Lawyers Guild National Jury Project, 1975).

[71] The expansion of a national network from the Guild, as well as the formation of the Mass Defense Office, is discussed further in the previous chapter.

law, like the *Selective Service Law Reporter* and the Guild's book, *The New Draft Law: A Manual for Lawyers and Counselors*, went to its sixth editions by 1971.[72]

The development of the Guild's local and national publications provided another platform for ideological discussions and logistical coordination. In April of 1972, the National Office launched *Guild Notes*, the Guild newspaper. It included convention resolutions, position papers, and activity reports. After moving from Virginia to the Bay Area,Edward Dawley, became editor of the *Guild Practitioner,* which continued to be a platform for larger ideological and practical discussions. Local chapters started their own publications, including some law schools.[73]

Local chapters continued to sprout in cities beyond the traditional strongholds of California, New York, and Detroit. Some chapters, which had been seriously weakened during the McCarthy era were revitalized — Chicago, Washington DC, Boston, Philadelphia. Other chapters were established and exponentially grew, such as Columbus and Cleveland in Ohio, as well as Houston, St. Paul, and Seattle. Law schools continued to see an increasing presence of student chapters of the Guild.

This expansion, in conjunction with the Guild's participation in the big public political trials and their relationship with organizations like the Black Panthers and the Young Lords, cemented the Guild's reputation as a formidable organization of the Left. This growing presence provided the Guild the resources and capacity to respond to specific immediate issues, as well as drawn-out processes. It built an on-call system for mass defense regarding anti-war protests, and in-house counsel for the Black Panthers. However, with this expansion also came mounting limitations. Fundraising was an issue for the different projects, but financial constraints had affected Guild-related projects since the mass withdrawal during the Red Scare. The more pressing limitation was the direction of where and how the organization was going to grow: was it fulfilling its role as the legal arm of the movement? In what direction should it go? Moreover, the challenges to sexism, racism, and elitism that were brewing in social movement organizations boiled over into the different law offices and Guild meetings. Younger, more radical lawyers were looking for alternative spaces and practices that could provide possibilities for tangible social and political victories.

"Bastards of the System": Alternatives to the Profession

The challenges confronting the legal profession extended well beyond the courtroom and the convention floor of the Guild. The law firms and legal services offices were additional contested grounds for the new politics and alternative lifestyles brought in by the younger generations. The young radical lawyers sought to demystify the traditional demeanor of the defense attorney, and strip away the three-piece suit image of the traditional attorney. In order for the lawyer to be a radical, or to be part of the radical movement, many changes needed to be made. New spaces and dynamics were idealized and implemented. One significant space that came out of this period was the law collective. Although several collectives came and went throughout the Seventies and Eighties, a brief examination of the first four collectives will illustrate the different variations put into practice.

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[72] Michael E. Tigar, *Fighting Injustice* (Chicago: Section of Litigation, American Bar Association, 2002), 116; Ginger and Tobin, *The National Lawyers Guild*, 228. Another important Guild publication during this period was by Ann Ginger, *Minimizing Racism in Voir Dire,* where she edited the transcripts from the Huey Newton murder trial.

[73] Each with their own clever pun or not-so-subtle jibe: in San Francisco it was *The Conspiracy* (with the subtitle "When Tyranny is Law, Revolution is Order"); the New York chapter's *Blind Justice*; Chicago's *Up Against the Bench*; Philadelphia's *Uncommon Law*; Houston's *Red River Justice*; *Trying Times* of Columbus, Ohio, among many others. Even the law school chapters began printing their own: UCLA had *Hostile Witness*, Yale Law School *Bar None*, and Rutgers *Contradictions*.

The first collective was formed in New York. After participating in the liberation school organized during the Columbia University strike of 1968 and working with the Mass Defense Office following the crackdown, several lawyers got together in early 1969. "I think it was primarily my sister-in-law, Carol," Gerald Lefcourt recalled, "who thought it would be great to sit and talk about possibly forming something. What we ended up talking about was some kind of law firm that would be supportive of the movement for social change that would take on movement cases that would figure out how to survive: hence the New York Law Commune."[74] The idea was to set up an office that would handle all political work — their clientele stretched from Sam Melville, Black Panthers, draft resisters, Paul Krasner and the Yippies, as well as handling landlord-tenant cases. It was the "first of its kind," according to Marty Stolar, an early member of the Commune, in creating a "method of practicing law that was agreeable to the New Left: non-hierarchical, non-professional, that is everybody had a voice in what was said; people were paid according to need not according to professional status; decisions about what cases to take, what fees to charge, were made collectively, lawyers, law students, paralegals, secretaries, everybody had a free voice in what the commune was going to do."[75]

The collective wouldn't charge for any "movement" cases with the exception of conscientious objectors. "There were a lot of fairly well to do, upper middle class white mommies and daddies who wanted their sons out of the draft," Stolar remembered. These paying cases, and a small retainer from the Liberation News Service allowed the Commune to pay rent in lower Manhattan and engage in their other political work for free. They also earmarked some of the income for maintenance of the Mass Defense Office and a policy was set that new communal firms would be given a financial start where funds were available.[76]

In Los Angeles, one of the more notoriously political collectives came together in 1970. Inspired by the New York Law Commune, several law students from UCLA formed the Bar Sinister. Primarily the name implied that, while still members of the legal profession, they were firmly on the Left (Sinister is a derivative of the Latin word for left.) It was also "the heraldic shield of bastardy," Joan Andersson, one of the founders, noted, "and we felt that we were bastards of the law, bastard children of the law."[77] Unlike the Commune, the California lawyers considered themselves organizers first, lawyers second. "We were organizers," Earle Tockman, of the members of the collective said, "We set out to organize a revolution, not just be lawyers to people who were doing the organizing." The Bar Sinister's primary self-definition as organizers, and secondarily as lawyers, "set us apart from a lot of other legal collectives," Tockman continued, "which is one of the reasons why almost all of us were active in the Guild."[78]

In addition, they were Marxist Leninists, and took the study of Marxism as a priority for the office. "We took theory seriously," said Joan Andersson.[79] They sought to live under communist values, rejecting hierarchies and competitive lifestyles. Instead of salary, they received a weekly allowance (the collective paid for the members' utility bills), and, most importantly, there was no division of labor. "We were the most extreme and radical because we didn't accept a division of labor, at all," reflected member Karen Jo Koonan. "It was a big deal for lawyers to do their own

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74 "Interview with Gerald Lefcourt" in Black, *Radical Lawyers*. Lefcourt, Oral History Interview.

75 Stolar, Oral History Interview.

76 Paul Biderman, "The Birth of Communal Law Firms" in Black, *Radical Lawyers*, 286-7.

77 Andersson, Oral History Interview.

78 Tockman, Oral History Interviews.

79 Andersson, Oral History Interview.

typing, to answer the phone, so we had a schedule, everyone had a shift of phone duty, reception duty."[80]

Initially most of the funds came from draft cases, but that began to dry up by 1971. The local director of the Equal Employment Opportunity Commission (EEOC) contacted them and they received training in employment discrimination law from Title VII of the Civil Rights Act. They successfully defended flight attendants who sued airlines over sexist requirements. At the time, flight attendants were expected to be single, young, attractive and slim."Stewardesses in those days couldn't be over 135 pounds, no matter how tall you were," Andersson recalled. "They couldn't be old, couldn't be married, and couldn't have kids. It was basically a sex worker's job. I mean, that was the idea: you wanted sexy women. But the same thing was not so for pilots. There were no restrictions on the pilots. And the pilots were all men and the stewardesses were all women."[81] This work permitted the office to maintain the subsistence allowance for the members but especially allowed them to work pro bono for their political clients, including the Black Panthers, Brown Berets, Gay Liberation Front, and folks involved in the Chicano Moratorium.

The collective worked hard in developing both political and practical skills. Every Friday they closed the office and held "Dare to Struggle, Dare to Win" Day, during which they would discuss Marxist and other political texts, learn how to fix cars, took first aid and self-defense classes, or went to the gun range.[82] "We were becoming the renaissance revolutionaries," Karen Jo Koonan noted. The office offered resources beyond their legal skills. When the Bar Sinister bought its first Gestetner machine they invited the community to duplicate fliers and posters.[83]

The strong political commitment of the Bar Sinister, as well as its engagement with building the Guild and the radical legal left community, made them a model for other collectives in the country. For another young lawyer who moved out West the same year and, along with several colleagues, was considering forming a collective in Seattle, the Bar Sinister "was a model and an inspiration for us… We learned a lot about the structure of the collective, we thought that's the way to practice law for the people… That was the tenor of the time."[84] Even in the South the Bar Sinister inspired lawyers to form collectives.[85] A few years later, however, it would be an example of the perils of sectarian conflicts.

Another model was the community law office. In early 1970 Paul Harris and Stan Zaks, who had been working in the San Francisco Bay Area for some time through Guild and the Neighborhood Legal Assistance offices, liked the concept of a community law firm. The basic idea was that it would function as the "in-house counsel" for community groups. The idea was similar to how big corporations had lawyers in-house who would take care of any emergent legal issues. Harris thought they could apply the same concept to the legal needs of community groups. They decided on the Mission neighborhood in San Francisco.[86] They invited six community organizations to lunch and told them they would represent their organizational legal problems for free, but if they had other kinds of cases — like car accidents, divorces, workers compensation — they should bring those

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[80] Karen Jo Koonan, Oral History Interview.

[81] Andersson, Oral History Interview.

[82] Koonan, Oral History Interview.

[83] Kupers, Oral History Interview.

[84] Ellen Yaroshefsky, Interview by author, New York, 4 November 2015.

[85] Marlise James mentioned several people who worked in the Florida Rural Legal Services in Gainesville met with Bar Sinister members to "seriously discuss starting a collective in the South." James, *The People's Lawyers*, 252.

[86] According to Harris "it was a rapid developing community, it was a racially diverse community; it desperately needed progressive lawyers and there were numerous community groups." Paul Harris. Interview by author, San Francisco. 6 July 2016.

cases to Harris and Zaks instead of taking those cases to downtown lawyers. Zaks was surprised at how quickly they built trust with the community. According to Harris, this was mostly due to their experiences from working with C.B. King and the civil rights movement in the South. "Stan and I, with our SNCC training believed that as white males we had to be very careful not to run meetings, or give too much political advice in meetings with community groups. They were the ones making the decisions. We were there to help them build their power."[87] They worked with Los Siete de la Raza, La Raza Legal Defense Union, the Mission People's Health Center, and other local groups.

More than any of the other collectives, the San Francisco Community Office worked on improving the racial composition of the office. They wanted to build a multi-racial collective, which was initially difficult since there weren't that many Latina/o lawyers in the Mission in the early Seventies. "There were very few Latinos, or Blacks, or Native Americans, or Asians, in law school at the time. Even among the few, there were even fewer who wanted to set up in a law collective where they would be making less money, and whose politics would be very Left."[88] The same thing occurred with the secretaries. They had a temporary white secretary from the East Bay, but in order to get a full-time legal secretary and strengthen their ties with the community they went to a number of community groups and said, "We are looking for a secretary; she doesn't have to be a legal secretary, we'll train her." Bernadette Aguilar, who was 18 or 19 at the time, received their training and became a full member of the collective.[89] "To build a multi-racial office at that time," Harris commented, "you had to recognize that we were willing to take a woman who had no training as a legal secretary and had minimal training as a secretary, but grew up in the Mission community, knew the Mission community, was not a Marxist, which Stan and I were, but had all the instincts upon which Marxism is based, and that was more important to us." Later, Otilia Parra, who had worked for a Chicano organization at San Francisco State University, joined and became the office manager.

Although the office was not as avowedly ideological as the Bar Sinister, the Community Law Office did have Marxist readings groups for the members of the collective. A few years later Aguilar conveyed to Harris how she believed they were pushing her along too fast. But for Zaks and Harris it was important to push. "But we were concerned that we didn't want to exploit the people," Harris reflected. "We didn't want to just exploit them so we wanted to them to understand. We wanted them to grow and become full partners. We also wanted them to be legal workers, which meant that they could interview clients, that they could do investigative work, that could do some basic legal functions; so we were really pushing."[90] Like the other collectives, they had equal salaries between the lawyers and legal workers. However, unlike the others, in order to become a full partner of the office, people had to work there for a year and commit to working there for more years.

The most enduring law collective of this period started in Chicago. After the DNC protests of 1968, several lawyers and law students — some of which had met and worked together on the mass arrests following Martin Luther King Jr.' assassination — formed the Chicago Legal Defense Committee. Inspired by the New York Law Commune, and after several meetings with local Black Panthers, they opened the People's Law Office.[91] Once they set up shop, they defended most radical

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87 Ibid.
88 Ibid.
89 Ibid.
90 Ibid.
91 "There's a couple of different stories," Flint Taylor, a long time member, remarked about the name. "My memory of it is that because the Panthers, their slogan was 'All power to the people,' they had a People's Medical Clinic, a People's Breakfast Program, a People's newspaper — everything was centered around people. So we became the People's Lawyers and then when we opened the office we were the Peoples' Law Office." Flint Taylor, Interview by author, Oral History Interview, Chicago, 25 September 2015.

groups in the area: Panthers, Weathermen, Young Lords, the Puerto Rican Fuerzas Armadas de Liberación Nacional (FALN), Young Patriots (a Marxist group of poor white people, mostly from Appalachia), hippies, as well as prisoners.[92] Primarily focused on criminal defense cases, most of the PLO's income came from individual drug cases and they would even charge some of their political clients a reduced fee.[93]

Similar to the other collectives, income was based on need, and, at least initially, all members of the office were involved in the decision-making process — including secretaries and the janitor.[94] However, unlike some of the other collectives, they were much more flexible with these issues. At various times they experimented with different salary systems and with decision-making dynamics. They were ideological, but not dogmatic.[95] Furthermore, some of the cases they were involved in were drawn out legal battles that lasted for several years.[96] This allowed them to survive the sectarian divisions and practical limitations of the other collectives and remains active to this day.

The general model of the law collective was emulated across the country. They would pop up in big cities like Seattle, in Dorchester, Massachusetts, and there was even a short-lived collective in Amarillo, Texas.[97] These offices functioned independently, but were, for the most part, very close to the Guild. Because of the non-hierarchical politics of the collectives, several were deeply involved in the struggle to get the Guild to admit legal workers as full members. As the youth increasingly took over leadership positions, the collective model was brought into the organization. The National Office Collective was established at the Austin convention in 1973. "The move to change the structure of the National Office flowed right out of that movement towards equality," said Karen Jo Koonan.[98] They were in charge of putting out the *Guild Notes* newspaper, developed agendas for meetings, handled the bookkeeping, and mostly organizing the different regional sections and chapters of the Guild.

Many radicals and some communities welcomed these alternative types of law offices and the attacks on hierarchy and elitism. The collectives became another way to become embedded in the movement and in the community. They were fertile grounds for the discussion and practices to combat sexism, capitalist "bourgeois" values, and, to a lesser extent, racism. They became yet another aspect in the struggle to demystify the legal profession. Although many of these fertile grounds became engulfed in flames of ideological and sectarian debates, for many of the young white lawyers this was another way to develop a closer relationship to movement organizations, especially those of communities of color, and play a more active role in their struggles.

This relationship, however, and the whole collective model, also came with serious criticism. The older labor law firms rejected the model. Although most of the young radicals excoriated the

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[92] When there was a shootout between the Southern Illinois chapter of the Black Panthers and the police, they opened a small office in Carbondale to handle the case directly. Deutsch, Oral History Interview.

[93] James, *The People's Lawyers*, 134–35.

[94] "Everyone who worked at PLO had an equal vote at office meetings, even Jim Sorflaten, who swept the office once a week. However, Jim was not selected because of his activism, and the issues we voted on both confused and bored him. We soon decided that only full-time PLOers got to vote." Haas, *The Assassination of Fred Hampton*.

[95] They stopped having weekly meetings and would only meet when they had to. "We found the strict collective form very far out in a lot of ways but we found, after we'd been together for a while, that it got oppressive." Quoted in James, *The People's Lawyers*, 137.

[96] For a detailed narrative of their work on the Hampton murder, see Haas, *The Assassination of Fred Hampton*. "The People's Law Office survived and grew because we did not require uniformity on political issues. It was a delicate balance at PLO to stay politically involved, aware, and participating, without requiring support of the same movement factions." Ibid., 114.

[97] National Executive Committee Minutes, 1982. TAM-NLG Box 57 Folder 4.

[98] Koonan, Oral History Interview.

older lawyers' refusal to sacrifice their comfortable lifestyle, the whole restructuring of the office seemed like a distraction for the lawyers who survived the Red Scare.[99] The main critique, however, came from the failure to incorporate or find significant support from Black lawyers. Ken Cockrel, of Detroit, believed that all the ideological and political discussions weren't practical. "We take the position that there is a point beyond which discussion is an inappropriate response to the resolution of certain problems, and that they'll be resolved in practice."[100] D'Army Bailey, former president of LSCRRC and city councilmember in Berkeley, was much more critical of the collectives. He saw them as another way that the progressive legal community excluded African Americans. "I think one device used to keep Blacks out is this whole commune thing. There ain't no sister or brother going to come out of law school and work for $80 or $100 a week. The device may be unwitting but that is the result, because the money is kept so low it almost demands that no Black lawyers come in."[101]Radical lawyers had told him that the idea of low wages was to become more closely affiliated to the people they were working for. "That is horseshit," he replied, "because they know if they ever feel pinched they can shave and put on a suit and tie and get a job that will pay."

Indeed most collectives only worked for a limited period of time. The New York Law Commune split up in 1971, in large part because the women lawyers decided to form their own collective and focus on women's legal issues. The Bar Sinister was consumed in its own ideological pyre. The Community Law Office survived for several years, but once other law offices and lawyers came into the Mission their position as in-house counsel came to an end. The PLO was the only exception and remains the only surviving collective from the Sixties. Regardless, many of the founders of the original collectives continued to establish and work in collectives of different sizes and shapes, and the model continues to be a practical and ideological alternative for young lawyers and law students.

Lawyers were also pushing boundaries in more institutional areas, like the Legal Services programs. Although they were in the process of being defanged by the Nixon administration, legal services programs of the Office of Economic Opportunity continued to be a viable option for young radical lawyers. By 1971 there were 250 Legal Services programs in the country, around 900 offices employed around 2,000 lawyers. The only state that didn't have a Legal Services program was North Dakota. The LSP annual budget reached 68.9 million.[102] The biggest program, the California Rural Legal Assistance, had an annual grant of 1.2 million dollars.[103] Set up in 1966, the CRLA became a significant office working with farm workers in Southern California and the Central Valley. It attracted many young lawyers from around the country. These programs provided a financially viable stepping-stone for young lawyers fresh out of law school. Other offices, like the Berkeley Neighborhood Legal Services, focused their energy on class action suits against the local police department and provided counsel to the tenant organizations that went on a rent strike in 1970.

Although the programs were growing, their scope and funding was increasingly limited. Particularly in California there was a conservative effort to curtail the programs. CRLA did its part to infuriate both Ronald Reagan and Southern California agri-business. Reagan referred to CRLA as the "legal arm of the UFW." In 1968 two bills were presented in Congress. The first, proposed by

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[99] In the Ben Margolis firm in Los Angeles, the partners took great pride in offering the secretaries the possibility to study law and eventually become lawyers, if they wanted to. James Larson, Interview by author, Sausalito, 13 September 2016.

[100] James, *The People's Lawyers*, 146.

[101] Ibid., 322.

[102] James, 61.

[103] Earl Johnson, *Justice and Reform: The Formative Years of the OEO Legal Services Program* (New York: Russell Sage Foundation, 1974), 99.

California legislators, sought to prohibit OEO programs from suing government agencies. The second restricted programs from taking criminal cases to court — this particular restriction was proposed shortly after the riots in Newark and Detroit. While the first bill was narrowly defeated, the second one passed. Throughout his administration, Nixon continued to cut the funding and logistical capacity of the OEO Legal Services. In 1969, Nixon appointed Donald Rumsfeld, who opposed the establishment of the OEO when he was a congressman in 1964, as director.[104] By the early 1970s funds for legal services dwindled. In 1971 a bipartisan congressional committee formed a new government entity that would address the legal need for the poor: the Legal Services Corporation (LSC). The LSC was subjected to more control from the Executive and Congress and had further restrictions on the kind of legal work it could do.

Not all community law offices were beholden to the OEO. The Community Law Office, with branches in East and Central Harlem, received most of its funding from private foundations. In 1968 the CLO worked out a deal with the Legal Aid Society. Although they would remain under the umbrella of Legal Aid, the CLO would operate independently, with its own board of trustees, and its own fundraising operation as long as the Legal Aid Society maintained the right to terminate the program and three members of Legal Aid could attend trustee meetings. Because they weren't part of OEO, they could take on criminal and civil cases of Harlem residents. The director in 1971 was Sheila Okpaku, one of the first Black women to graduate from Harvard Law School. After seeing the "gung-ho" young volunteers who came in between 1969-1970, Okpaku set up a recruiting effort in 1971 and found a lot of "enthusiastic young lawyers." However, she rejected any collective decision-making models, which would potentially draw out discussion for matters which needed quick decisions. "I do believe in a hierarchy for a program like ours," Okpaku said. "There has to be a director, a decision maker."[105]

Radical lawyers, for the most part, were critical of the limitations of Legal Services, but many believed it had positive functions. Alan Houseman, the director of the Michigan Legal Services Assistance Program, which helped attorneys with research and did some legal work with indigent clients, believed that there had been some success with affirmative litigation. Ultimately, though, he believed true change would only come when groups like welfare rights organizations attained power. He believed that, regardless of what the Supreme Court did in the Sixties, fundamental change doesn't come through court decisions, but through community pressure to enforce decisions. "Until we understand that, a lot of what Legal Services does is Band-Aid work."[106]

There were other aspects of these government programs that benefited young progressive lawyers. In 1965, Lyndon Johnson created a national service program, the Volunteers In Service To America (VISTA), as part of his War on Poverty. They hired young professionals — teachers, doctors, lawyers, etc. — to operate as a domestic peace corps in marginalized communities. For recent male graduates, not only was this an opportunity to get a job right out of law school, but it was also a chance to avoid the draft. Martin Stolar recalls how he was able to convince the local draft board that VISTA was a vital occupation to the "national interest" and receive a deferment. For the training Stolar was sent to Chicago in August of 1968, just before the Democratic National Convention and the police riot. "Wondering out in the streets," Stolar remembered, "I got gassed, I

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[104] Ironically for Nixon, Rumsfeld would become an unwilling supporter of OEO. In 1969, California Senator George Murphy, at the behest of Reagan, introduced a bill through the Senate that would give state governors absolute veto over any legal services program as well as control over funding, The American Bar Association joined Rumsfeld, and his secretary, Richard "Dick" Cheney, and successfully set up a task force to defeat the Murphy Amendment. For more on the Rumsfeld as head of the OEO See Terry Lenzner, *The Investigator: Fifty Years of Uncovering the Truth* (New York: Blue Rider Press, 2013).

[105] James, *The People's Lawyers*, 291.

[106] James, *The People's Lawyers*, 69.

got chased and I got significantly radicalized and pushed a whole lot to the left because of that experience." He did his service in Columbus, Ohio, which "was another year of education that the government gave me… [that] really pushed me to the brink of political understanding, both the combination of the civil rights movement, and what it means to be Black in America."[107]

The OEO Legal Services Program had its own fellowship to help young lawyers. In 1967, the OEO started the Reginald Heber Smith Community Lawyer Fellowship Program (colloquially known as the "Reggie.") Initially the University of Pennsylvania administered the fellowship, which sought to recruit recent law school graduates, train them in the growing field of poverty law, and place them for a year or two in the legal services offices around the country.[108] Earle Tockman, after he graduated from Northwestern Law, received the fellowship and spent the summer training in Haverford, Pennsylvania. It was there that he first heard about the Guild. "Maybe I had heard of it," he later recalled, "but I didn't know anybody in the Guild when in was in law school. And all of a sudden I go to Haverford with all these Reggies and I was meeting people who had been active for a long time. And some of them had been in SDS, there was a guy named Ken Cloke, who I met then and Peter Haberfeld... And I was like a new kid but it was, 'Wow!' My mind literally exploded."[109] After the training he was sent to work in Compton, California. Both the VISTA and the "Reggie" programs provided young lawyers an exposure to alternative politics and spaces, as well as a first hand experience of the economic and legal needs of different communities.

These programs, however, had restrictions. Lawyers who were employed with VISTA could only provide legal education, and "Reggie" recipients could only handle civil cases: divorces, bankruptcy, will, custody, etc. There was an explicit ban for lawyers in either program to conduct any criminal work. Nonetheless, most young lawyers relied initially on grants from the Reginald Heber Smith Community Fellows, the VISTA program, and the resources from Legal Services offices to support themselves and conduct their political work until they could set up their own offices. For instance, Dan Meyers was a "Reggie" and worked out of an office in the South Brooklyn Legal Services. However, he did criminal and political work with a Puerto Rican organization, the Young Lords, until he was fired. He then set up a collective law firm with three other colleagues who had also left other organizations and offices to pursue more political work.[110]

While legal services programs and offices were often labeled as "liberal" and "reformist," the young radicals still considered them useful. Legal Services offered an alternative to corporate and large law firms for recent law school graduates; they provided income and resources for lawyers to conduct their own work; and, furnished a training ground and often a radicalizing experience for lawyers. The Guild had to maintain a distance to avoid any accusations of red-baiting, yet they defended the existence of OEO and denounced the Nixon administration's efforts to weaken the programs. In fact, support for the OEO was one of the few issues where the ABA and the Guild were strongly in agreement.

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[107] Stolar, Oral History Interview.

[108] In 1969 the fellowship program was moved to Howard University, in a drive to attract more minority fellows. Finding Aid for the Reginald Heber Smith Community Lawyer Fellowship Program Papers, Georgetown University Law Library.

[109] Tockman, Oral History Interview.

[110] The collective was a perfect example of people who either left or were fired from liberal or civil libertarian organizations. In addition to Meyers, Henry Di Suvero left the Emergency Civil Liberties Committee because they wouldn't represent the Black Panthers. Lewis Steel was fired from the LDF after he wrote an article for the *New York Times* "A Critic's View of the Warren Court — Nine Men in Black who Think White" (13 October 1968) that was highly critical of the Supreme Court. Gretchen Oberman was at Legal Aid but wanted more independence. They formed DiSuvero, Meyers, Oberman & Steel. Daniel Meyers, Interview by author, New York, 4 December 2015.

Even in what were considered the traditional bastions of the legal profession, alternative methods and practices challenged the norm. In law schools, students and some faculty members insisted on more courses on civil rights, poverty, and the general public interest law, and demanded a place for students in faculty meetings as well as a student voice in administrative decisions.[111] The student body at law schools underwent major changes in this period. Between 1965 and 1975 student population in accredited law schools doubled, from 60,000 to 117,000. More significantly, the number of women students increased ten times, from 2,500 to 27,000.[112] Affirmative action programs also increased the number of minority students. However, these percentages were still way below in relation to the national population.

The curricula and academic programs of law schools underwent significant changes in the early Seventies. For Arthur Kinoy, who became a professor at Rutgers Law School in 1964, there was a crisis in legal education, in which students questioned the relevance of what was taught in the classroom to the political and social reality. He believed that if law schools wanted to "survive as vibrant exciting centers for the teaching of young lawyers" they should reflect the reality of the "new frontiers" of the legal profession created by recent social and political struggles. The law schools' challenge was to apply the insight first brought up by Jerome Frank, his old mentor, of having the legal clinic at the heart of legal education. The clinics, Kinoy believed, "provid[ed] a teaching tool to probe into theoretical conceptual problems within the context of the throbbing excitement of reality."[113] For instance, students could learn law by practicing within vulnerable communities, often in association with legal services offices. Clinical law programs spread quickly throughout the 1970s.

Rutgers Law School embodied some of the main changes in law schools. Rutgers University expanded its law school into Newark, as the city was still recovering from the violent uprising in 1967. The expansion ignited strong opposition from the community and from Black law students, who staged several protests. After negotiations with university administrators and faculty, the Minority Student Program was created.[114] In addition to affirmative action, which began in the university in 1968, these programs increased the numbers of minority students, primarily African Americans. Rutgers Law School also saw a significant increase in its female student body. The class of 1971 was 41% women. The following cohort grew to 51%. The faculty was quite noteworthy. In addition to Kinoy, Ruth Bader Ginsburg taught one of the first seminars on "Women and the Law" and, along with Nadine Taub, began the Women's Rights Litigation Clinic. Furthermore, the *Women's Rights Law Reporter*, the first specialty law journal on women's issues, was founded at Rutgers. Alfred Slocum, who as a law student was one of the founders of the Minority Student Program, and Frank Askin were instrumental in starting the Constitutional Litigation Clinic and the Urban Legal Clinic. Rutgers became a notorious hotbed for leftists and radicals; it was affectionately nicknamed the "People's Electric Law School."[115]

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111 Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill: University of North Carolina Press, 1983), 234; Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976), 278.

112 Cynthia Fuchs Epstein, *Women in Law* (New Orleans: Quid Pro Books, 2012).

113 Arthur Kinoy, "Crisis in American Legal Education," in Black, *Radical Lawyers*, 277.

114 The program included mentoring, internship and guidance to minority students. George W. Conk, "People's Electric: Engaged Legal Education at Rutgers-Newark Law School in the 1960s and 1970s," 40 *Fordham Urban Law Journal* 1, 503-548, November 2012.

115 Ibid. Loren Siegel, a Rutgers student at the time, succinctly explains the importance of Rutgers: "We saw ourselves as in service to the revolution, people's lawyers, and we chose Rutgers because, first of all, it was incredibly inexpensive because it was part of the state university that was heavily subsidized. And it had people on the faculty like Arthur Kinoy, who was very well known at that time, and it had clinical programs before most of the law schools had them. So

The patriarchal culture in legal education was an important site of struggle for female students. Male pronouns were ubiquitous in articles, lectures, and speeches related to legal profession and the legal profession, in general. When a State Board of Law Examiners wrote to Bernadine Dorhn, after she had taken the state bar exam, the letterhead read, "Dear Sir."[116] Even the older radical and progressive lawyers would refer to hypothetical situations would refer to the lawyer and "his client" or "his fees."[117] Carlin Meyer, who was in the first cohort where women made up the majority, remembers how the women's group confronted the male-centered culture of the law school with determination and humor. "Because so much of the law was: the reasonable man, the man, the man; it was so structured around the image of males, the way so much of life was. So we were trying to oppose that," Meyer recalled. In response, they printed out stickers of a meat cleaver that said, "Emasculate the law."[118] They also held constant consciousness-raising meetings and organized self-help clinics in the law school lounge. "[It] had glass doors," Meyer said, "We hung blankets over the doors and learned how to do vaginal self-examinations right in the middle of the law school. It was just the craziest time but it was really marvelous."[119] The Guild already had a presence in the law school, but it became a formidable force in these years. They put out their own publication, *On Contradictions*, and held sit-ins in the Dean's office over the school's hiring practices, demanding the school hire more women and people of color.[120]

The Guild had a strong presence in other law schools as well. More than half of the students at Northeastern University School of Law, which also quickly became a notoriously progressive school with a robust clinical law program, were in the Guild chapter.[121] While having a solid base in places like Boalt or NYU, the Guild increased its presence even in private schools like Seton Hall and Villanova. They even had occasional members in Duke University and other southern law schools.[122] Members of the National Office organized tours around the different schools to galvanize student interest. Often they would travel with or trail behind big acts like Charles Garry or William Kunstler, who were nationally recognized "radical" celebrities on the college speaking circuits.

These visits weren't always met with enthusiastic support and energy. Sometimes there was frustration and confusion. Steve Kehoe, a student at Columbia, attended a conference held for the students where he felt they were given a "mixture of liberalism, radicalism, and utter pessimism." The student was disappointed that the speakers didn't provide any analysis or guidelines for the students: "either you try to work through the law for reform… or realize that the only purpose you can serve is to defend groups which are really doing something… or work in Wall Street and give your money to people who are doing something."[123] Nonetheless, the Guild remained focused on campus organizing and recruitment.

Following the success of sending law students into civil rights firms in the South, the Guild expanded its own summer projects. These became a significant labor force to assist the Attica and Wounded Knee cases. Ellen Yaroshefsky, then a recent graduate from Rutgers Law School,

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it offered an opportunity to start practicing at a fairly early stage." Loren Siegel, Interview by author, New York. 9 December 2015.

116 State Board of Law Examiners to Bernardine Dohrn, 30 December 1967. TAM-NLG Box 45, Folder 8.

117 See quotes from Chapter 1.

118 Carlin Meyer, Interview by author, New York, 30 November 2015.

119 Ibid.

120 Siegel, Oral History Interview.

121 Matt Ross, Interview by author, Berkeley, 20 September 2016.

122 National Office Notes, 1974, TAM-NLG Box 66 Folder 27.

123 Cerruti to Rabinowitz, July 15, 1969, TAM-NLG Box 45 Folder 10.

remembered how in 1973 they were trying to establish a summer project involving Native American issues beyond Wounded Knee. She recalled how the project coordinators, still working out the details, told her, "We don't know yet, it's either going to be in Denver or it's going to be in Seattle, so just get in your car and when you get to Kansas call us and we'll tell you where the project will be."[124] She ended up going to Seattle where she worked on fishing rights cases. The Guild summer projects also sent many people to work with Cesar Chavez and the farm workers union in California.

Rather than solely organizing in existing academic spaces, the Guild and other organizations decided to take a step further. The People's Law College in Los Angeles opened its doors in the fall of 1974 to train "people's lawyers." Although the school was founded legally under the name The Guild Law School, it was a joint project with the National la Raza Law Student Association, the National Conference of Black Lawyers (NCBL), and the Asian Law Caucus of Los Angeles.[125] Unaccredited law schools go back to the night schools in the 1920s, where many working-class students could aspire to a career in the law. But in the course of the twentieth century most state bar associations increased the requirements to take the bar exam. California remained one of the most flexible states in this regard, and graduates of correspondence and unaccredited schools could take the exam provided they pass a special exam at the end of their first year.[126] California had the most active growth of these schools. In the San Francisco Bay Area, also with a heavy involvement from the local Guild, the People's Law School was established.[127] Still, similar schools opened in other areas providing alternative legal education and a community space. In Philadelphia there was the short-lived Free Law School. In Chicago the was the NCBL's Lawyers Community College of Law and International Diplomacy.

Although most schools kept the case and Socratic methods, and most faculties ranged from moderate liberals to staunch conservatives, there was a push to challenge and reformulate the different spaces of the profession. These new politicized spaces provided these young lawyers with the possibility to acquire and use legal skills on their own terms. The relatively inexpensive law schools and the low paying but bearable wages of legal services and law collectives gave them the economic viability to continue to do public interest and political work.

In the late Sixties, The rise of women enrollment further politicized the traditionally male spaces of law schools. Female students had to fight against the hostility from members of the faculty and their classmates. Joan Andersson, who attended Yale Law School, described how in the dining room a well-known professor challenged her to attend his class topless, claiming that he would give her an A if she did. She also remembered how during moot court sessions, her opponent from Princeton posted a poem in the main hall in which he described how she met her client in his jail cell

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124 Yaroshefsky, Oral History Interview.

125 The first class was expected to be "two-thirds third world students" and one-third "socially concerned white students." "New Law School to Open Aug 22," *Los Angeles Sentinel*, 1 July 1974. The "PCL's approach to learning the law combines a cooperative, non-competitive, non-elitist method inside and outside the classroom." Students, for the most part, operated the school's Governing Council. Ted Winchester, "People's College of Law — The First Five Years," *Law for the People*, 1979. TAM-NLG Box 66 Folder 7. The school remains active, and among its alumni is Antonio Villarraigosa, Los Angeles' former mayor.

126 Stevens, *Law School*, 208–9. Other states required additional academic work or at least seven years practicing law in order for graduates of unaccredited law schools to take the bar exam.

127 Although it opened in 1971, before the PCL, it was somewhat more informal — the classes were held in YMCA rooms, public libraries, or in empty classrooms at Hastings Law School. There was "no tuition, no grades, no degrees." It mostly served as a free legal community education: "[The school] provides legal survival information in areas that affect daily lives of poor people, working class, third world, street people, gay, youth, and women," seeking to developing an understanding of the legal system with classes like "Street Survival," "Welfare Rights," "Legal Worker Skills," and "Basic Legal Research." People's Law School, Winter, 1973. BAN-AFG Box 35 Folder 4.

and had sex with him. The poem was left on the wall for several days.[128] Holly Maguigan, who went to the University of Pennsylvania Law School, recalled a professor who called all the women students "Portia," because "there was no point in learning our names because all we were going to do was get married to other students and make babies."[129]

Some contemporaries dismissed the increase of women as an unintended consequence of the Vietnam War. Harvard President Nathan Pursey exclaimed at the height of the Vietnam War draft, "We shall be left with the blind, the lame, and the women."[130] Regardless, as sociologist Cynthia F. Epstein argues, the incoming cohorts of women and people of color in the law schools came in with a progressive, if not radicalized, sense of legal practices, services, and tools to be used for meaningful social change.[131]

"Every Perry Mason has a Della Street": Empowerment in the Legal Community

Sexism and the women's movement were front and center at the 1970 NLG national convention in Washington, DC. One of the attendees described how that year all the "uncomfortable challenges of men's leadership which had been growing in the movement came home to the Guild."[132] There was a panel on women and the law, which the entire convention attended. The feminist confrontations within the Guild didn't only come from the youth. At least two women of the "middle generation" — who became lawyers in the late Fifties and early Sixties — addressed the convention. Florynce Kennedy gave an impassioned speech challenging the many sexist assumptions in the practice of law.[133] Jean Kidwell of California criticized the failure of the Guild to address issues of family law. "To many men," Dan Lund remembered, "everything seemed topsy-turvy. It was no longer simply young versus old."[134]

The debate on law student membership also had a strong gender component. As more women enrolled in law schools, student Guild chapters became new arenas for the women's movement. Rutgers was one of the first, but by far not the only chapter. When the election of a woman president of the Guild was imminent, however, tension arose between the young radicals and the older folks. A women's caucus was formed when Doris Brin Walker came out against the admittance of law students, and debated whether she should remain a candidate or be replaced by a younger lawyer from the area, Jennie Rhine. A compromise was finally reached: she would remain the sole female candidate but would keep council with the younger generation.[135]

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[128] Andersson, Oral History Interview.

[129] Holly Maguigan, Interview by author, New York, 18 December 2005.

[130] Quoted in Epstein, *Women in Law*.

[131] Ibid.

[132] "Women Hold Up Half the Guild," Dan Lund, *The Conspiracy*, Summer 1986. Rabinowitz Personal Papers, Tamiment Library, Box 9 Folder 17.

[133] In New York, Kennedy became an instrumental figure in left-wing coalition building. She was more of an organizer than a lawyer and was committed to bringing together the women's and Black liberation movements. She was also a mentor for many in the radical legal community. For a biography see Sherie M. Randolph, *Florynce "Flo" Kennedy: The Life of a Black Feminist Radical* (Chapel Hill: The University of North Carolina Press, 2015).

[134] Lund, "Women Hold Up Half the Guild."

[135] *A History of the National Lawyers Guild, 1937-1987*. In 1970, a "Resolution on Women's Struggles" declared that "since NLG has not effectively addressed itself to either the needs of women generally nor the role of women within the NLG and unwilling to direct itself to its own sexism, elitism and starism, insofar as it oppresses women relating to the NLG and since women have been mainstay in implementing and running program of NLG, propose that following program exist in NLG for all women collectively and women in guild." The program proposed that the Guild initiate and participate in cases concerning abortion, prostitution, marriage/divorce, sterilization, unwed mothers and children out of wedlock, collaboration with women's liberation groups, expose institutional patters of sex discrimination, support gay

The women's caucus was also instrumental in the following convention's debate on the inclusion of legal workers. The anti-hierarchical struggles within Guild offices, law firms, and the collectives brought the role of the legal worker to the forefront. For legal workers, and for many of the young radical women lawyers, the issue wasn't only to have representation but also recognition both in the legal work and in the political work. One legal worker described most lawyers as "political babe in arms." While lawyers might be good at "book theory," she explained, "terribly deficient in relating library theory to street theory." Legal workers, on the other hand, were unrestrained by professional canons of ethics and regulations, giving them the possibility to be more radical and have a deeper involvement with communities.[136] While some older members, like Rabinowitz and Goodman, insisted that the debate over the admission of legal workers to the Guild was not about sexism, the women's caucus and many young radicals argued that the majority of legal workers were indeed women and the gender dynamics within the Guild could only improve by bringing in law students and legal workers.

Beyond representation and recognition, the struggles around sexism and elitism in the Guild were about empowerment. The developing camaraderie between women lawyers and legal workers enhanced the potential and agency women could have in the Guild and in the legal profession. Historically in the Guild, as well as in other radical organizations, women (both lawyers and non-lawyers) had occupied important administrative roles. In the early days Anna Damon organized the IDL's publication and logistics. Carol King started the IJA in the U.S. and published the *IJA Bulletin*. Ann Ginger took on numerous editorial and administrative roles in various offices from Ohio to California. Claudia Shorpshire Morcom ran the Jackson office and Dorothy Shtob was a permanent staff member in the national office and then in the New York City chapter. Mary Kaufman helped lead the first Mass Defense Office in New York. Later, women legal workers staffed most of the burgeoning law collectives and Guild regional offices. "There was this whole segment of people who were doing Guild work who didn't have a vote," Koonan commented. Koonan also recalled the important relationship between women lawyers and legal workers. In her case, Joan Andersson projected a sense of possibility for legal workers, "You can learn this crap; we can do this together," Andersson told Koonan. She believes the support and connection with women lawyers gave legal workers the audacity to say, "I can do anything you can do."[137]

The struggle also required dramatic episodes to assert women's presence and position. In the Boulder convention in 1971, as the Guild was preparing different strategies to confront the growing threat of grand jury indictments, Arthur Kinoy and Barry Litt, of the Bar Sinister, held a meeting to brainstorm about strategies. However, they had failed to invite three Guild folks who had been working on the subject: Karen Jo Koonan, Susan Jordan, and Jennie Rhine. Furiously the women's caucus came in and interrupted the gathering: "You can't have your fucking meeting… you have excluded us." As the women were standing in front of the circle of men, a newcomer from the Philadelphia chapter raised his hand and made a comment, which was not well received. Susan Jordan yelled out, "Pull in your dick and zip up your pants!" Many of the interviewees remember this as a cathartic moment. "It was empowerment," said Koonan, "all the women were [saying] 'Yeah, we can stop this shit! We have some power… We can be audacious and we can set the tone and demand that people respond to us after years of marginalization and dismissiveness.'"[138]

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and lesbian rights and movements, and support welfare rights activities. "Programs and Resolutions submitted by the Women's Caucus," 1970. BAN-AFG Box 35 Folder 3.

136 As Carol Goodman put it, "Every Perry Mason has a Della Street." Goodman in Black, *Radical Lawyers*, 258.

137 Koonan, Oral History Interview.

138 Ibid.

Both the conventions in Washington and in Boulder signaled a generational transition in the Guild. The membership had become younger, more radical, and increasingly female. The official change of the guard took place in 1973. The annual convention was held in the Armadillo World Headquarters in Austin, Texas. It had become clear to the youth that one of them had to become president of the Guild. They decided to nominate 32-year-old Jim Larson, who had become a well-known criminal lawyer in the Bay Area and had a good relationship with older law firms in San Francisco and Los Angeles.[139] While the "takeover" alienated many of the older members, one of the main activities of the new leadership was to placate the older folks and keep them in the fold, both on the national and local level.[140] One immediate reason to keep more members from leaving the organization was financial. "Not to be crass about it," Jim Larson later commented, "but they were the ones that were established in practice and were making money, so it was going to be a financial issue if it was all us poor as church mice and collectives running the thing. And one of our key strategies was going to be trying to keep as many of the old people in the fold as possible."[141]

In New York, Marty Stolar, a former member of the Law Commune, became the city chapter's president.[142] His strategy for keeping the older lawyers involved in the Guild was to hold a yearly dinner honoring the older generations. They formed a "core" group in the chapter, which functioned in a quasi-collective way and included at least two members of the older generation: Dorothy Shtob and Ralph Shapiro. The city chapter shared office space with the national office, which itself represented the culmination of this "takeover" by the New Left and the women's movement in the Guild. The first two cohorts of the National Office Collective were predominantly women and mostly recent graduates from Rutgers Law School.[143]

Other trajectories of empowerment characterized this period. While some occurred within the Guild, others took place outside of it. In late 1968 twelve Black lawyers got together in Capahosic, Virginia. There were activist lawyers of all ages with the common goal of creating an organization "in service of the community."[144] In 1969, they held another meeting in Chicago, along with representatives of the Black American Law Student Association (BALSA) and created the National Conference of Black Lawyers (NCBL). The constitution of NCBL declared that the organization was formed to: "(1) Seek out and eradicate the roots and causes of racism. (2) Vigorously defend Black people from those who consciously or otherwise deny them basic human and legal rights. (3) Assist the Black community in eliminating the root causes of poverty and

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[139] There was an attempt to get the elder's blessing. "I'm not sure if I was personally involved in that, but Dan [Lund] and others made sure that they checked it out with certain key figures in the older generation and got their assent to go along with it. So it sailed through." Larson, Oral History Interview.

[140] "It was like a takeover. I think that's how a lot of the older members who had devoted many years of their lives to building this thing probably felt, somewhat under attack. But we had the numbers; we just flooded into the organization. Not only us but legal workers, which was an innovation of young people, that we insisted that non-professional legal workers have equal status." Siegel, Oral History Interview.

[141] Larson, Oral History Interview.

[142] Doron Weinberg reached out to him and said, "Look, it's our time; we got to take over the lawyers Guild." Stolar, Oral History Interview.

[143] Ellen Yaroshefsky, who had just graduated from Rutgers remembers that the "National Office was really women lib — women dominated and sexism was a high priority. It was white women and white men arguing with each other about acceptance and that was the dynamic." Yaroshefsky, Oral History Interview.

[144] They also came from different organizations and ideological backgrounds. Among the first to attend were Derrick Bell, a law professor at Harvard; Samuel Jackson, manager of community development section of HUD; Floyd McKissick, former national director of CORE; A. J. Cooper, then president of BALSA; Frank Reeves, Howard Law School; and Robert Carter, who had just resigned from the NAACP-LDF in New York. James, *The People's Lawyers*, 272–73.

powerlessness. (4) Make use of legal tools and legal discipline for the advancement of economic, political, educational, and social institutions for Black people."[145]

Other organizations were formed in the late Sixties. Also in 1969, La Raza National Law Student Association was formed to recruit more Latinos into law schools and provide a progressive network. By the early Seventies it became La Raza Legal Alliance, a more radical counterpart to the also newly formed Mexican American Legal Defense and Education Fund (MALDEF).[146] Organizations like the former, which emulated the NAACP-LDF emerged in different communities — for example the Puerto Rican-LDEF and the Native American Rights Fund, which was a legal services program that branched out of the CRLA.[147] In 1972 Asian American law students and lawyers in New York formed the Asian American Legal Defense Fund. Some of the students who wanted to incorporate a more radical perspective into the organization invited Marty Stolar, then president of the city chapter, to be one of the founding board members. Although these organizations were created outside of the Guild, Guild members and offices established an immediate working relationship with these organizations. This, however, did not guarantee that the relationships would be without problems and critiques.[148]

The predominantly white racial composition of the Guild was becoming increasingly noticeable and problematic. Although the fear of red-baiting, which kept many Black lawyers at bay from the Guild, continued, the rising number of Black lawyers coming out of law schools was not reflected in an increase in Guild membership. As noted earlier, the collective model wasn't an attractive or viable option for most Black and Latino lawyers. There were, however, a few exceptions. For instance, Stewart Kowh consulted with Earle Tockman and the Bar Sinister before the formation of the Asian Law Caucus — a legal collective formed in 1972 in Los Angeles.[149] Also, many Latino lawyers who founded La Raza Legal Alliance had interned with the San Francisco Community Law Office.[150] Still, most of the legal collectives in this period remained predominantly white, as did the Guild.

Bill Goodman, the son of Ernest Goodman, spoke on the subject in the Midwest Regional meeting in Cleveland in January of 1973. Goodman lamented that the Guild's hope and possibility during the civil rights movement of truly becoming a multi-racial organization evaporated in the early Seventies. One important reason, he argued, was that the Guild had moved away from civil rights litigation and issues that concerned the Black community in general, and the Black legal profession in particular. For instance, he lamented that there hadn't been a single discussion at any regional or national Guild meetings on busing. Historically, the Detroit chapter had been the most integrated chapter and it had a close relationship with the local Black organization — the Wolverine Bar Association. Goodman believes this was the result of the conscious effort of the local Guild to focus on "bread and butter" issues of the legal profession and help lawyers develop professional skills, especially around the area of personal injury law.[151]

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[145] Ibid, 274.

[146] "La Raza Legal Alliance is a national organization of politically conscious and active Latino legal workers. The Alliance stands by the principle that we must use our legal skills for the purpose of fighting for the democratic rights of Latino people who suffer socio-economic oppression due to class differences caused by the economic system under which we live." La Raza Legal Alliance, Our Principles, History, and Future Objectives, in TAM-NLG Box 81 Folder 17.

[147] For more on the latter see James, *The People's Lawyers*, 352-359.

[148] It should also be noted that all these organizations came out of law student groups between 1968 and 1972.

[149] Later it became the Asian Americans Advancing Justice.

[150] Tockman and Harris, Oral History Interviews.

[151] Bill Goodman, "National Lawyers Guild as an All-White Organization," 30 *Guild Practitioner*, 74 (1973).

However, by the time Goodman gave his speech, the Detroit chapter was "almost all-white." Furthermore, Goodman argued that "so called lifestylism, youth culturalism, and cultural revolutionalism" had created a "cultural chauvinism" in the Guild, and members who are openly middle class, particularly older members, were excluded and disdained at meetings. Although he recognized the importance of invigorating and strengthening organizations like the National Bar Association and the National Conference of Black Lawyers, he still questioned why Black radical lawyers had to develop their own organization independently from the Guild? And how can the Guild not appear to be a racist organization?

The answer, for some of the younger members, was in the groundwork laid out by Stokely Carmichael and SNCC. In the same way that women told men to meet and caucus amongst themselves, young white radicals in the Guild saw the formation of BALSA and NCBL as a "SNCC moment," where they should step aside and work in solidarity with the organizations that were developing organically in the communities. When describing the dynamics around sexism in the Guild, Koonan mentioned how at first they told the men to step aside, "then it was, 'You guys need to meet.' We took SNCC's approach: 'White people need to organize white people.' We followed in their footsteps, 'You men have to deal with each other.'" In the 1971 convention the men were challenged to "talk to each other and be responsible for dealing with their own sexism and not have the women have to teach them, just like SNCC had laid that groundwork with Blacks and whites."[152] According to Martin Stolar, it's an important part of why there are still problems of diversity within the Guild:

> Because in that period in time the National Conference of Black Lawyers was saying, 'OK, we're going to do our own thing, we're not going to join with the Guild; we're going to be our own independent thing that's going to be responsible for African American development of lawyers and law students.' Parallel to the Guild, same radical notions, but independent, and so there were a lot of the younger Black lawyers went to the NCBL, even though they had good politics that were consistent with what the Guild did. And so the Guild became essentially a very white organization, not because of racism in the Guild, but because that was the desire of the rather diverse groups of other ethnic groups to create and establish their own separate identities.[153]

Many would also point out that prominent members of NCBL, Haywood Burns, James Herndon, Lennox Hinds, and later on Gerald Horne, were either members or "fellow travelers" of the Guild. In addition, the Guild developed several joint projects with NCBL and La Raza Legal Alliance. In 1974, the National Executive Committee of the Guild worried that the new generation of law students and young lawyers were pushing the Guild further to the left than most "third world legal organizations" in the United States. While the Guild agreed that they should help push those organizations further to the left, they needed to focus on concrete ideas to build coalitions and help build skills and resources.[154] The internal and external critiques of the Guild's racial composition and dynamics continued to grow. The issue was raised many times again in the late Seventies and Eighties.

Political fragmentation was also starting to eat away at the Guild. Initially the New Left was mostly non-sectarian and united in its broad critique of the Soviet-oriented CP-USA. Instead, an increasingly influential New Left faction looked toward Maoism. In the early Seventies the splits

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[152] Koonan, Oral History Interview.

[153] Stolar, Oral History Interview.

[154] Report on NEC, October, 1974. TAM-NLG Box 57 Folder 22.

within SDS and the Black Panthers, as well as the rise of Détente exacerbated the nuanced ideological positions of the different factions, as they began to introduce motions and resolutions in Guild debates in line with their respective "pre-party" organizations. The first frictions revolved around the radicalization of and increasing use of violence by some groups. There was growing criticism of Weatherman in particular, especially after the townhouse explosion in 1970. Still, the young radicals still found wide support from lawyers in New York, San Francisco, and Chicago.

However, support for violent actions waned abated significantly three years later. In 1973, the Symbionese Liberation Army (SLA) murdered Marcus Foster, the African American school superintendent in Oakland. Debates in the Guild, especially in the Bay Area, centered on whether they should defend all groups that were fighting against "the system," or if the politics and tactics should be scrutinized. When and what type of violence is justified? Some lawyers related to the Guild ended up defending some of the SLA members, but there was a general rejection from most quarters of the Guild and the legal profession.[155] Although these ideological factions uneasily co-existed within the Guild, there were signs that confirmed the prediction of the older folks that the Guild was going to "consume itself in militant fury."[156] In the mid-to-late Seventies, issues of international solidarity, identity politics, and revolutionary subjectivity threatened the Guild's capacity to sustain itself as a "Popular Front" organization, open to various types of political ideologies.

The national executive committee carefully laid out the agenda for the 1974 annual convention. Although the practical discussions continued to be focused on sustaining the legal work around Attica and Wounded Knee, the larger political discussion turned towards the Guild's capacity to engage in the struggle for the "four antis": anti-racism, anti-sexism, anti-capitalism, and anti-imperialism. On the night of August 8th, the debate in the plenary was interrupted and the attendees flocked to the nearest bar in Dinkytown, Minneapolis, to watch Nixon's resignation speech. Shortly after, Joan Andersson gave the keynote speech. While the resignation of Nixon and the end of the Vietnam War were turning points, "the ruling class did not resign tonight," Andersson said. Thus, the task of the Left was to sink deeper into all potentially progressive sectors of "our people," especially workers, and work on demystifying and stripping away the social differences used to divide them and use their economic common interest to bring them together. The left also needed to develop an internationalist perspective and lead the fight against fascism, abroad and at home. The role of the Guild, in particular, should be to examine the role of the law and develop work that encompasses different struggles so that programs and projects aren't solely focused on racism or imperialism. Moreover, her generation had to examine its own trajectory and recognize that their earlier attitude of anti-elitism and anti-professionalism began to downgrade the importance of their skills and role. Although laws should not be considered sacrosanct, they did have "incredible effects" on the people they served. Thus, the Guild needed to sharpen its skills in order to better serve the people.

The button the youth used to wear, a big "BULLSHIT!" written across a scale of justice, reflected that attitude, along with a regional chauvinism. Andersson concluded,

> Only people in the cities think that bullshit is something that isn't worthwhile. People from the country know that shit is used to fertilize and help things grow large and strong. So if law is bullshit, I would suggest that our job is to shovel that shit, to move it from one place to

[155] Donald A. Jelinek, *No Lawyers for the SLA*, 1974.

[156] Dan Lund quoted in Ginger and Tobin, *The National Lawyers Guild*, 304.

another, and to help fertilize the People's Movement so they can grow large and strong enough to take power in this country.[157]

This was an extraordinary period of intense activity. The conservative shift in the Supreme Court and federal courts supplied the Guild with continuous challenges. Despite the end of the Vietnam War, which had driven many social movement organizations, the ongoing measures of COINTELPRO and grand jury indictments kept many of these organizations on the defensive. Despite the significant legal victories some of these cases brought, there was growing pessimism regarding the possibility of redress coming from the courts, especially with the conservative government of Richard Nixon. This didn't mean that there was a dismissal of the courts. The successful litigation emboldened lawyers to look for innovative approaches, rather than relying on remedies from the Supreme Court and the district courts. Still, even as the Nixon presidency crumbled under the Watergate investigation, the rising rejection of the electoral and legal systems by radical sectors also exacerbated the tensions between the old and young lawyers regarding the increasingly blurry lines that defined the traditional position of lawyer and client, and the definitions of lawyer/organizer/radical.

A generational sea change had hit the legal community. The new politics and polemics that were washed up by the strong currents of the period, however, muddied the waters for the Guild and for progressive social movements in an increasingly conservative arena. The enduring tensions around violence, identity politics, and the latest divisive issue of international solidarity began to challenge the Guild's position as a unique space for radical coalitions and strategies. Nonetheless, lawyers in the Guild, NCBL, La Raza and other organizations had to figure out how to continue the legal work despite these theoretical and ideological undercurrents.

[157] Keynote Address, Joan Andersson, 1974, TAM-NLG Box 66 Folder 7.

Chapter Four:
Critique and Crisis: Human Rights, Immigration, and Resisting Repression, 1975-1980s

In the immediate aftermath of Watergate and the resignation of Richard Nixon, there was a general atmosphere of despair and frustration. Faint glimmers of hope and possibility faded quickly with the continuation of repression of dissidents and the conservative shift in the federal courts under the presidency of Gerald Ford. "The movement" itself was severely fragmented in the aftermath of the Vietnam War. The violent actions of the Black Liberation Army, the Weather Underground, the Symbionese Liberation Army, and the Jonestown massacre in Guyana, discouraged many people from the "radical left." As one lawyer commented on why he moved away from the Guild: "I started saying, 'What are people doing? What's happening in the name of leftist politics?'... It just depressed me."[1] This period is usually seen as one of deep divisions and extremist violence from isolated, small groups that brought on the final decline of the radical left in the United States, or at least sent it further to the margins of the political spectrum.[2] However, while there was a rearrangement of radical leftist organizations and ideologies, many lawyers sustained a focus on civil liberties and economic issues, and the legal work regarding ongoing and new struggles continued.

This chapter examines the years between 1975 and 1980, which marked a period of criticisms and crises for the Guild. It was also a period of reflection and reinvigoration. While the Left fragmented into different distinctive groups, social struggles were taken on by different grassroots organizations often lacking an organizational structure — at times deliberately — and some organizations formed new coalitions and networks while others collapsed. The Guild also experiencing an operational reconfiguration. More than in the previous periods, the debates and conflicts within the Guild spread throughout the different regional conferences, committee workshops, and executive board meetings, lessening the climactic culmination of the conventions. Thus, the annual conventions will be de-emphasized, and the focus will be on specific issues and struggles and how the lawyers, chapters, and the Guild itself addressed them. In addition to the continuation of previous legal work, the incorporation of new litigation arenas and political positions kept the organization in a constant state of action. New forms of creative litigation replaced some of the innovative strategies and tactics of the Civil Rights era which became ineffective or unavailable. In addition areas of the law that had traditionally been considered separate were brought together in a renewed effort to frame a broader, interconnected struggle for social justice.

The Fight at Home and Abroad: The NLG and International Solidarity

[1] Unnamed lawyer, Oral History Interview, Chicago, 15 September 2015.

[2] Todd Gitlin, *The Sixties: Years of Hope, Days of Rage* (New York, N.Y: Bantam Books, 1993); Bryan Burrough, *Days of Rage: America's Radical Underground, the FBI, and the Forgotten Age of Revolutionary Violence* (New York, Penguin, 2015); Dan Berger, *The Hidden 1970s: Histories of Radicalism* (New Brunswick, N.J.: Rutgers University Press, 2010); John P Diggins, *The American Left in the Twentieth Century* (New York: Harcourt Brace Jovanovich, 1973); Milton Cantor, *The Divided Left: American Radicalism, 1900-1975* (New York: Hill and Wang, 1978). In Diggins' updated edition, *The Rise and Fall of the American Left* (New York: W.W. Norton) he concedes that there was a continuation of Sixties radicalism in the Eighties, however it mostly comprised of "tenured radicals" in academia.

While there was an ideological shift in this period, for many of the radical lawyers and law firms a lot of the work carried over from the heady period of the early Seventies. The Wounded Knee leadership trials from 1974 had ended after eight and a half months in 1975, when the judge dismissed the charges due to a long list of government misconduct.[3] New York lawyers filed a civil lawsuit on behalf of the prisoners in 1974, two years before the governor of New York issued a general amnesty. After various delays from the judge and the prosecution, the civil case wouldn't be resolved until the year 2000. Continuing the tradition of defending revolutionary groups and developing a political/technical defense, Guild lawyers took on the Black Liberation Army trials in New York. They relied heavily on the use of inadmissible evidence, as well as coerced and tampered testimonies from witnesses by the police and the FBI.[4] Throughout the country, the Guild, the Center for Constitutional Rights, and the National Jury Project engaged the numerous grand juries set up to subpoena activists. In Chicago 1979, the Seventh Circuit court reversed a court decision in favor of the People's Law Office (PLO) civil lawsuit, and found that there was substantial evidence of a conspiracy among the Illinois State attorney Edward Hanrahan, the FBI, and the Chicago police in the murder of Fred Hampton.[5] The PLO also advocated for prisoner's rights in Pontiac and Marion penitentiaries, and took on several cases emerging from the Puerto Rican nationalist movement. It was actually through their prison and grand jury work that the lawyers began to connect to Puerto Rican organizations.[6]

Many radical lawyers were deeply involved in the prisoners' rights movement. However, by the mid- to late- Seventies there were hostile debates and sharp divisions on the issue, resulting in projects splitting up and coalitions breaking down.[7] Still, the membership of jailhouse lawyers grew in the Guild, as well as the incorporation of prison chapters.[8] *The Midnight Special,* a prison movement newsletter started by a group of Guild members in the New York chapter in 1971, was both a literary and a legal resource for prisoners. It contained articles and poems written by prisoners, as well as legal communications from outside (and jailhouse) lawyers. In 1975, bitter debates intensified over the publication due to the lack of editorial oversight from the Guild. At first they put in a disclaimer, "The views expressed in this paper do not necessarily represent those of the National

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[3] John William Sayer, *Ghost Dancing the Law: The Wounded Knee Trials* (Cambridge: Harvard University Press, 2001); William M. Kunstler and Sheila Isenberg, *My Life as a Radical Lawyer* (Secaucus: Carol Pub. Group, 1994).

[4] Evelyn Williams, *Inadmissible Evidence: The Story of the African-American Trial Lawyer Who Defended the Black Liberation Army* (Chicago: Lawrence Hill Books, 1993).

[5] In 1983, there was a combined settlement from the FBI, city of Chicago and Cook County of 1.85 million dollars to Hampton's mother. For more on the trial see Jeffrey Haas, *The Assassination of Fred Hampton: How the FBI and the Chicago Police Murdered a Black Panther* (Chicago: Chicago Review Press, 2009).

[6] Michael Deutsch, Oral History Interview.

[7] For an overview of the splits within the legal Left around the prison movement see Lise A Pearlman, *Call Me Phaedra: The Life and Times of Movement Lawyer Fay Stender* (Berkeley: Regent Press, 2018); Eric Cummins, *The Rise and Fall of California's Radical Prison Movement*, (Stanford: Stanford University Press, 1994). For a more sympathetic and nuanced perspective on the different iterations of the prison movement, see Dan Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era* (Chapel Hill: University of North Carolina Press, 2016)

[8] The National Office received constant letters from prisoners, requesting legal assistance, free subscriptions to *Guild Notes* and the *Midnight Special* or membership applications from jailhouse lawyers. Earl Mink wrote to ask for assistance from the "free world" to form a Guild chapter in Jackson prison, Michigan, and mentioned his friends at Marquette will also send a request for help. Earl F. Mink to Diana Hicks, 5 November 1975, TAM-NLG Box 65a Folder 11. By 1983 there were around 400 jailhouse lawyers affiliated with the Guild. NEC Meeting Minutes, 19 February 1983, New York City. TAM-NLG Box 57 Folder 5.

Lawyers Guild," and then removed the name entirely from the masthead. Regardless, the newsletter continued well into the late Seventies.[9]

In addition to the persistent criminal defense of political activists and organizations, there was a revival of other areas within the Guild. The Labor Committee was revitalized in the mid Seventies. Many in the incoming cohorts, however, focused on the representation of emerging rank-and-file caucuses within the trade unions.[10] At this point, the labor movement in the United States was besieged. Between automation, globalization, and stagflation, U.S. workers lost many of the economic and social gains from the New Deal and postwar eras.[11] Additionally, due to a combination of alienation, union bureaucratization, the rejection of identity politics, and the expansion of individual civil rights, the racial dynamics within unions worsened and there was an increasing rejection of radical politics.[12] Nevertheless, in the early and mid Seventies there was a surge of progressive challenges to the established union politics: Miners for Democracy helped kick out corrupt union boss, Tony Boyle, from the United Mine Workers; Ed Sadlowski mounted a considerable progressive movement within the steelworkers union; in Detroit several dissident rank-and-file caucuses of Black workers formed within the UAW; AFSCME locals in New York were also radicalized; and the Hotel Employees and Restaurant Employees became one of the most progressive unions in the Bay Area.[13] Young Guild lawyers and collectives joined these efforts by filing fair representation lawsuits against union leadership, sending observers to union elections, and supporting the formation of insurgent caucuses.

Most of the law collectives took up rank-and-file cases and sued the union leadership. For instance, The Bar Sinister in the early Seventies brought a case against the International Longshore and Warehouse Workers union. At the time the marine clerks had two lists: list A, which was white, and list B, which was Black. The B list couldn't vote but they had to pay dues to the union, in addition to having fewer chances of getting hired paid jobs. They brought race discrimination suit. They union settled just as the young lawyers were getting ready to depose the long time president of the union, Harry Bridges. "And we're just out of law school!" remembered one Bar Sinister, "We're like 'Oh, my God! How are we going to do this?' But luckily, they realized what they were doing was wrong and they settled with us and that changed."[14]

This division among labor lawyers wasn't strictly generational. Some of the traditional labor firms, such as the Ben Margolis firm in Los Angeles or Allan Brotksy's office in San Francisco which were on retainer for some of the big unions, were rejuvenated by a new generation of lawyers. David Weintraub, who returned to the Bay Area after law school at Northeastern and working in the Dorchester Collective, noted, "there were younger lawyers who also accepted that labor unions should not be sued ever by anybody."[15] Several young lawyers, including Weintraub, joined some of the traditional labor firms; the Victor Van Bourg firm in San Francisco hired Weintraub. These firms

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[9] There are issues of *The Midnight Special* in both the Tamiment and the Bancroft NLG collections. For more on the magazine's role in the prison movement, see Dan Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era* (Chapel Hill, N.C.: University of North Carolina Press, 2016).

[10] Ann Fagan Ginger and Eugene M. Tobin, eds., *The National Lawyers Guild: From Roosevelt through Reagan* (Philadelphia: Temple University Press, 1988), 324.

[11] Jefferson Cowie, *Stayin' Alive: The 1970s and the Last Days of the Working Class* (New York: New Press, 2012); Judith Stein, *Pivotal Decade: How the United States Traded Factories for Finance in the Seventies* (New Haven: Yale University Press, 2011).

[12] Nelson Lichtenstein, *State of the Union: A Century of American Labor* (Princeton.: Princeton University Press, 2003); Cowie, *Stayin' Alive.*

[13] Matt Ross, Oral History Interview; Earle Tockman, Oral History Interview; Dan Meyers Oral History Interview.

[14] Joan Andersson, Oral History Interview.

[15] David Weintraub, Interview by author, Oakland, 17 November 2016.

had been defending unions at least since the Forties. As young and New Left lawyers joined the field, different ideologies and approaches clashed within the Labor Committee of the Guild.

An area where the Guild experienced considerable growth was its involvement with international struggles. Since its formation the Guild included foreign events and conflicts into its debates. From the Spanish Civil War to the boycott against apartheid in South Africa and the U.S. invasion of Grenada, Guild conventions included resolutions denouncing government abuses or supporting popular resistance. Although the Guild was often accused of being a front for the Communist Party, there were critical positions within the organization on the Soviet Union, especially regarding its invasions of Hungary and Czechoslovakia. These debates often took on both an ideological and generational perspective, creating an additional point of contention between the Old Left and the New Left. In 1969, William Standard of New York — a partner in the law firm Rabinowitz, Boudin & Standard — and Ernest Goodman argued over whether they should support or reject the Soviet occupation of Czechoslovakia. Standard defended the occupation under the pretense that West Germany was inevitably going to invade Czechoslovakia. Goodman criticized this position, and claimed that for leftists like Standard, intervention seemed to be condoned for communist countries but not capitalist countries. Standard then suggested that to take a position critical of the Soviet Union would be altogether inconsistent with the views of the new members the Guild. "I assume," answered Goodman, "you refer to the new law students and young lawyers members of the Guild who are part of the 'movement', which seeks radical changes in our society." "My impression is the opposite," he concluded, "I believe that most of the American young radicals of today have no ideological ties to the Soviet Union. If anything, I have noted more interest in Cuba and China as sources of inspiration."[16] Among the older members, there was an apparent period of understanding and confronting the ideological shift of allegiance from the New Left.

Finally, the Guild withdrew its membership from the International Association of Democratic Lawyers (IADL) when the organization expelled the Yugoslav lawyers association in 1949 — as a result of Josef Broz Tito's estrangement with the Soviet Union.[17] Some individual lawyers kept a connection with the IADL and after a series of unofficial communications between the two organizations the Guild rejoined the IADL in 1971.[18]

Independently of its relationship with the IADL, the Guild gained international recognition and increased its presence abroad. Lawyers received invitations to visit Cuba in the early Seventies. Some had traveled to the island previously with the Venceremos Brigades.[19] In 1973, the North Vietnamese, aware of the Guild's anti-war efforts, also sent out an invitation. James Larson, the young Guild president, arrived in Hanoi with two other lawyers. "They met us at the plane with flowers and treated us like foreign dignitaries," Larson recalled.[20] The Guild also denounced the tribunals in Chile, following Augusto Pinochet's military coup. Larson sent a letter to the Chilean ambassador as well as to Chilean judicial ministers denouncing the proceedings against Michelle

[16] Ernest Goodman to William Standard, New York, 24 February 1969, TAM-NLG Box 45, Folder 11.

[17] Mentioned in Chapter 1, the IADL was established in 1949 and based in France. It served as a platform and network for legal organizations, as well as individual lawyers, ranging from progressive liberals to communist associations close to the COMINTERN.

[18] Report of NLG committee dealing with the question of affiliation of the Guild with the IADL, TAM-NLG Box 45 Folder 11.

[19] Karen Jo Koonan and Joan Andersson, Oral History Interviews.

[20] OH James Larson. In 1979 a Guild delegation travelled to China. Emily Jane Goodman, Interview by author, New York, 2 December 2015.

Bachelet and other detainees, and Guild lawyers participated in a delegation to observe the trials.[21] These actions marked the beginning of a new role for the Guild: a more active involvement in matters of international solidarity and the formation of official delegations to issue on the ground reports — both for internal education and for submission to the U.N. and other intergovernmental agencies.[22]

The most contentious international issue in the Guild was the Israel-Palestine conflict. The trajectory of this particular debate in the Guild illustrates the changing perspectives of the Left towards Israel. During the war in 1948, the Guild supported the creation of the state of Israel and demanded the United States lift the arms embargo.[23] During the 1967 Six Day War, when the Guild was reaching its mobilizing zenith, the Vietnam war and the Black Liberation movement dominated the internal debates. Abdeen Jabara, a Lebanese-American lawyer from Detroit, first submitted a resolution condemning Israel's human rights abuses in the occupied territories in 1969. Because Guild members knew little on the subject, he was told to write an article for the *Guild Practitioner*. It wasn't until the National Executive Board meeting in 1975 that they determined to "study the many complex historical, political, and social issues flowing from the Palestinian-Israeli conflict."[24] The chapters held teach-ins and educational programs. Meanwhile, the Guild was the only member organization of the 1975 IADL congress to abstain from a resolution supporting the PLO's tactics and denouncing the Israeli occupation.[25] Finally, the Guild decided to send a delegation to Israel to further investigate the matter.

The ten-member delegation left for the Middle East in the spring of 1977. They visited Lebanon, Jordan, Syria, Israel, the West Bank and Gaza, where they met with Israeli activists and lawyers, Palestinian Liberation Organization representatives, former prisoners, and other Palestinian nationalists. "We ended up in Israel meeting with left wing Israeli attorneys," recalled Matt Ross, one of the delegation members, "We met with our counterparts, left wing progressive attorneys. To a certain extent we did talk with some representatives of the state, as I recall, with the left party that was then in a coalition government. We did seek out attorneys over there who were kindred spirits."[26] They returned just in time for the 1977 convention in Seattle, where they presented their findings in a majority report. "The delegation concludes," it read, "that many of the allegations commonly made are valid… Repression is a fact of life in an occupation; Israel's occupation is no different."[27] The report condemned the explicit violations of the provisions of the Fourth Geneva Convention and listed the economic, social, political, and territorial aspects of the human rights violations. "This report was the first thing in English—in the United States," Jabara claimed, "about Israeli practices following '67. It was a major contribution."[28]

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21 Larson to Chilean Ministers, 24 June 1974. TAM-NLG Box 72 Folder 21. "US Lawyers to Monitor Chile Trials," *New York Post*, 13 April 1974; the delegation included Martin Garbus of the ACLU, Ira Lowe, Lawyers Committee on Chile; and Paul O'Dwyer, Leonard Boudin, and Victor Rabinowitz of the NLG.

22 The Travel Subcommittee of the Guild was established in 1974, and was mostly in charge of selecting people to go on these delegations. *Guild Notes*, March 1976.

23 This resolution is discussed in more detail in the first chapter.

24 Abdeen Jabara, "Israel and Human Rights," 29 *Guild Practitioner* 25 (1970); Abdeen Jabara, "The Guild in Palestine: A History," 63 *Guild Practitioner* 193 (2006).

25 Joan Andersson, Oral History Interview; Joan Andersson, "IADL Congress Meets in Algiers," *Guild Notes*, 4:3, May 1975.

26 Matt Ross, Oral History Interview.

27 *Treatment of Palestinians in Israeli-Occupied West Bank and Gaza*, Middle East Subcommittee of the NLG (New York: National Lawyers Guild), 1978.

28 Abdeen Jabara, Interview by author, New York, 18 December 2015.

Before the Guild could discuss the report and debate its official position, there was an ad in the *New York Times* titled "Palestinians Have Human Rights Too." The Arab Information Center placed it, but the optics of the ad made it seem as if the Guild was also involved. The ad contained excerpts of the report and a description of the NLG, while the Arab Information Center's name was in a smaller font in the lower left corner.[29] Henry di Suvero, president of the Guild, wrote to the *New York Times* and the *Washington Post* clarifying that the Arab Information Center, "a registered agent of the League of Arab States," was responsible for the ad and the Guild had no part in its writing.[30]

Reaction outside of the Guild came quickly. Leonard Fein, editor of *Moment*, a Boston-based Jewish magazine, responded with another ad in the *New York Times*: "The National Lawyers Guild v. the State of Israel."[31] Alan Dershowitz, a fierce advocate for Israel, corresponded with John Quigley, a member of the delegation and head of the Middle East Subcommittee, challenging the Guild's focus on Israel and not on other countries like the Soviet Union. Quigley explained, "Our tendency has been to work on human rights matters involving countries financially supported by or politically close to the United States, since as a U.S. organization we feel we can bring more pressure to bear on the U.S. government than on foreign governments." Unsatisfied, Dershowitz responded that the distinction between countries supported by or politically close to U.S. "seems to me a convenient but not entirely satisfactory way of distinguishing between leftist countries which you are unwilling to criticize and others which you are anxious to criticize."[32]

Later, William F. Buckley Jr., the famed conservative commentator, took on the issue and denounced the Guild as a "red front" as well as a front for the Palestinian Liberation Organization.[33] The newly elected Guild president, Paul Harris, prompted his colleagues on the importance of creating a new committee on red-baiting. Since Dershowitz and Buckley were reviving the "time-honored weapon," it was important to pool experiences and resources to respond to this new wave of attacks around the issue of Israel and anti-Semitism.[34]

When the report of the delegation reached the convention floor, the debate roiled beyond generational lines. While many of the older members of the Guild, especially those who were around for the resolutions in favor of the formation of Israel in the late Forties, considered themselves "labor Zionists," there were also younger lawyers who identified with and defended the position of Israel.[35] After a long and heated debate, Martin Popper, the old Communist lawyer from D.C., stepped in to help mediate. They decided to focus first on passing a political resolution, which recognized the PLO as the representative of the Palestinian people and called for the mutual recognition between the Palestinian right to self-determination and the right of the state of Israel to exist — basically support a two-state solution based on the 1967 borders.[36] The following year they passed another mediated resolution on human rights, condemning the Israeli actions in the occupied territories.[37] The Israel-Palestine debate in the Guild has had several subsequent waves in the

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29 "Palestinians Have Human Rights Too," *New York Times*, 6 September 1977.

30 Henry di Suvero, President NLG, to the Editor of The Washington Post, 12 Sept 1977. TAM-NLG Box 260 Folder 4.

31 "The National Lawyers Guild v. the State of Israel," *New York Times*, 12 September 1977.

32 John Quigley to Alan Dershowitz, 10 April 1978; Alan Dershowitz to Quigley, 27 April 1978, TAM-NLG Box 87 Folder 7.

33 William Buckley, "Why Not Call a Red Front a Front?" *The New York Post*, 23 May 1978.

34 Paul Harris to the Guild membership, 19 June 1978. TAM-NLG Box 87 Folder 7.

35 Matt Ross, Oral History Interview.

36 1977 Guild Resolution on the Middle East. Quoted in Ginger & Tobin, *The National Lawyers Guild.*

37 The resolution was only passed after they removed the word "systematic" when describing the torture of Palestinian prisoners. Abdeen Jabara, Oral History Interview.

following decades, each one with its own set of nuanced politics and reactions, but the position of the Guild as an early critic of the state of Israel was firmly established.

Howard Dickstein, a lawyer from Oakland and the sole dissenting member of the delegation, wrote a minority report. Dissatisfied with the "factual inaccuracies" and the lack of "vital corroboration," he returned to Israel in early 1978 to conduct more interviews on the Israeli side. He accused most of the delegation of being "anti-Zionist" even before the trip; he maintained that the PLO was the primary sponsor; and concluded that the delegation's findings failed to understand the "complex problem."[38] This report was taken up by pro-Israel publications and used to denounce the "Majority Report" and accuse the delegation of being PLO "propaganda dupes" while pointing out alleged growing anti-Semitism in the Guild. A special report in *Moment* magazine quoted an observer of the Guild debates: "You had a situation where a bunch of third-world types wanted to insure that the Jews in the Guild — and the Jews are almost certainly a majority—would be forced to eat crow, to choose sides… Endorsing the PLO has become a litmus test for Jewish radicals."[39] "The Guild," the report concluded, "particularly, those Jewish members who battled for 'moderation' and accepted a resolution which implies the death of Israel in the name of a progressive consensus — cannot be forgiven."[40] To this day, questions over Zionism and Palestinian solidarity continue to be a cause of tension and debate within the left-wing Jewish community and the Guild.

On one hand, this added arena of struggle brought the Guild controversy and condemnation from outside and within. On the other hand, it also opened up new possibilities for networks and coalitions with human rights groups and globally-minded political activists. Nonetheless, the lawyers and legal workers carried on with their specific legal tasks, and the Guild continued to expand into its new international role by building networks, sending delegations, filing reports, and issuing press statements. The integration of international law connected the Guild to a global struggle for human rights, which affected the focus on domestic issues — some would argue positively, by broadening the legal arsenal, while others argued that taking official positions on controversial and complicated international issues discouraged potential members and alliances.

The Death of the Radical Left? The Fight for Inclusion and Pluralism within the NLG

As the different Marxist-Leninist groups advanced to their "party formation" periods, they began pushing particular ideological lines and vying for leadership positions in unions and organizations to influence their political direction.[41] In the Guild, there was a broad assortment of these political groups: Progressive Labor, the Revolutionary Union (which later became the Revolutionary Communist Party), the Communist Party-Marxist Leninist (also known as the October League), the Socialist Workers Party, the Communist Workers Party, and not the remnants of the CP-USA. There was even an "Albanian" group which advocated for the alternative position of the Albanian president, Enver Hoxhia. The main struggle was between New Left groups, more

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[38] "Minority Report of the Middle East Delegation of the NLG on Treatment of Palestinians in Israeli Occupied Territories," Prepared and distributed by Howard Dickstein, delegation member, and chairman of the International Law Sub-Committee of the NLG. TAM-NLG Box 261 Folder 5.

[39] "The Malpractice of the NLG: A Special Report," *Moment Magazine*, October 1977.

[40] Others picked up on this report, including Congressional Hearings in 1979; "National Lawyers Guild members who Criticized Israel Admit Visiting Lebanon at the Invitation of the PLO," *Jewish Telegraphic Agency*, 1 December 1978; Harvey Klehr, *Far Left of Center: The American Radical Left Today* (New Brunswick, N.J: Transaction, 1991).

[41] For more on the New Left and sectarianism see Max Elbaum, *Revolution in the Air : Sixties Radicals Turn to Lenin, Mao and Che* (New York: Verso, 2002); Paul Buhle, *Marxism in the United States: A History of the American Left*, 3rd ed (New York: Verso, 2013); John Campbell McMillian and Paul Buhle, eds., *The New Left Revisited* (Philadelphia, PA: Temple University Press, 2003).

closely identified with Maoism, who sought to challenge the "Revisionist" politics of the CP-USA and its support for the Soviet Union. In 1977, the Anti-Imperialist Caucus within the Guild was organized around the slogans of "Oppose the two superpowers" and "Oppose the CP-USA."[42] Many of the older folks distanced themselves, or at least from the meetings, during this period.[43] Others hunkered down and withstood endless debates, position papers, and Criticism/Self-Criticism sessions on the theoretical minutiae of whether the working class, "third world" communities, the youth, or prisoners were the true vanguard of the revolution.

The sectarian strife naturally extended to international issues. For instance, when discussing South Africa the majority in the Guild supported the African National Congress. However, the Anti-imperialist Caucus fruitlessly challenged the position, claiming that the ANC was backed by the Soviets, and instead advocated that the Guild support the Pan Africanist Congress, a rival organization.[44]

Domestically, the role of the radical lawyer in the labor movement became a big point of contention. In the Labor Committee of the NLG there were fierce battles between the union lawyers and young radicals defending the rank-and-file caucuses. The former wanted to have an open discussion about strategies in support of labor unions, which they argued was one of the founding tenets of the NLG. David Weintraub described the committee meetings "got hot and heavy."[45] Furthermore, many New Left groups encouraged their members to not only engage with workers on the factory floor but also join them. Earle Tockman, who had left the Bar Sinister and went to the Midwest, joined the Workers Viewpoint Organization. "As Marxists, as Leninists, our view was that the working class was going to make the revolution, so people thought that everybody could experience organizing factory workers. Everybody was encouraged to go to work in factories."[46] He worked in a steel mill in Indiana and a Ford assembly line starting in 1976. Some of those who went to the factories thought they were going to be at the "vanguard" of the revolution, while others took a more educational approach. Still, they all agreed on the revolutionary potential of the industrial workforce. "I was humble enough to know that I wasn't going to lead the working class," Karen Jo Koonan reflected, "so it was more like learning and being at the point of production where the revolution was going to happen."[47]

Moving from legal work to manual labor was a backbreaking experience for some, yet others had to confront archaic social mores in the factory floors. Another former Bar Sinister member, Karen Jo Koonan, worked in several factories in southern California. She took an apprenticeship test to be a tool and die maker. She described how on the first day of the job, she looked down "and I had two big wet spots on my breasts because I was still nursing. It was the epitome of everything

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[42] William Goodman, "Officer's Column," *Guild Notes*, May 1977.

[43] One of the older folks, Victor Rabinowitz, recalled attending meetings in New York where he "witnessed bitter ideological battles between Prairie Fire, Progressive Labor, the October 10 Movement, the Weathermen, RYM II, and other sects with equally colorful names — battles over esoteric, revolutionary doctrine." Victor Rabinowitz, *Unrepentant Leftist: A Lawyer's Memoir* (Urbana: University of Illinois Press, 1996), 196.

[44] S. Talbot, "South Africa, an Anti-Imperialist Perspective," *Guild Notes*, June/July 1977. On another occasion, Doron Weinberg was invited to chair the U.S. delegation to the World Peace Council on the independence of Puerto Rico in 1975. The Council was close to the USSR. As part of the drafting committee he worked very hard so that the final resolution wasn't a defense of détente. "I got back to the Guild and I was a pariah, because I had supported a document that endorsed détente, even though the word only appeared once. Even the people who had been very good friends of mine — some of whom have returned to being good friends of mine — wouldn't talk to me." Doron Weinberg, Oral History Interview.

[45] David Weintraub, Oral History Interview.

[46] Earle Tockman, Oral History Interview.

[47] Karen Jo Koonan, Oral History Interview.

that had never happened: no woman had ever stepped foot before much less leaked milk all over the place. So they fired me on the 29th day before I became a member of the union." She then got a job on an assembly line making water heater dials.[48]

These efforts were not only grueling but also largely fruitless. "It was foolish," said Eric Poulos, a labor organizer with the Socialist Workers Party who had just gotten his law degree but continued his party's directive of going to the factories. "And it also showed a terrible misunderstanding of what was going on in American history, with factories closing and the center of American politics was moving away from the manufacturing working class." The workers were not going to trust or confide in graduate students, former professors or lawyers who left their jobs to work in minimum wage positions. "It was a ridiculous thing," Poulos reproached.[49]

Conversely, some labor organizers took the opposite approach and decided to enroll in law school. Walter Riley, a veteran civil rights worker for CORE who later worked as a labor organizer in auto plants in Detroit, always liked the "idea of the independence of a lawyer." His role model was Floyd McKissick, who would speak his mind and engage in what he wanted to do. When he realized he needed a steady job — he didn't have seniority and as auto plants closed workers like him would be the first to go — he decided to go back to what he liked to do. He enrolled in Golden State Law School.[50]

For some in the Guild it was important to keep the attention on economic relations and the working class. They believed analyses of race and gender dynamics obfuscated that objective. The October League, for instance, had the position that homosexuality was "bourgeois decadence" and that the Guild should focus on defending the traditional working class family.[51] This caused many personal and professional ruptures in law firms and Guild chapters. One law collective in New York disbanded when several members joined the October League and supported the position — including an openly gay person who renounced her sexuality. The other members left in protest. The response from the Guild leadership was slow. "We didn't see it as important as community organizations fighting against police abuse or creating poverty programs," admitted Paul Harris, a leading member in the Bay Area who became president in 1979. "It was just really low on our agenda."[52] He remembers that there were also October League people in the Guild leadership who insisted homosexuality was anti-working class. In the end, the Guild and most chapters rejected their proposals and positions, and passed a resolution in favor of gay rights. However the discussions were highly disparaging. Although some Guild lawyers were involved, for the most part the organization remained in the margins of the gay rights movement.[53]

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[48] Ibid.

[49] Eric Poulos, Oral History Interview.

[50] Walter Riley, Oral History Interview. "I gave up the idea of becoming a lawyer because I thought it was important to develop organization in the community… When I went back to school to finish my undergrad school, I went to Wayne University and I was doing community organizing at the time, and that wasn't enough to make a living… And I decided: 'Well, I'm in school. Why not just go back to whatever I like to do?' And I wanted to go to law school."

[51] Loren Siegel, Karen Jo Koonan, Paul Harris, Oral History Interviews.

[52] Paul Harris, Oral History Interview.

[53] The NLG is not mentioned in most of the historiography on LGBT rights. See Ellen Ann Andersen, *Out of the Closets and Into the Courts: Legal Opportunity Structure and Gay Rights Litigation* (Ann Arbor: University of Michigan Press, 2006); Scott Barclay, ed., *Queer Mobilizations: LGBT Activists Confront the Law* (New York: New York Univ. Press, 2009); Patricia A Cain, *Rainbow Rights: The Role of Lawyers and Courts in the Lesbian and Gay Civil Rights Movement* (Boulder, Colo.: Westview Press, 2000). The only mention I found was regarding the role Pearl Hart, the radical criminal Chicago lawyer, played defending gay Chicagoans against police violence in the 1950s and 1960s. Timothy Stewart-Winter, *Queer Clout: Chicago and the Rise of Gay Politics*, (Philadelphia: University of Pennsylvania Press, 2017). In the mid Seventies the Guild created the Gay Rights Task Force, which merged with the National Committee to Combat Women's Oppression in 1985 to form the Anti-Sexism Task Force. A year later the Guild was part of a national network against AIDS discrimination and

Litigation around issues of gender and women's issues flourished in the Seventies, however, the NLG was not at the forefront of these either. While women increasingly occupied leadership positions in the national office and in regional chapters, the internal dynamics of sexism continued to be a contentious point that was often relegated to a secondary tier. Nonetheless feminist litigation took great strides in this period, from sexual discrimination in the workplace to abortion rights. The CCR devoted a considerable amount of energy to abortion law. One of their staff attorneys, Janice Goodman, believed abortion cases drew wide attention and gave CCR more recognition than anything else.They helped changed the traditional legal argument, "it's the doctor's right to decide what's best for their patient," to the woman's right to decide what's best for her.[54]

Lawyers like Holly Maguigan and Elizabeth Schneider were instrumental in developing the legal defense of women accused of murdering their abusers. Maguigan started a law clinic at NYU for battered women.[55] Charles Garry, the infamous criminal defense lawyer of the Bay Area, took on the defense of Inez Garcia, accused of murdering her rapist in 1974. He argued that she had a temporary loss of conscious control over her behavior, a state of "impaired consciousness." The defense committee, which he claimed had been taken over by "radical feminists," were furious and convinced Garcia to assert her right to self-defense. After her conviction was overturned on appeal, Susan Jordan took over and got a "not guilty" verdict in the second trial.[56]

Despite success in certain areas, what consumed the Guild internally was the sectarian fire, which spread rapidly in 1975. The fight for the direction of the Guild intensified in the late Seventies. During the presidential tenure of Doron Weinberg and Bill Goodman, a considerable amount of energy was spent trying to negotiate and reconcile among the different groups. The conflict came to a boiling point in 1977, when Henry di Suvero took over the Guild presidency. Part of a generation of lawyers who graduated in the early and mid Sixties, di Suvero did not have the patience to deal with the dogmatic groups and their attacks against the remaining CP members within the Guild. He decided to shut them down and insulate them. However, the neutral segments in the Guild resented this aggressive position and came to their defense. Paul Harris, who took over a deeply fragmented Guild the following year, pushed the notion that they were a "legal-political organization, legal first." Both the New Left was weakened and the CP was even weaker, and people were tired of "this kind of shit." In his inaugural speech he drew from the lyrics of Sister Sledge's musical hit of the summer, "We Are Family," to make an argument for an enduring conciliation:

> We should maintain the New Left stress on leadership which is collective, not sexist and authoritarian, and which does not develop a cult of personality…. We Are Family. Look at us—we have disagreements, adolescent rebellions, trial separations, and reunions. We share our work, and we care about each other's lives. The 1980s will be a time to test our commitment, a time of pain and a time of love. As the man said, there's plenty of both in this war we are fighting. We Are Family, and we can be proud to be part of it.[57]

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had it's own publication, *The Exchange*. Bill Thom and other lawyers, founded the Lambda Legal Defense and Education Fund in 1973, and claimed to have been inspired by the structure and activities of the Puerto Rican Legal Defense Fund.

[54] Rhonda Copelon and Nancy Stearns were important figures on the issue. Albert Ruben, *The People's Lawyer: The Center for Constitutional Rights and the Fight for Social Justice, from Civil Rights to Guantánamo* (New York: Monthly Review Press, 2011), 47.

[55] Elizabeth M Schneider, *Battered Women and Feminist Lawmaking* (New Haven: Yale University Press, 2002).

[56] Charles R Garry and Art Goldberg, *Streetfighter in the Courtroom: The People's Advocate* (New York: Dutton, 1977); Susan Jordan, "Inez Garcia: Politics of Rape and Self-Defense," *Guild Notes*, March 1976.

[57] Paul Harris, "Officer's Column," *Guild Notes*, January 1980.

This conflict was a reflection of a broader fight in the U.S. Left. Many of the New Left organizations imploded in the late Sixties and early Seventies, chief among them SDS and SNCC. Older organizations, like the CP-USA and the SWP, went through tumultuous fights and splits as the New Left challenged the leadership of the Old Left. The Guild was able to survive this crisis because of the urgency and necessity of their legal work, and their ability to maintain the Guild as a pluralistic progressive forum. However it did come at a destructive cost. Once a paragon of a principled functional legal collective, the Bar Sinister became the cautionary tale of sectarian obstinacy. Since 1974 founding members began leaving as the collective moved closer to the October League and its dogmatic positions. Finally by 1976 the collective fell apart and most of the founding members eventually left Los Angeles. Personal relationships were broken, collectives and law firms shut down, and burn out forced several people to leave the Guild, the profession, and even the country.

While highly damaging, the sectarian strife was not the only threat to the Guild's survival. The 1977 Report on Israel and the resolutions that followed drew severe condemnation from within the Guild as well. Some challenged the position of only looking at "Human Rights"; others questioned the double standard of only focusing on Israel; and more than a few denounced what they considered to be anti-Semitic language and tropes.[58] In New York, some members led by Dorothy Shtob, the long-time office administrator of the Guild, pushed against the majority report and sent another delegation, which would include more interviews and interactions with people on the Israeli side. They were correspondingly frustrated when the second delegation came back with a similar report.[59] Many older established members left the Guild, especially in New York. This was not only detrimental in terms of losing membership, but many of them were established and well-to-do firms, which provided sizeable donations and contributions to the Guild. Their departure threatened the organization financially. Beyond sectarianism and generational politics, although both still play a part, the Israel-Palestine debate in the Guild dealt with the complicated relationship of Jewish identity and radical politics, which would become a defining aspect of the NLG's identity: establishing a demarcated political position regarding the state of Israel, and a commitment to actions of international solidarity.

Another criticism of the Guild that lasted since the late Sixties was its racial composition and its relationship to minority legal organizations. Lawyers in the Guild built a collaborative relationship with the National Conference of Black Lawyers (NCBL) and La Raza Legal Alliance. They attempted to provide logistical and financial support to set up chapters and local efforts; the People's College of Law in Los Angeles was a joint effort among the three organizations and others; there was an early collaborative effort with La Raza when they opened an immigration office in 1974 in Houston, Texas, and sent delegations to Central American countries (this will be discussed further below). With the NCBL there was coordination around specific cases like the defense of Attica

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[58] Morton Stavis, one of the founders of the CCR, extolled the Guild to consider other cases like the Kurds in Iraq, Copts in Egypt, chattel slavery in Saudi Arabia and Sudan, as well as explore the accusations towards PLO against civilians in the nationalist struggle. By not considering these other areas of human rights, the Guild would "allowed itself to become a tool of a propaganda battle with short-term publicity benefits for one side of a bitter political conflict and long-term, serious damage to the Guild." Morton Stavis to Jim Larson, International Committee of NLG, 12 August, TAM-NLG, Box 260 Folder 4. Ken Stern, a Guild member, wrote to the *Guild Notes* editor denouncing an article critical of Israel: "To call for the emasculation of Israel's military is unfortunately an open invitation to such a genocidal attack on Jews." If the Guild's position on Middle East has become one of "virulent anti-Semitism, consider this letter as my resignation." Ken Stern letter to the Editor of Guild Notes, 14 October 1982. TAM-NLG Box 63 Folder 3. Paul O'Dwyer, an old New York lawyer, denounced a press release, which included a reference to "powerful Zionist forces." The language reminded him of the anti-Semitism of the Thirties. Paul O'Dwyer to John Quigley, 14 December 1978.

[59] Ellen Chapnick, Interview by author, New York, 8 December 2015.

prisoners and the BLA trials, as well as supporting each other's resolutions and reports on international issues, such as South Africa and Zimbabwe. The organizations would send representatives to each other's conventions, and the Guild would have an editorial section for the NCBL in its *Guild Notes*. However, this collaboration did not guarantee an increase in the number of minority lawyers in the Guild, or an improvement of relations with certain communities in the United States.

In 1975, Cesar Chavez and the United Farm Workers went on a collision course with the Guild. For a few years, one of the Guild's Summer Projects (connecting law students with specific areas and organizations) was with the UFW. However, when Chavez took the position of calling in *la migra* on undocumented workers whom the growers used to beak the strikes in the Central Valley, many lawyers protested. Their position, which was supported by several La Raza lawyers, was that the Guild should withhold their summer volunteers until the UFW stopped reporting these undocumented workers to the immigration authorities. Chavez sent his legal team, many of whom were members of the Guild, to argue in favor of the UFW. There was a fiery debate in San Francisco, where some of the "moderate" labor lawyers agreed with the Chavez team. "Well, this is overstepping the bounds of the Lawyers Guild," one UFW lawyer recalled, "telling a workers' organization conditions of the relationship like that. They want our help; we should give them our help."[60] By a narrow margin the Guild voted in favor of supporting immigrant rights and conditioning their association with the UFW. An incensed Chavez brought in the legal department to a board meeting and demanded they cut their ties with the Guild.[61]

Critiques amongst the lawyers were also rampant. Those who worked on housing law, or family law, claimed that by sustaining an emphasis on criminal law, mass defense, and international solidarity, the Guild was neglecting important economic and legal issues affecting different communities and thus weakening their relationship to these communities.[62] Others challenged the Guild's detachment from civil rights struggles — for example, busing was mostly discussed at local level, and almost exclusively in the Boston chapter. While they did engage in some Affirmative Action cases and filed an amicus brief in the *Bakke* Supreme Court decisions, they did not participate or collaborate further with the litigation teams taking on these cases.[63] Moreover, unlike the Public Defenders or District Attorney's offices, the Guild was having trouble implementing its own affirmative action programs.

The Guild set up an Affirmative Action Anti-Discrimination committee and also participated in the Affirmative Action Coordinating Center, jointly sponsored by the NCBL and CCR. Both worked on programs geared towards incorporating more lawyers and law students of color into the Guild and strengthening their relationship with organizations like NCBL, La Raza Legal Alliance, La Raza Law Students Association, Puerto Rican Law Students Association, Black American Law Student Association (BALSA), LSCRRC, and progressive Asian and Native American legal organizations. In 1979 the Affirmative Action committee of the Guild submitted a resolution calling for local chapters to initiate discussion workshops on various factors, "including white chauvinist errors which have hindered our work, have limited active minority participation within the Guild, and have prevented good joint work with progressive minority legal

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60 Unnamed Lawyer, Interview by author, Oakland, 6 October 2016.

61 Frank Bardacke, *Trampling Out the Vintage: Cesar Chavez and the Two Souls of the United Farm Workers* (London: Verso, 2012); Miriam Pawel, *The Union of Their Dreams: Power, Hope, and Struggle in Cesar Chavez's Farm Worker Movement* (New York: Bloomsbury Press, 2009).

62 Emily Jane Goodman, Interview by author, 2 December 2015.

63 Charles Lawrence, "When the Defendants are Foxes Too: The Need for Intervention by Minorities in 'Reverse Discrimination' Suits like Bakke," 34 *Guild Practitioner* 1, 1976.

organizations."[64] They offered that dues-paying members of progressive legal organizations be allowed to join the NLG "[on payment of] the cost of a subscription to *Guild Notes,*" and reduced fees to attend national and regional meetings.[65] Some prominent NCBL members were also part of Guild leadership, most notably Haywood Burns, Gerald Horne, Robert Van Lierop, Lennox Hinds, and Margaret Burnham. Nonetheless, the Guild continued to be a predominantly white organization well into the Eighties, and beyond.[66]

For some Black and Latinx lawyers the Guild has not been a comfortable or welcoming place. Walter Riley joined BALSA and the Guild when he was a student in Golden Gate Law School. He recalls trying to bring in more Black lawyers and law students into the Guild, but acknowledged, "the Guild is not a place where one finds a level of comfort. I work with the Guild and I will continue to work with the Guild, but it's not the place I am most comfortable." After Riley graduated, Tom Meyer, a labor lawyer and member of the Affirmative Action Committee, offered to help him get a job with a Guild firm, and took him to every office he could think of to no avail.[67]

Some community organizations were also resentful of the patronizing dynamics that at times resulted from working with white lawyers. The lawyers would neglect to incorporate some of the demands of the defendants, fail to understand and address their qualms regarding the lawsuit, and claim to know what the best strategy would be, or end up charging a fee when they had initially promised to work pro bono.[68] Joan Gibbs, a Black feminist activist in New York, became a lawyer because of a lack of representation and identification with the legal community. "One of the reasons why my friends wanted me to go to law school was that the relationship of the white lawyers was sort of problematic, being frankly honest. And it still is." When she expressed an interest in going to law school another friend said, "You have good politics but people won't listen to you. You happen to be a lesbian… but if you become a lawyer people will listen to you."[69]

The relationship between white lawyers and Black activists has often been polemical. However, in the late Sixties white lawyers developed a stronger connection with Black radical militant groups. In 1967, the first attorney to visit Huey Newton after the shootout with the Oakland police was Charles Garry. Beverly Axelrod contacted Garry after she obtained a court order to visit Newton in the hospital. Bobby Seale, the co-founder of the Black Panther Party, and other Panther members initially skeptical of hiring Charles Garry. Their first choice was Clinton White, General Counsel for the NAACP's local office. The second choice was John George. He had once worked out a favorable compromise for Newton on an assault charge, but had no known history of trying death penalty cases. Seale met Garry at his law office in December 1967 and decided Garry was the best candidate.[70] Convincing the others was not an easy task, as several SNCC leaders joined the local Black lawyers in demanding that a Black attorney represent Newton. Seale later reflected, "We needed a lawyer. Black groups were saying you can't have a white lawyer. Well, we think we chose the best technician. Somebody who was not going to sell us out."[71]

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64 Ginger and Tobin, *The National Lawyers Guild*, 368.

65 Ibid.

66 In a National Executive Committee meeting in 1983, they estimated the Guild to be around 95% white, with approximately 4,000 lawyers, 500 legal workers, 400 jailhouse lawyers, and 2,000 law students. NEC Minutes, 19 February 1983. TAM-NLG Box 57 Folder 5.

67 Walter Riley, Oral History Interview.

68 Edward Dawley, "An Observation on a Charge of Racism," 35 *Guild Practitioner* 11 (1978).

69 Joan Gibbs, Interview by author, New York, 13 December 2015.

70 For more on this selection process see Pearlman, *The Sky's the Limit*, 350.

71 Roxanne Bezjian, Producer, *Charles Garry: Street Fighter in the Courtroom*, Videorecording (Media Guild, 1992).

Charles Garry also faced resistance from colleagues and other white liberals. He later commented, "All that 'A, B, C' thinking started that you have to have a Black lawyer for a Black and a woman lawyer for a woman and all of this horseshit instead of recognizing the fact that you are involved in a revolutionary situation and that the person who can pick up the cudgel and go to work is the person you get."[72] Like Seale, Garry maintained that lawyers were technicians who could incorporate and amplify the politics of the clients in the legal defense, but did not have to personally reflect or embody the political subjectivity of the defendant. He was still caught in the perception that it could only be one or the other.

Seale prevailed over the objections and Garry became a leading lawyer for the BPP. However, the animosity continued between the Black Panthers and some members of the Black legal community. In the spring of 1968, Both Seale and Kathleen Cleaver bitterly denounced black lawyers in the Panther newspaper.[73] Seale accused John D. George of only using Newton and the Panthers as a "stepping-stone to attain a better paying political position." He denounced George for not successfully defending him for three misdemeanor cases in February of that year, and waived a jury trial without his knowledge. Seale saw that as a clear case of black lawyers selling black people out, "he has been one of the advocates and foolish black racists running around talking about we should have a black lawyer. Huey Newton's life is in danger and these ignorant, stupid, life-sucking, petty-minded fools, who call themselves black lawyers have done nothing but harm the black community."[74]

Kathleen Cleaver, another leader in the BPP, added on to the critique against Black lawyers. She wrote that besides Floyd McKissick, the national director of CORE, Howard Moore, Jr., General Counsel for SNCC, C.B. King, and Willliam Patterson, most Black lawyers were only working "for the aggrandizement of their personal wealth and prestige, which within the racist and exploitative legal structure of America means bootlicking." She mentioned that during the civil rights protests white lawyers did most of the legal work, whether or not they could be paid. It did not matter if Newton's attorney was white or black, "white resources at the disposal of black people, a white legal firm defending the Minister of Defense of the BPP is an example of Black Power."[75]

Consequently, there were accusations that the Panthers of being dominated by white radicals. In 1969, Conrad Lynn, the old socialist civil rights lawyer, recalled a conversation with Charles Garry at the beginning of the Panther 21 case. Garry told Lynn that after the Panther co-founders were spurned "disdainfully" by Black lawyers, they would only take on Black lawyers who were approved by the NLG. According to Lynn, this led many Black middle-class circles to believe

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[72] James, *The People's Lawyers*, 307. White lawyers and Black Panthers made some of the older lawyers of the Guild nervous. Malcolm Sharp wrote to Rabinowitz expressing his concern, "With a high regard for the talent and personal qualities of nerve of Charles' clients, I have quite a firm mistrust of their philosophy. I don't want to disassociate myself from the Guilt (sic), but I would suggest a committee study of the current philosophy of the riot." Malcolm Sharp to Rabinowitz, (no date), 1969. TAM-NLG, Box 45, Folder 11.

[73] Kathleen Cleaver, "Black Lawyers are Jiving: Black Power, Black Lawyers and White Courts," *The Black Panther*, Vol. 2 No. 3, 18 May 1968, 5.

[74] In Ibid.

[75] Ibid. In a previous edition of *The Black Panther*, Eldridge Cleaver noted in his article,"White 'mother country' radicals," that whites had played a role in black liberation struggles around the world — supplying aid, guns, and money. But in the U.S. they had not lived up to that standard. They mostly acted as if they were smarter than Black people and should guide them. He demanded that the relationship between white radicals and the Panthers should be of material contribution, information, and skills. However, whites should understand that their role is subordinate and they must learn to listen to Black leadership. See Joshua Bloom and Waldo E. Martin, *Black Against Empire: The History and Politics of the Black Panther Party* (Berkeley: University of California Press, 2013), 82.

that the Panthers were dominated by old-line Communists — perpetuating the assumption that the Guild was a Communist front.[76]

By the early Seventies, the leadership of the NCBL were aware of the lack of Black lawyers defending Black militants. Haywood Burns believed this was mostly because of two reasons. The first was financial, since Black lawyers had problems making ends meet that they did not have the resources to take on political cases for free or for low fees, like their white counterparts. The second involved reputation: Black lawyers were working in a very competitive profession and some could not afford to be shunned, disbarred or rejected because of the people they represented. Burns acknowledged that they were sensitive about seeing mostly white lawyers defending Black militants.[77]

As a result, this gave some white lawyers the sense of protagonism and control over the legal spaces and strategies. In the late Seventies, Evelyn Williams, a well-known lawyer in Harlem and aunt of Assata Shakur, clashed constantly with Robert Bloom and other lawyers in the Black Liberation Army cases. They would refuse to develop a concerted legal strategy, and more than once negotiated with the prosecutors without her knowledge to the benefit of their clients and to the detriment of Assata's defense. In the New Jersey turnpike case in 1976, Williams was initially critical that they did not use up all their jury challenges after the National Jury Project field survey results said that remaining jurors had the same degree of prejudice, so it didn't matter which ones were chosen. She reminded them that they lost an important appeal argument, if defense doesn't use all their jury challenges they can't claim that a biased jury was chosen. Although she had already been preparing to cross-examine the state trooper who first called dispatch, the team appointed a less experienced lawyer and relegated her to another trooper. On the day of her cross-examination she pushed hard on the witness and soon received notes from the other lawyers saying, "You've crossed enough"; "You're antagonizing the jury"; "This isn't Brooklyn"; "Shut up and sit down!"[78] She finally withdrew from the case. Williams was particularly critical of the lawyers who she claimed used the publicity of the BLA cases to further their own careers and reputations.

By the end of the Seventies it became clear that the failure to incorporate more people of color in the Guild would have immediate and long-term effects on the Guild and its relationship to communities. Unfortunately, some of the relationships weren't as political or respectful as Guild lawyers had perceived or hoped them to be. This also demonstrates the sometimes limited view of the lawyers' narratives, especially where they do not incorporating the views and narratives of the clients, a topic beyond the scope of this dissertation. Although the Guild debates encompassed the politics of community empowerment and the development of identity politics, the dynamics of incorporating those communities was exceedingly complicated and has been a perennial source of tension and frustration.

Surviving the Seventies: Breaking Through the Breakdown

There were primarily two areas where the Guild was able to find renewed energy and an offensive role. The first was the legal challenge to illegal surveillance and tactics from law enforcement agencies (discussed below), and the second was around the United States' involvement in Central American conflicts and U.S. support for dictatorial regimes in the Southern Cone. The mass protests and solidarity campaigns across the country echoed those of the Vietnam anti-war movement; some of the same activists and leaders were involved in both. Abbie Hoffman allegedly coined the phrase on buttons and bumper stickers, "El Salvador is Spanish for Vietnam."

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[76] Conrad J. Lynn, *There Is a Fountain: The Autobiography of Conrad Lynn* (Brooklyn: Lawrence Hill Books, 1993), 208.

[77] Haywood Burns in James, *The Peoples' Lawyers*, 279.

[78] Williams, *Inadmissible Evidence*, 162–63.

Additionally, there was a particular litigation strategy that was first used unsuccessfully during the Vietnam War, but which became an effective tool in the anti-war and human rights movements of the 1980s.

In the aftermath of the My Lai massacre, the CCR, in collaboration with journalist Seymour Hirsch, brought a lawsuit against the United States government over the destruction of the village. In preparing for the case, lawyers in the Center uncovered an old law dating back to the Judiciary Act of 1789. The Alien Torts Claim Act (ATCA) had a forceful sentence: "an alien has a right of action in an American court for a tort in violation of the Law of Nations" — international law, in twentieth century parlance. Basically, if the accused was within the jurisdiction of U.S. courts, foreigners had the right to bring suit in federal court for a tort, a civil claim. Eventually the Center dropped the lawsuit when the government of North Vietnam didn't want to be involved. However, Peter Weiss, an Austrian lawyer who escaped with his family the Nazi scourge during World War II and an expert on international law, thought the eighteenth century act could be useful.

Almost ten years later, in 1978, Amnesty International called Weiss and the Center informing them that a Paraguayan national was being held for deportation in Brooklyn. He had been a police officer in charge of torture during the Alfredo Stroessner dictatorship. The family members of a 17-year-old tortured by the cop, Joel and Dolly Filártiga, wanted to sue. Weiss and the Center used the ATCA to get an injunction preventing the deportation. The case, *Filártiga v Peña Irala*, ended in a judgment in favor of Dolly Filartiga for 10.4 million dollars, but also extended the reach of federal courts and established new human rights standard in the U.S that violators of human rights in other countries could be sued in the United States.[79]

Not everybody in the progressive legal community welcomed this strategy. Victor Rabinowitz sternly argued with Arthur Kinoy to prevent the Center from using the ATCA. In 1963 the firm of Rabinowitz and Boudin, as the legal representative in the U.S. for the Cuban government, argued the case of *Banco Nacional de Cuba v Sabatino* using the Act of State Doctrine, which held that what a state does in their own territory is out of the jurisdiction of foreign courts. "*Filártiga* was a terrible violation of that principle," Rabinowitz affirmed.[80] Nonetheless, it was a groundbreaking precedent that allowed lawyers in the Center and the Guild to bring lawsuits against exiled dictators and their lackeys from Haiti, the Philippines, El Salvador, and Guatemala.

For many of the lawyers interviewed for this project one of the few significant changes during the Jimmy Carter administration was the government's position towards human rights and international law. When Weiss argued the *Filártiga* case in the Second Circuit Court, the judge interrupted him to ask, "What does the State Department say?" Weiss responded that it shouldn't matter. Still the judge requested a position from the State Department and Charles Runyon, who was a proponent of human rights within the administration, wrote a brief in support of the suit. Weiss was convinced that this ultimately influenced the judge and that this was a brief period when human rights "were taken seriously by the State Department."[81] The conservative shift of federal courts continued, nonetheless, and the frustration and pessimism of electoral and legislative processes continued to fester in radical circles. Still, the addition of ATCA to the arsenal of constitutional and international litigation brought new energy to the Center, the Guild, and other human rights organizations throughout the Eighties.

The overlap in membership and litigation emphasis between the Center and the Guild has been a constant, but the legal work around Central and South America intensified the interaction

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[79] Ruben, *The People's Lawyer*. Peter Weiss interviewed in Law And Disorder radio program, 6 August 2007, part of the "Lawyer's You'll Like" Project.

[80] Ibid., 140–42.

[81] Weiss, Ibid.

and brought a new period of collaboration and cross-pollination. Michael Ratner, who held top leadership positions in both organizations, was a key figure, along with Ellen Yaroshefsky, Rhonda Copelon, Eleanor Stein, and many others. The Left in the United States had been increasingly drawn towards South America and the Caribbean, starting with the Cuban Revolution of 1959, followed by the election of Salvador Allende in 1970 and the coup that toppled him three years later, and intensified with the Central American conflicts of the 1980s. There were different attempts to create networks of solidarity and different attempts at mobilization, political pressure, and litigation. Once again the radical legal community joined the fray in attempts to defend, justify, and innovate these efforts.[82]

A major endeavor the Guild engaged in the late Seventies was in Puerto Rico. With a similar logic and goals of the CASL and Jackson, Mississippi, office and the Military Law Office in Southeast Asia in the Sixties, the Guild's Puerto Rico Legal Project helped set up in San Juan the *Instituto por los Derechos Puerto Riqueños* (Institute for Puerto Rican Civil Rights), in San Juan on March 15th, 1977, in collaboration with the CCR, the Puerto Rican Socialist Party, and with the support of a few local labor unions. The project was approved at the NLG Houston convention in 1976, and would have at least two lawyers and one legal worker and a backup staff on the mainland for fundraising. The office would "fill the void" of progressive lawyering in the island, and lend legal assistance to local lawyers in areas of criminal law, labor relations, environmental law, women's rights, support independence struggles, curtail repression in federal courts and grand juries, and provide educational work.[83] Ellen Chapnick, who arrived in San Juan in 1977, described the project as working with "progressive lawyers who would eschew the federal system because they thought it was the place of colonial oppression."[84] Individual Guild lawyers would go down for specific cases to help deal with them so that Puerto Rican activists weren't going to jail. One of the first lawyers to arrive, Judith Berkan, became deeply embedded in the case against the U.S. naval base in Vieques and continues to be an active civil rights lawyer in the island.

In 1979 a combined delegation of Guild and La Raza lawyers and legal workers went to Guatemala, with an invitation from the National Committee for Trade Union Unity in Guatemala City. The report was then sent to the Inter-American Commission on Human Rights, aiming to prompt the OAS to send an official investigatory commission, and hoping it would "further bring to the attention of the international community the violations of human rights in Guatemala and focus the attention on the acts of the present government of Guatemala and their effect on the people of the country," while also pushing for a further exposition of the effects of U.S. foreign policy on Guatemala.[85] In the following decade several delegations would go to Nicaragua, after the Sandinistas took over, and produced reports on the social, political, and labor conditions in the country.[86] The Guild was also present at the first Inter American Conference on Legal Aspects of Economic Independence in Peru in 1974, out of which came the American Association of Jurists — a Western Hemisphere version of the IADL. Both the Guild and the NCBL were affiliates of the

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82 Teishan Latner, *Cuban Revolution in America: Havana and the Making of a United States Left, 1968-1992* (Chapel Hill: University of North Carolina Press, 2018); Jessica Stites Mor, ed., *Human Rights and Transnational Solidarity in Cold War Latin America* (Madison, WI: University of Wisconsin Press, 2013).

83 "Reports from the Grassroots," *Guild Notes*, December 1976; "Puerto Rico Project Opens," *Guild Notes*, February 1977.

84 Ellen Chapnick, Oral History Interview.

85 *Guatemala: Repression and Resistance*, Report of NLG and La Raza Legal Alliance Join Delegation, 1980.

86 The Guild Labor Committee sent a delegation to Nicaragua to counter the report from the American Institute for Free Labor Development (AIFLD AFL-CIO), and presented its findings at the annual meeting of AFL-CIO lawyers. Ann Fagan Ginger and Eugene M. Tobin, eds., *The National Lawyers Guild*, 366. Also see Jeff Jones, *Brigadista: Harvest and War in Nicaragua: Eyewitness Accounts of North American Volunteers Working in Nicaragua* (New York, [etc.: Praeger, 1986).

AAJ. In addition to hosting annual meetings on topics such as Puerto Rican independence, foreign debt, political prisoners, etc., the AAJ issued reports on human rights violations in Chile, Nicaragua, Argentina, and Brazil.[87]

The National Immigration Project, which originally was set up as a Guild committee in 1971, expanded considerably in the Seventies and became an independent organization in 1981. It set out to publish manuals as well as training tours around the country to build "resources, skills, and a network." In 1976 it received at least 200 requests for assistance. The response was weak so they published a newsletter to bring in more people into the network. The project also engaged in outreach in the Caribbean and Asian communities.[88] One of its first big cases was defending Haitian asylum seekers against deportation.[89] It was a hub for lawyers to offer an alternative to go on the offensive and directly hamper the activities of the government, while having a functional role with social movements and bringing together different areas of litigation.

The second issue the Guild took on in the mid-Seventies was government surveillance. Guild members had often suspected their offices and phones were wiretapped. In 1977 their suspicions were confirmed when they found out a hotel clerk in Atlanta had been approached by FBI agents requesting the names of Guild members who had checked in for a national board meeting. In the fall, Michael Krinsky and others filed a lawsuit against the FBI on behalf of the Guild in New York. The aftershocks of the U.S. Senate Church Committee, investigating Watergate and COINTELPRO in 1975 were still creating shockwaves within the radical community as they considered the extent of the surveillance programs. The "temper of the times," as Krinsky put it, was reflected in the courts and favored the Guild, denying the numerous attempts from the FBI to suppress the suit and allowing a broad discovery of documents regarding FBI conduct. It wasn't until 1984 that the FBI finally released the documents, over 300,000 pages. While confident that there would be plenty of evidence of FBI surveillance of the Guild, many were taken aback at the extent and duration of these efforts. Since 1940 the director of the FBI, Edgar Hoover, was determined to destroy the Guild. The FBI used over 1,000 informants to report on the NLG, disrupt meetings, press conferences, and seminars. FBI agents broke into offices, searched through trash, and directed efforts to defeat members' political and judicial candidacies. The "burglaries and wiretaps" of the offices of Joseph Forer, David Rein, and Martin Popper were "a substantial factor in bringing about the widening authorization to investigate the Guild." There was a vast list of surreptitious entries and "other selected techniques" of offices in D.C., Minnesota, Albany, Hawaii, L.A., Chicago, Boston, Oklahoma, Columbia, SC., Yale and Harvard. The phones calls of Arthur Kinoy, Len Holt, Jonathan Lubell were intercepted in the Sixties.[90]

The FBI's view of the Guild reveals a persistent "Cold War" paradigm of a leftist organization. The Guild was considered a communist front and a potential bridge capable of bringing in foreign and international agents and ideologies. The FBI traced the history of the Guild back to the International Labor Defense (ILD) and the communist domination of the organization after the Nazi-Soviet pact in 1939. In memos of the late Sixties, agents described the NLG as a "communist front organization of lawyers and law students dedicated to Communist Party USA (CPUSA), and New Left ideals for radical change of the social, economic, and judicial systems in the United States." Some reports had a more nuanced take. "To put a handle on the overall philosophy

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87 "American Association of Jurists: A Little History," 47 *Guild Practitioner* 122 (1990).

88 "Report from the Immigration Project," *Guild Notes*, May 1976.

89 "Deportation Fight Continues," *Guild Notes*, January 1976.

90 Michael Krinsky, "COINTELPRO Lingers On: National Lawyers Guild v FBI," 43 *Guild Practitioner* 51 (986). Also see "Plaintiffs Opposition Memorandum," March 13, 1984, TAM-NLG, Box 108 Folder 18, and "Plaintiffs Factual Papers," 26 September 1984, TAM-NLG Box 109 Folder 5.

of NLG," read a report in the early Seventies, "would be very difficult in view of the many complex and variable endeavors attributed to the group. The objectives of the NLG are multiple and show some variance from region to region. The general thrust of the NLG appears to be the accomplishment of radical social change through activist legal, para-legal and political endeavor. The NLG's political orientation is self-proclaimed left-wing and sometimes revolutionary."[91]

In the late Sixties there were renewed FBI suspicions of the Guild as they began defending Black Power militants and revolutionary groups, which only intensified by the mid-Seventies. FBI agents followed lawyers from Santa Barbara, CA, to Albany, NY.[92] They believed lawyers were an essential part of the aboveground network of the Weather Underground. For instance, in Chicago in 1971 they maintained "extensive" surveillance of Susan Jordan, who at the time was working with the People's Law Office. The agents recommended her inclusion in a higher Security Index, "in view of the support of and close association with individuals who advocate the use of explosives and incendiary devices and have also advocated the overthrow of the US Government." She was considered armed and dangerous.[93]

Members of Congress took up these reports in their attempts to undermine and delegitimize and attack the Guild, along with those issued by the CIA. In the remarks by Rep. Larry McDonald of Georgia, on December 7, 1981, he quoted the CIA report, "Soviet Propaganda Operations," presented at the House Intelligence Committee in 1978, which characterized IADL as "one of the most useful Communist front organizations at the service of the Soviet Communist Party." The Krinsky, Boudin, Rabinowitz firm were considered "Cuba's paid agents." Abdeen Jabara was an "agent of the PLO." The National Jury Project was a "a pro-terrorist effort co-sponsored by NLG and supporters of the Weather Underground Organization (WUO)." The FBI also alleged to have "ample evidence that the NLG continues to exert influence and control over the Weather Underground Organization and the WUO's overt branches." The congressman insisted that Guild activities were not limited to legal representation, but rather included hiding and supporting fugitives, providing access to FBI documents with vital intelligence concerning ongoing investigations, serving as communication links between fugitives and prisoners, and assisting jailbreak attempts.[94] The Brinks armored car robbery in Nyack, NY, took place less than two months prior to McDonald's remarks. What happened at Nyack, he said, highlights the role of "revolutionary lawyers from the NLG who, in close association with Cuba and other Soviet satellites, play a key role in providing logistical and propaganda support to terrorists and revolutionaries."[95] The Guild — and radicals in the U.S. — were still an important part of Cold War paranoia: lackeys and puppets of foreign governments, and/or part of an international communist network.

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91 Confidential Report on the National Lawyers Guild, Ken Cloke FOIA Files, TAM-NLG Box 147 Folder 7.

92 "The Relationship Between the Weather Underground Organization and the National Lawyers Guild," Internal Security, 16 September 1975, TAM-NLG Box 235 Folder 2.

93 Memo, Director FBI, SAC Chicago, Susan Jordan, 12 Aug 1971, TAM-NLG Box 166 Folder 8. For the use of this characterization of radical lawyers, see Burrough, *Days of Rage*; Klehr, *Far Left of Center*.

94 The list of local and international groups the Guild allegedly supported included American Indian Movement, Black Liberation Aarmy, Symbionese Liberation Army, Fuerzas Armadas de Liberacion Nacional; Palestinian Liberation Organization, Red Army Faction, Irish Republican Army, African Nacional Congress and the Frente Sandinista de Liberacion Nacional. The CIA report also noted that on September 9, 1975, Stew Albert, Judy Hemblen, and NLG legal worker Ellen Ray, were observed in New York with West German revolutionary lawyer Kurt Groenewold, convicted of running an illegal communications network for the Baader-Meinhof gang. "The contact between NLG activists and West German terrorists has continued."

95 The NLG and the WUO (Extension of Remarks in the US House of Representatives by Rep. Larry McDonald of Georgia, December 7, 1981, in Western Goals, *Outlaws of Amerika: The Weather Underground Organization.*, 1982.

The perceived threat of the CP-USA influence diminished in the mid Seventies. FBI reports on the Guild had a more nuanced analysis of the internal politics and recognized that the CP did not wield the influence they suspected.[96] However, they were primarily afraid of the Guild's involvement in the prison movement. They were first concerned with a position paper submitted in the executive board meeting in San Diego in 1972, which described how the Guild should organize prisoners into a "revolutionary movement." Combining Guild position papers, information from correction officers, and reports from informants, FBI agents concluded that lawyers influenced prisoners to organize, mobilize, and strike. They determined that it was hard to determine the damage done by "NLG representatives," especially the "psychological effect created on the minds of inmates, whose belief they are exploited victims of society, is reinforced by the NLG through personal contact and publications."[97] They emphasized the attorneys' focus on various legal actions to harass the prison system, even if there's an adverse outcome of the suit, deposing the administrators is "suitable enough." They also brought sophisticated class action suits, along with individual efforts to get organizers out of solitary confinement, "the hole." Finally, they pointed out the lawyers' use of politicians and celebrities to further the cause. When they opened up their membership to law students, legal workers, and jailhouse lawyers, the Guild "greatly increased [its] manpower base."[98] While some reports of the Guild's role in the prison movement sought nuanced analyses, others were put together with broad strokes. In an organizational chart circulated among field offices, defining the formal and informal links to radical organizations, they included the Aryan Brotherhood and the Mexican Mafia, two very unlikely groups to garner the support of Guild lawyers. Still, these reports perpetuated the notion that educated, middle class, outside agitators could be capable of instigating and mobilizing the prisoners' movement and actions.[99]

In 1989, the Guild's lawsuit against the FBI was settled in the federal district court in Manhattan. The Guild dropped the demand for 56 million dollars in damages, and the FBI consented to turn over more than a million pages of files to the National Archives (where they would remain sealed until 2025). They guaranteed that no investigations would use the information gathered in the over 35 years of surveillance. And, while they acknowledged the effort to disrupt and investigate the NLG, the settlement did not contain any admission of illegality from the FBI in the period after the Church Committee report.[100] At that time, the disclosure of thousands of documents exposed federal and local government agencies involvement in illegal surveillance.[101]

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[96] "CPUSA has members who are also members of NLG, but their influence currently appears to be minimal." CP are older in age "than the new breed of social activists" attracted to the Guild and who "for all intents and purposes have taken over the policy making role in the NY chapter." Memo, Acting Director FBI, SAC New York, National Lawyers Guild, 1/10/73, TAM-NLG Box 138 Folder 10.

[97] A paper titled, "Legal People and the Prison Movement," particularly fascinated one agent. "This is a very interesting, intelligently written analysis prepared by the West Coast Prison Committee," he reported. Confidential Report on the National Lawyers Guild, Ken Cloke FOIA Files, TAM-NLG Box 147 Folder 7.

[98] Ibid.

[99] "The numerous radical and inflammatory publications and involvement in activist roles going beyond legalities and in some cases promoted dissident activity among inmates as to disrupt programs and threaten public safety; criminal involvement in several such incidents has been suspected of NLG attorneys… There is ample material available to strongly suspect the NLG of attempting to organize prisoners through giving them status as 'political prisoners' into a force of revolutionaries to actively rebel, both in the prisons and as street leaders, in revolutionary activity." *Outlaws of Amerika*. For a more nuanced history of the prison rights movement, see Berger, *Captive Nation*.

[100] William Glaberson, "FBI Admits Bid to Disrupt Lawyers Guild: Federal Suit is Settled on Long Surveillance," *New York Times*, 13 October 1989; From Wires, "FBI Admits it spied for 35 years on Lawyers," *Chicago Tribune*, 13 October 1989.

[101] In the NLG collection at the Tamiment Library, there are over 300 boxes from FOIA and court discovery requests from the FBI. Other organizations, the SWP and CISPES, also successfully sued the FBI in the Eighties.

Movement lawyers effectively argued several individual cases of the BLA and the WUO based on illegal government surveillance, as well as coerced and manipulated witness testimonies. In Chicago, the PLO brought a civil suit for the murder of Fred Hampton, and through disclosed COINTELPRO files established a direct connection among the FBI, local police and informants.[102] In New York, after the Panther 21 trial in 1971 revealed the extent of the NYPD's infiltration in the Panthers, the Law Commune began putting together a file on police surveillance and infiltration in other political groups. This was the Special Services Division of the New York police, colloquially known as the Red Squad. When the Commune dissolved, Martin Stolar and Jed Eisenstein filed a class action lawsuit in 1971 — *Handschu v Special Services Division*. They reached a settlement in 1985, in which the police accepted a series of surveillance guidelines, including the formation of the "Handschu Authority" — consisting of two police and one civilian appointed by the mayor. "A civilian? Looking over the shoulder of the police?" Martin Stolar later explained, "nobody had heard of this before we came up with it and the city agreed to it. So now we got guidelines in place."[103] If the investigation is purely based on the politics of the organization or individual, lawyers could take the police to court.[104]

Finally, the fight against the use of grand juries to hamper social movements reached its height in this period. A coalition of lawyers in the Guild, CCR, and the National Jury Project set up a network to combat grand juries during the Nixon administration. Guy Goodwin, a notorious federal prosecutor who became the antagonist of the Guild, traveled across the country empaneling grand juries and issuing subpoenas, often on insubstantial evidence, with the backing of ambiguous conspiracy and national security charges. Goodwin's official role was chief of Internal Security Division, a unit created at the Justice Department by the Nixon administration to prosecute crimes by "revolutionary terrorists."[105] This proved an effective strategy of the government to keep people in courts and jails. According to the *Washington Post*, he supervised about 100 grand jury investigations in 36 states, and returned more than 400 indictments. However, few of those indictments stuck. As a result, Goodwin often sought contempt and perjury indictments in order to keep activists in jail. The rare convictions were for more minor offenses, unrelated to political activities.[106] In 1974, the Grand Jury Project and the NLG's Grand Jury Defense Office published *Representation of Witnesses Before Federal Grand Juries*, a comprehensive manual edited by Margaret Ratner-Kunstler and used extensively by movement lawyers in the following years. Eventually, in 1977 Guy Goodwin's run came to an end. An ex-assistant U.S. attorney from Virginia, who worked

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[102] Haas, *The Assassination of Fred Hampton*.

[103] Martin Stolar, Oral History Interview.

[104] *Handschu v Special Services Division* (Challenging NYPD Surveillance Practices Targeting Political Groups," NYCLU Accessed 14 January 2018, https://www.nyclu.org/en/cases/handschu-v-special-services-division-challenging-nypd-surveillance-practices-targeting; "Testimony: Police Surveillance of Political Activity—The History and Current State of the Handschu Decree," NYCLU, 21 May 2003 [Accessed 14 January 2018, https://www.nyclu.org/en/publications/testimony-police-surveillance-political-activity-history-and-current-state-handschu

[105] The special "investigative" grand juries that Goodwin and his staff set up prodded information from hostile witnesses "to plug holes in government cases," unlike ordinary federal grand juries, which reviewed information and heard witness testimonies brought by the FBI and would decide whether to indict the defendants. Ronald Ostrow, "Have Jury, Will Travel," *The Washington Post*, 11 February 1973. "There were all these federal grand juries being empaneled around the country and people were being subpoenaed," recalled Karen Jo Koonan. When people refused to testify they were held in contempt and imprisoned. "There was this guy, Guy Goodwin, who was this U.S. attorney, he became the bad guy who traveled around the country and did this." Koonan, Oral History Interview.

[106] "Back in the bad old days of Watergate, a briefcase-packing, circuit-riding prosecutor traveled around the country hunting subversives." Jack Anderson and Less Whitten, "'Which Finder' Under Investigation," *The Washington Post*, 10 November 1977.

with Goodwin, accused him of abusing his office, stating that "he seemed unable to distinguish between bomb-throwing revolutionaries and peaceful anti-war activists."[107] Goodwin nevertheless remained in the Justice Department, but was moved to a less visible office. The grand juries hounding the left continued during the Carter administration, though the prosecutors were not as aggressive as Goodwin. Although his activities were curtailed, the structure of grand juries remained an efficient tool for the government to subdue or slow down activists and organizations.

The grand jury challenges were a successful area of litigation and struggle in an otherwise bleak political period. The Guild maintained relevance and an active role with social movements as they uncovered secret and often illegal government programs — most importantly, COINTELPRO. Although they would only rarely obtain more than temporary injunctive relief, successful lawsuits that established that the FBI and police were caught breaking the law (and could be caught again) gave the lawyers a morale boost and judicial precedent. This arena changed considerably after September 11, 2001, when laws relating to surveillance were severely expanded.

Energizing the Eighties

When Ronald Reagan took office in January of 1980, the Guild hit the ground running. The year before, Paul Harris, the newly elected president of the Guild, mentioned in his conciliatory speech that almost 500 new members joined the organization — the highest number since the early Seventies. "They are getting ready for 1980," he said, "it's going to be a busy period."[108] Lawyers also recognized that the political changes — the tangible conservative shift of the federal courts, a renewed and successful undermining attack on the legal services programs — meant that the strategies and role of the Guild would also be different. Michael Ratner, who became president of the Guild in 1981, wrote that they could no longer use the law as they had before. "Reagan," Ratner argued, "has taken from us the forums where we will litigate — the courts." Lawyers, he explained, should help create a "national and local voice" to expose and fight the economic, political, and militaristic policies of the Reagan administration.[109] He exhorted Guild lawyers to have a strong educational presence, taking every opportunity to use the media, as well as engaging national and local legislative work—something that the Guild and radical lawyers had sharply moved away from in the previous decade. Nuclear disarmament, environmental law, and animal rights were some of the new issues that radical lawyers endeavored to bring into the larger struggle for economic, social, and political rights.

The work on Central America put the lawyers in a pivotal position in the emerging anti-war movement. In the first months of 1980, the Guild established a subcommittee, the Central American Task Force (CATF), to help "prevent another Nicaragua" or the creation of "another Vietnam." The focus would be on El Salvador, Guatemala, and Nicaragua, where the Sandinistas had recently taken power. The Task Force acted as a coordinating space for lawyers in the Guild, the Center, the National Immigration Project, and other organizations like the Committee in Solidarity with the People of El Salvador (CISPES) to formulate class action lawsuits with the Alien Torts Claim Act. In coordination with the Mass Defense office, the Task Force sent legal observers to the marches and defended arrested protesters. Through their newsletter, they informed local chapters on the activities of solidarity groups in their areas and hoped to set up stronger networks to coordinate various campaigns (lobbying, boycotts, demonstrations), and speaking tours. Similar to the

[107] Morton Mintz, "Ruling Curbing Prosecutor Immunity Allowed to Stand by Supreme Court," *The Washington Post*, 20 June 1978.
[108] Paul Harris, "Officer's Column," *Guild Notes*, January 1980.
[109] Michael Ratner, "Toward a Guild Response for the Reagan Era," *Guild Notes*, March-April 1981.

organizing role the Guild had during the Vietnam War (providing a national network of referrals, mass defense, and offensive litigation against the government), radical lawyers in the U.S. now had a strong link with their foreign counterparts. After the delegation to Guatemala in 1979, the CATF received invitations from the Sandinista officials in Nicaragua and from Socorro Jurídico, a legal aid organization of the Catholic Church in El Salvador, along with La Raza and NCBL. They also set up a reception and workshop for a Salvadoran human rights lawyer, Roberto Cuellar, and an Argentinian labor lawyer, Horacio Martinez, in 1980. "The CATF," an internal memo read, "have been instrumental in aiding and connecting Horacio with other Latin American lawyers involved in revolutionary struggles."[110] They also set up a televised war crimes tribunal, a symbolic action where we put people on trial in absentia for the war crimes they had committed in Salvador and Guatemala. "This was the next anti-war movement," remarked Ellen Yaroshefsky, one of the chairs of the CATF. "Here we were invading Nicaragua, invading Salvador, you really couldn't avoid it… We were primarily in the Task Force focused on exposing the war, exposing the reasons for the war, exposing U.S. involvement, and the illegality of it."[111]

In the 1980s, different areas of progressive litigation came together around the subject of immigration. Lawyers like Maria Blanco, who had a interest in the crossover between immigration and labor rights, issues of employment, and how federal anti-discrimination law can apply to undocumented workers. Blanco was a community organizer in the Seventies and graduated from Boalt in the early Eighties. In this period that labor lawyers began to incorporate these three issues, and, most significantly, to combine immigration and criminal law.[112] The Guild, Blanco noted, "took their criminal defense background… of having been around in the Fifties and the defense of the Panthers and they… got very involved in looking at the issues of immigrants in criminal issues." Ellen Yaroshefsky, who was a law professor for many years in the Cardozo Law School in New York, mentioned that there are now courses and clinics on criminal immigration law, "Crim Im," as it's colloquially known, "which is the overlap between those two, that didn't exist... It was seen as very separate, people didn't understand or think about the consequences of having a criminal conviction if you were a person who wasn't documented."[113] To reiterate, in the Eighties, there was an amalgamation between radical lawyers led the bridging of two legal areas that were previously seen as separate: criminal and immigration law.

Asylum law was legal domain enriched by a cross-pollination of different legal approaches and strategies. The Justice Department was coming down hard on the sanctuary movement, which consisted of activist clergy and faith workers employing the medieval concept of "Sanctuary" by bringing refugees into churches to prevent deportations. Darlene Nicgorski, a nun active in the movement, went to the Central America Task Force after she and several of her colleagues were arrested in Texas. Lawyers from the Guild, the Center and the NIP formed a large defense team and developed several arguments, including a motion to dismiss the case after they found out that the government sent an informant. The lawyers argued that the government's use of this informant to

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[110] Memorandum from Central American Taskforce to International Committee RE: Proposal to be established as a subcommittee July 28, 1980, TAM-NLG Box 68 Folder 23.

[111] Yaroshefsky, Oral History Interview.

[112] Politically, Left groups of color began to look at immigrants as the most vulnerable, "there was a notion that we should be with the most vulnerable and if you looked at that analysis that the most vulnerable were the 'vanguard' politically, potentially, then you had to look at immigrants. You had to… The Guild, while a predominantly white organization, were on that side of things early on. Their work is still some of the work that everybody uses when you look at the impact of criminal issues on immigration. The Guild started doing books and had specialized lawyers that looked at the overlap between criminal issues and immigration very, very early on." Maria Blanco, Interview with author, Berkeley, 9 December 2016.

[113] Yaroshefsky, Oral History Interview.

spy on Nicgorski and her co-workers was a violation of the First Amendment right of the religious workers. While the criminal cases of sanctuary workers were ongoing, the Guild held another strategy meeting, where Morton Stavis suggested they file a class action lawsuit on behalf of all Salvadoran and Guatemalan applicants, alleging discrimination against these particular applicants in the asylum process. While only 2.9% of them received asylum, applicants from Poland, Iran, and Nicaragua had significantly higher approval rates. The lawsuit, *American Baptist Churches v Thornburgh*, with over a hundred churches and individuals and the Central American Refugee Centers as plaintiffs, was filed in 1984. There was a lot of coordination among the lawyers, the faith-based groups, and the immigrant communities. Many of these activists had been political and labor organizers in their countries. For an immigration lawyer involved in the case, this was one of the most incredible aspects of the work: "you don't just do a litigation," she commented, "you do it in the surface of something, so you have to be connected. You don't just sit around in rooms and dream up what would be good litigation.You do it because you are very involved in communities that are effective."[114]

American Baptist Churches v Thornburgh was successful and groundbreaking: it extended asylum protection to about 215,000 people. The case also had a political implication. It set out to de-politicize the asylum process, which had been tainted by the Cold War paradigm of extending asylum protection to refugees from countries the U.S. was hostile towards, and preventing shelter to those from countries the U.S. was supporting — which would amount to an admission of a political/humanitarian crisis in countries allied to the United States.[115]

Internal dissent and debate around the international solidarity work, in general, and the Central American focus, in particular, illustrates the contradictions within the different struggles for justice. While most lawyers supported anti-imperialism and anti-racism, many argued that in some cases one could obfuscate the other. For instance, most of the Guild believed they should provide full support to the new Nicaraguan government but the Committee on Native American Struggles of the Guild, as well as other Native American rights organizations, wanted to condemn the Sandinista treatment of the Miskito and Sumo Indians of Nicaragua. Steven Tullberg, of the Indian Law Resource Center, wrote several letters to the Guild leadership requesting the NLG use its "good offices" with the Sandinista government to investigate alleged executions and disappearances of Nicaraguan Indians in the town of Leimus. He also pointed out that a "*Filártiga*-type" lawsuit could be filed on behalf of the Miskito and Sumo Indians. "You as a private individual may or may not choose to investigate these matters," he wrote to Michael Ratner, "But you as president of the Guild may not simply turn your back."[116]

The fight for the incorporation of lawyers and legal workers of color continued to affect the Guild. As more Black, Latinx, and Asian law students graduated, there was a growing demand for places for these newly-minted lawyers of color to practice progressive litigation. It wasn't only an issue in radical circles, but also in liberal spaces. A young Latina lawyer, Maria Blanco, recalled how

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114 Unnamed lawyer, Interview by author, New York, 16 December 2015.

115 For more on the sanctuary movement see Ann Crittenden, *Sanctuary: A Story of American Conscience and the Law in Collision* (New York: Weidenfeld & Nicolson, 1988). A question that remains unanswered is the extent of influence these movements and litigation had on the changes in immigration and asylum laws during the Reagan administration. Cases like *American Baptists Churches v Thornburgh* provides an example of impact in terms of the judicial side of things, but the political and geopolitical aspects would also need to be considered, both of which are beyond the scope of this dissertation.

116 Steven Tullberg, Indian Law Resource Center, to Ratner, Pres. NLG, 7 July 1983; Steven Tullberg, to Barbara Dudley, 15 September 1983; Marti Roberge, CONAS, to Dick Soble, 24 April 1983, all in PS-TAM B 77 Folder 5. Also see Peter Schey, Karen Parker, "Role of Nicaraguan and United States Governments in the Relocation of Miskito Indians," 40 *Guild Practitioner* 93 (1983).

after graduating from Boalt, she had trouble finding a comfortable space in public interest law: "All these high-profile litigators that did public interest law work were all basically white and basically male. So the radical thing there was to try and break into that world that was very much a male hotshot, knight on a white horse kind of legal practice."[117] Although Blanco recognized the important work the Guild did and how they were an alternative to the ABA, still she never joined the Guild: "I just thought it was a white organization."

The Affirmative Action / Anti Discrimination Committee of the Guild was created in 1979. Its programs included the implementation of "racism workshops" in local and national meetings of the Guild. Fania Davis, an Oakland-based lawyer and sister of Angela Davis, attended one of the first workshops in Santa Fe in 1982. She had several critiques of these workshops: the inadequate theoretical discussions included; the open sharing of ideas without criticism; the use of only hypothetical situations; and, the evasion of "real life situations," which would ensure that the workshops would be all-white. White-only spaces, she wrote, are "less likely and able to recognize the unconscious subtle expression of racism and only identify and reverse the overt manifestations." Furthermore, "sensitivity"-type training sessions are a personalized, moral, and "subjectivistic" approach to racism, which will continue to muddle the historical lesson that the fight against racism not only benefits people of color but white people as well.[118] The only way to "identify and reverse" racist conditioning, she maintained, is by working side-by-side and day-by-day with lawyers and activists of color and engaging with anti-racist action on every level: enforcing the Voting Rights Act, taking direction from NCBL in work in the South, engaging in Affirmative Action litigation, pursuing solidarity with South Africa, performing anti-KKK work and assisting Black lawyers facing disbarment. In 1983, the National Executive Committee admitted that the Guild was an "uncomfortable" place for "third world people." Although they didn't conduct an official study, they estimated the Guild was 95% white (with almost 4,000 lawyers, 500 legal workers, 400 jailhouse lawyers, and 2,000 law students).[119]

This, in part, is a result of the relationship between the trajectories of empowerment of different communities and the Guild. The women and student movements, along with the anti-professional, anti-hierarchical strains of the New Left of the 1960s were able to develop their political processes and shape their spaces within the Guild. Other communities did so in juxtaposition to the Guild, yet outside of it. Black, Latinx, Native American, and Queer lawyers and law students fought for and created their own spaces and organizations. Within the NLG, some argue that due to the historical and political context in which the communities became empowered, the Guild needed to take a step back while supporting the process. Other Guild members, however, condemn the Guild for taking that step back and not providing the same professional outreach and technical initiative the NLG did in the 1950s and 1960s. The process of incorporating these processes and spaces into the Guild have been a continuous struggle.

Furthermore, starting in the 1980s, but increasingly in the following decades, there were a growing number of small and large progressive legal organizations providing more options and alternatives for radical lawyering. In New York, there was the ACLU, NYCLU, CCR, A Better

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[117] Maria Blanco, Oral History Interview.

[118] Fania E. Davis, "National Lawyers Guild Personal Racism Workshops: A Critique," 39 *Guild Practitioner* 97 (1982). Kathleen Herron, one of the organizers of the first racism workshops responded by acknowledging that there was still a lot of space for improvement but disagreed with Davis' unspoken assumption that workshops detract from programmatic work against racism; the two enhance one another. She also doesn't see anything wrong with whites getting together as whites to look at their conditioning. As a woman she was encouraged by few times she had heard of men doing the same to work on their own sexism. Kathleen Herron, "On Fania Davis and Guild's Personal Racism Workshops," 40 *Guild Practitioner* 44 (1983)

[119] NEC Minutes, 19 February 1983. TAM-NLG Box 57 Folder 5.

Balance (which focuses solely on women's rights), and countless other organizations. In the Bay Area, the Center for Justice and Accountability came in to fill the void left by the CCR, as they moved away from cases against individual defendants, perpetrators of human rights abuses, to suing corporations for human rights and environmental abuses around the world.[120] This assortment of organizations permitted (and condemned) the Guild to dig in to its traditional strong areas of criminal work, mass defense, and international solidarity. It also meant that there were more options for young lawyers and law students to move into without having to go through the vetting of some Guild offices on their positions regarding Palestine or Capitalism.[121]

This wide-ranging array of options extended to the law schools. Ellen Chapnick, who was director of the Director of the Center for Public Interest Law, noted that students had numerous choices depending on their interests. She also stressed that they could easily belong to more than one organizations if they had multiple interests. Unfortunately, "they don't belong to an organization that connects the dots, that says, 'This is basically different manifestations of the same phenomenon,'" she lamented.[122] There were no organizations that would try to bring together different areas like human rights, criminal law, and immigration. She also noticed a growing presence of right wing organizations like the Federalist Society, a conservative organization that focused on the legal system and public policies.[123]

Even the traditional bastion of the academic Left, Rutgers Law School, became increasingly conservative during and after the 1980s. While the faculty remained mostly progressive, the university undercut its community outreach program and the student body was noticeably conservative. Furthermore, one of the "wonderful things" about the Guild, according to Chapnick, was that you could start off as a student in the organization and then join as a lawyer. Whereas recently, "There is no community that you become a part of with older lawyers that you then sort of move into. You just have to restart making your affiliations with organizations and finding your feet." Especially with the increasing amount of debt that students took on after graduation, Guild law firms and legal services offices were no longer financially viable, regardless of how politically stimulating. The Reginald Heber Smith Community Lawyer Fellowship ended in 1985. Since 1983, the national executive committee of the Guild recognized that this new generation of lawyers, for the first time ever, faced a "fear" of not getting a job while having to pay off student loans.[124]

Law collectives, another resource for recent graduates, also faced existential challenges in this period. The PLO in Chicago became the sole survivor of the first generation of law collectives after the San Francisco Community Law Office officially closed its doors in 1989. Since the late Seventies, law offices have moved away from the collective model to more traditional law firm structures for several reasons. In part it was a way to push past some of the inflexible debates amongst staff members regarding the hiring process, which cases to take, and the division of labor in the office. This also led to a re-evaluation of wage and task distribution and recognition that not all work was the same and thus shouldn't be remunerated equally. There was also a return to a hierarchical structure by appointing legal directors and office managers to prevent these paralyses from affecting the legal work. The National Office of the Guild, the CCR, the National Jury Project, and others went through this process in the late Seventies and early Eighties. Added to these conflicts was the national economic uncertainty of the period, which led to a push from staff lawyers

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120 Unnamed lawyer, Oral History Interview. New York.

121 Carlin Meyer, Oral History Interview.

122 Ellen Chapnick, Oral History Interview.

123 Michael Avery and Danielle McLaughlin, *The Federalist Society: How Conservatives Took the Law Back from Liberals* (Nashville, TN: Vanderbilt University Press, 2013).

124 NEC Minutes, 19 February 1983. TAM-NLG Box 57 Folder 5.

and legal workers towards unionization. Naturally, these shifts created a whole new set of tensions and conflicts between "management" and "staff."

As a national organization, the Guild also moved towards de-centralization by giving more flexibility to regional chapters and allowing some of their projects and committees to become separate entities, while maintaining a close working relationship. The National Immigration Project, which originally was set up as a Guild committee in 1971, became an independent organization in 1981. Palestine Legal, an offshoot of the Middle East subcommittee mostly involved in providing support to Palestinian solidarity efforts on college campuses, became a separate entity in 2012. In structural terms, on the one hand, this contributed to the financial wilting of the Guild. As more of its legal satellites became economically independent, the Guild lost some of its fundraising capacity and central control over membership. However, on the other hand, these changes also kept the Guild relevant and functional.

Another reason the Guild remained relevant was its continuous self-reflection in terms of its own membership composition, ideological plurality, and practical position vis-a-vis social movements. The NLG continued to be the space where radical principles met with grounded legal strategies. By the time Maria Blanco graduated in the early Eighties she described how, "If you were not a Guild lawyer doing criminal defense or union-side work there really wasn't a place to do radical law."[125] While the debates increasingly included global issues after 1980, Guild conventions were of the few places where folks could draft an Economic Bill of Rights which included housing and welfare in the morning and the afternoon discuss the social policies of the Sandinista government in Nicaragua. In realistic terms, Karen Jo Koonan described the Guild as a space where a lawyer who was representing a refugee woman, who was a battered wife and who had lost her job and was trying to get her some protection, knew that there were committed lawyers working on immigration, criminal law, and labor rights who could assist in the case.

Although the organization survived, enduring its internal conflicts, the Eighties heralded a new period — in terms of internal dynamics, national politics and the response of the Left, and international conflicts. The attempts to connect and bring together human rights and economic rights, as well as criminal law and immigration law, as well as others issues such as animal rights, environmental law and climate justice, brought in a new series of litigation strategies and confrontations with the legal system. The new generation of lawyers and legal workers who came of age in the aftermath of the Vietnam War and after the Black Power movement set the radical community in a continuous path of criticism and self-reevaluation that maintained the Guild an important forum of discussions and resolutions, of networking and planning. Despite its ongoing decrease in membership, the Guild remains a functional and relevant organization because it continues to coalesce the different struggles, attempting to "connect the dots," and recognizes that justice is a constant struggle.

[125] Maria Blanco, Oral History Interview.

Chapter 5
Behind Another Front: An Initial Exploration into Radical Lawyering in Mexico and the *Frente Nacional de Abogados Democráticos*

In 1944, the Inter American Bar Association held its annual convention in Mexico City. Founded in 1940, the IABA brought together lawyers and jurists representing over forty professional organizations in seventeen countries of the Western Hemisphere.[1] Most of the discussions centered on strengthening legal and professional ties between the countries, especially to find safeguards from the effects of the war in Europe. One topic, however, caused great tension and controversy. A delegation of Puerto Rican lawyers, with the backing of Cuban and Mexican lawyers, proposed a resolution in support of the self-determination of Puerto Rico. Lawyers from the United States and Canada protested the resolution and threatened to walk out. Martin Popper, of the NLG, spoke in favor of the resolution, assuring the proponents that the protesting delegates did not represent all the opinions in the United States. While the resolution passed in committee, it was defeated later on because it "lacked jurisdiction."[2] Nonetheless, the Guild delegation, led by its president Robert Kenny, sympathized with the local lawyers and saw kindred spirits. At an event hosted by progressive Mexican lawyers, Kenny suggested they form an organization similar to the Guild. Unbeknownst to him, they already had.

This chapter explores the trajectory of two legal organizations in Mexico: the Socialist Front of Mexican Lawyers (FSA) and the National Front of Democratic Lawyers (FNAD). Both organizations had objectives similar to those of the NLG and used comparable language and principles in describing the role of the radical lawyer. However, because of the political and judicial circumstances, the lawyers found other avenues to fight for social justice. The human rights movement, moreover, played a significant part in the challenges and weakening of the dominant political party, the Institutional Revolutionary Party (PRI). The two organizations are separated by three decades and both were short-lived: the FSA began to disband after WWII, and the FNAD only lasted a decade breaking up in 1990. Nonetheless, both are emblematic attempts of lawyers attempting to form an organizational space of professional support, political solidarity, and legal strategies to challenge the abuses of the State from the post-revolutionary period of the 1930s to the end of the Cold War in the 1980s.

The Socialist Front of Lawyers (FSA) was formed in 1937 in Mexico City. For some time progressive lawyers felt a need for collaboration in order to address some of the issues confronting the country — mainly the economic instability of the Great Depression, the threat of facist and reactionary ideologies, and the growing intervention of foreign financial interests — while still upholding the social and political gains of the 1917 constitution.[3] The

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1 John O. Dahlgren, Inter-American Bar Association*, Lawyer of the Americas*, 1:1 (February 1960), 115.

2 Untitled Report on the 1944 Conference, TAM-NLG Box 49 Folder 27.

3 Written in the middle of the Mexican Revolution, the constitution had two provisions that made it one of the most progressive charters of its time. The first, Article 27 provided the framework for land distribution among indigenous and peasant communities, which would be collectively owned and federally protected. The second, Article 123, guaranteed collective rights to workers, including the right to form unions and the right to strike. For more on labor in the Post-revolutionary period see Ruth Berins Collier, *The Contradictory Alliance: State-Labor Relations and Regime Change in Mexico* (Berkeley: International and Area Studies, University of California at Berkeley, 1992); Joseph U Lenti, *Redeeming the Revolution: The State and Organized Labor in Post-Tlatelolco Mexico*

first "Manifesto" of the FSA described how lawyers had generally remained unclear of their role and were at the margins of the problems — at times showing no initiative and at others taking the side of a wrong conservative tendency, "which has increased the image of the lawyer as selfish or a parasite in society." For this reason, they decided to form the FSA, which would "act as a left wing group, supporting the tenants of scientific socialism."[4]

The first meeting was held in November 1936. Around twenty lawyers arrived in Mexico City at the behest of Alberto Bremauntz, a prominent constitutional lawyer. The lawyers laid out the parameters of the organization: members had to be lawyers and they could not work against workers in labor disputes or against peasants in land or water distribution disputes. In February of 1937, the FSA approved its main program: besides following the tenets of scientific socialism, the FSA would develop technical counsel, as well as cultural action amongst the working masses; fight against institutions that hamper the economic, intellectual and moral improvement of the proletariat; promote the improvement of the legal profession in the country; and publish their own journal.[5]

The FSA engaged mostly in an informative capacity. In March of 1937, the Unified Front in Favor of Women's Rights went to the FSA for support and commissioned a study on the constitutional grounds for women's suffrage. Bremauntz published his opinion, stating that only through a constitutional amendment could women gain the right to vote. He added that just "revolutionary" women should initially be allowed to vote — not specifying how that could be measured. There was some dissent within the FSA. At the following convention, Valentín Rincón said it was only because of "unsustainable prejudices" that men have been "afraid to resolve" that women did not have full citizenship rights. He proposed a resolution to accept a constitutional interpretation extending full rights to men and women, but it was defeated.[6] Four years later, in November of 1941, the FSA organized an event to support the opening of a "Western Front" in the War, express solidarity for the USSR and England, support for the fight against Francisco Franco in Spain, and fight against the expansion of "Nazi-fascism." Vicente Lombardo Toledano, the fiery Communist labor leader, was the main speaker.[7]

While the FSA continued to hold informational events and attend international conferences, the organization began to peter out by the end of World War II. Lawyers belonging to the strongest left wing organization in the country, the Mexican Communist Party (PCM), took the lead in most of the trials and struggles of the following decades.

Political Prisoners, Defense Committees, and the Tlatelolco Massacre

(Lincoln, Nebraska: University of Nebraska Press, 2017); Kevin J Middlebrook, *Unions, Workers, and the State in Mexico* (San Diego, CA: Center for U.S.-Mexican Studies, University of California, San Diego, 1991); Kevin J Middlebrook, *The Paradox of Revolution: Labor, the State and Authoritarianism in Mexico* (Baltimore: John Hopkins University Press, 1995).

4 Manifiesto, Programa de Acción y Estatutos del Frente Socialista de Abogados de México. TAM-NLG Box 49 Folder 27.

5 Ibid.

6 Jocelyn Olcott, *Revolutionary Women in Postrevolutionary Mexico* (Durham, N.C.: Duke University Press, 2007), 176–78.

7 Reporte IPS a Sria. Gobernación, 12 November 1941. "Agape de Solidaridad Revolucionaria que se celebró en restaurante de Chapultepec," AGN, Fondo DGIPS, Box 23 Folder 2.

The 1930s were a period of significant legal and political victories for industrial workers in Mexico. During the presidency of Lázaro Cárdenas, the progressive Mexican president who expropriated the oil industry in 1938, the government and the courts, for the most part, sided with labor and unions as the country began an overhaul of infrastructural projects. However, his successors began shifting quickly and significantly toward the Right. President Miguel Alemán in the 1950s oversaw a period of rapid industrialization and an opening of opening to foreign financial and business interests. The unions, especially the large confederation of unions, became an important instrument of political control for the regime, providing a large electoral bloc and as a means of alleviating political and labor disputes. Increasingly, dissident groups within unions demanded more transparent and democratic internal practices and applied direct action pressure against unfair labor contracts and stagnant wages.[8]

One of the measures to control the insurgent labor movement was the creation of Article 145 of the federal Constitution. In 1941 President Manuel Ávila Camacho passed the "Law of Social Dissolution" (Article 145) in response to the threat of fascism. It applied to "any foreigner or Mexican national who in speech or in writing, or by any other means, carries on political propaganda among foreigners or Mexican nationals, spreading ideas, programs, or forms of action of any foreign government which disturb the public order or affect the sovereignty of the Mexican State."[9] In the Fifties and Sixties Article 145 was tailored to face communism, the new threat of the Cold War.[10] The language was vague enough to include blocking of highways or roads, strikes, or threats of strikes in speeches or meetings. The two main leaders who were prosecuted with this law were Valentín Campa and Demetrio Vallejo, both promoters of a democratic union of railroad workers.

Demetrio Vallejo led a successful campaign in 1958 to defeat the official candidate of the railroad worker's union. Vallejo ran on a platform for higher wages, better contracts, and, especially, an independent union of the Confederation of Mexican Workers (CTM). The CTM is the biggest union confederation and has a very strong connection with the president and the PRI.[11] The Secretary of Labor refused to recognize Vallejo's victory and the Secretary of the Interior, along with the CTM, demanded that the previous leader be reinstated. A series of strikes led by Vallejo and Campa paralyzed parts of the country in 1959. The government responded with force and violence. First Vallejo and then Campa, the following year, were imprisoned and charged with several crimes, the most serious of which was "social dissolution." Their defense lawyer, Juan Manuel Gómez Gutiérrez, who was close to the PCM, argued that Article 145 was unconstitutional and that the government was

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8 Ruth Berins Collier, *The Contradictory Alliance: State-Labor Relations and Regime Change in Mexico* (Berkeley: International and Area Studies, University of California at Berkeley, 1992); Kevin J Middlebrook, *The Paradox of Revolution: Labor, the State and Authoritarianism in Mexico* (Baltimore: John Hopkins UP, 1995).

9 Diego Pulido Esteva, "Los delitos de disolución social: primeras experiencias (1941-1944)," *Antropología. Revista interdisciplinaria del INAH*, no. 101 (Diciembre 2016): 129–43.

10 Jaime M. Pensado, *Rebel Mexico: Student Unrest and Authoritarian Political Culture during the Long Sixties* (Stanford, California: Stanford University Press, 2013), 40.

11 Fabio Barbosa, "Las Luchas Obreras de 1958-1959 y La Izquierda Mexicana," *Investigación Económica* 42:163 (1983): 89–119; Michael Snodgrass, "The Golden Age of Charrismo: Workers, Braceros, and the Political Machinery of Postrevolutionary Mexico," in *Dictablanda: Politics, Work, and Culture in Mexico, 1938-1968* (Durham NC: Duke University Press, 2014).

using their case to silence dissent.[12] They were nonetheless convicted and given long prison sentences.

While the early Sixties are seen as a period of relative calm with the labor movement, there was constant ferment stirring in different sectors. One of the movements that would remain at the margins but continue to have a presence in protests and rallies was the formation of defense committees in support of political prisoners, including Vallejo and Campa. While there were some detailed variations to some of the committees, the main demands were: the recognition that political prisoners were put and kept in prison because of their ideas and not their actions; respect for the rights of prisoners, including proper legal defense and visiting hours; the improvement of prison conditions; and, eventually, a general amnesty for political prisoners. In the early to mid Sixties most of these committees were controlled, or at least heavily influenced, by the PCM.[13] The PCM was famous for its doctrinal sectarianism, which mostly emphasized its links to the Comintern and the USSR.[14] Still, calls to "Free the political prisoners" echoed in various progressive circles.

Those same calls reverberated in the growing student protests in early 1968. The student movement, which had begun to take hold the previous year, was a response to several aspects of the PRI regime: the undemocratic and clientelist processes of student unions and organizations; the infiltration of reactionary politics and tactics in high schools and universities; the paternalistic culture of the "revolutionary" government, which the youth no longer recognized as appropriate or legitimate; and, the especially violent response from the local and federal government to the growing student protests.[15] For the most part the students kept the PCM at bay. As part of the global New Left and countercultural revolt, the youth denounced some of the dogmatic positions of the USSR and local Communist parties and hoped to build a broader and more inclusive political movement.[16] While the PCM kept its distance, the Communists soon felt that the students would require their legal experience and defense committee structure.

In the spring of 1968 as the protests intensified, so did the repression. As the organizers were getting ready for a large rally on July 26, in commemoration of the Cuban

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12 Juan Manuel Gómez Gutiérrez and Raúl Sánchez Perea, *La defensa acusa: Conclusiones de la defensa en el proceso número 106/59, instruido por el Juzgado Segundo de Distrito del D.F., en materia penal, a los presos sindicales y políticos, con motivo de las huelgas ferrocarrileras de 1958-1959* (México: Ediciones "Nuestra Hora," 1962).

13 Volante del Comité de defensa Pro-Valentín Campa. D.F., agosto de 1951. "Dos Cantos a Valentín" por Hernán Laborde. CEMOS, Fondo Valentín Campa, Box 02, Folder 27. 1951; Conferencia de prensa, Comité Nacional por la libertad de los presos políticos y defensa de las garantías constitucionales, México, D.F ., 8 de agosto de 1960. CEMOS, Fondo PCM , Box 38, clave 34, Folder 08a. 1960; Asamblea Nacional por la Libertad de los Presos Políticos. 1.- Desarrollo y programa de labores. 2.- Discurso de David Alfaro Siqueiros en la asamblea. 3.- Intervención de Fernando G. Cortés en la asamblea. 4.- Relación de representaciones asistentes. CEMOS, Fondo PCM , Box 59, clave 55, Folder 18, 1965; Formas legales con las que se puede obtener la libertad de los presos dirigentes ferrocarrileros y políticos escrito por el Lic. Enrique Ortega Arena, D.F., 2 de marzo de 1965 Seis volantes "5 de febrero de 1965 Aniversario de la Constitución ¡Libertad a los presos políticos! Partido Comunista Mexicano." CEMOS, Fondo Valentín Campa, Box 07, Folder. 05. 1965.

14 Barry Carr, *La izquierda mexicana a través del siglo XX* (México, D.F.: Ediciones Era, 2000).

15 Elaine Carey, *Plaza of Sacrifices: Gender, Power, and Terror in 1968 Mexico* (Albuquerque: University of New Mexico Press, 2005); Pensado, *Rebel Mexico*; Eric Zolov, *Refried Elvis: The Rise of the Mexican Counterculture* (Berkeley: University of California Press, 1999); José Revueltas, *México 68: Juventud y revolución* (Mexico: Bolsillo Era, 2018); Julio Scherer García and Carlos Monsiváis, *Parte de guerra: Tlatelolco 1968* (México, D.F.: Aguilar, 1999).

16 Carr, *La izquierda mexicana a través del siglo XX*; George Katsiaficas, *The Imagination of the New Left: A Global Analysis of 1968* (Boston: South End Press, 1999).

Revolution, the government began arresting several of the leaders. These arrests included not only students but also young professors, exiled activists such as Adolfo Gilly and political organizers like Heberto Castillo. Unlike the repression of 1950s labor leaders, initially the administration of Gustavo Díaz Ordaz didn't use article 145. Instead, the government charged the protesters with trespassing, destruction of private property, obstruction of public passage, among other minor charges. When added up, these charges would result in hefty sentences.[17]

The first lawyers to appear at the Palacio de Lecumberri — where the criminal tribunals were held and the largest federal prison in the city — were known communist lawyers Juan Manuel Gómez Gutiérrez, José Rojo Coronado, and Carlos Fernández del Real. They were quickly overwhelmed with the amount of work but also surprised that they were rejected by many prisoners. In part, many of the defendants saw their imprisonment as illegal and therefore believed that engaging with legal matters would only legitimize the process. But — at least in the recollection of some of the younger lawyers who came along later — the main reason was that the prisoners realized that the lawyers were making decisions without having first consulted with them, using writs made for labor leaders which did not translate well to the current context, as well as trying to convince the defendants to plead guilty and negotiate a lighter sentence.[18]

One of these young lawyers, José Luis Romero, was deeply politicized by the student movement and the events of 1968. He graduated from law school in 1963. "Since I was young I disliked injustices," he recounted. "I saw an immense disproportion between wealth and poverty and it seemed to me that we needed to use the weapons that law provides for the benefit of the people."[19] He was a teacher and co-founder of an alternative free high school, the Preparatorias Populares. He joined the student movement and was briefly arrested. On October 2, 1968, the army and an elite force of the Mexican federal police surrounded a political rally in the Tlatelolco housing complex and fired into the crowd. The exact number of people killed and detained is still unknown.[20] After the massacre, Romero focused entirely on the defense of students and activists.

The PCM began to reach out to the students. They sent some of their younger members who had stronger links to the student movement over to the prison. Rodolfo Echeverría was not a licensed lawyer, but in some Mexican courts — depending on the charges — a person does not need to be an accredited lawyer. Rather, as long as one registers as a "defender," that individual can argue on behalf of the defendant and present defense writs. Commissioned by the PCM, Echeverría helped around twenty prisoners leave Lecumberri prison by the end of the year. In January 1969 he was preparing to go back to his hometown in Puebla, when a few more prisoners asked him to finish some paperwork. As he was heading out to pick up his belongings to leave the prison, he was surrounded, arrested and put in a cell nearby. Once all the visitors left the prison, they took him to a hotel outside of the city where they tortured him and threatened to take him to the military barracks. By then, rumors were widespread that in the military barracks people were killed and "disappeared." He never knew exactly whom it was that took him, although he believes

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17 José Luis Romero, Interview by author, Mexico City, 7 April 2016.

18 Manuel Fuentes, Interview by author, Mexico City, 19 March 2019.

19 Romero, Oral History Interview.

20 For more on the Tlatelolco massacre see Carey, *Plaza of Sacrifices*; Scherer García and Monsiváis, *Parte de guerra*.

they were members of the Federal Directorate of Security (DFS), who were mostly in charge of surveillance and cracking down on activists. They tried to force him to sign a confession stating that he had planted some bombs back in December. After he refused, he was finally charged with ten federal felonies and sentenced to sixteen years in prison.[21]

There were different attempts to form defense committees for the prisoners of 1968. Many were short-lived and crumbled due to weak and divided objectives. Those organized by the PCM provided a model for a stronger structure. Moreover, at least according to one of the imprisoned students, the legacy of the labor movement provided a basis for the new demands for prisoner rights. Family members of the prisoners, however, took on positions of leadership, and began uniting the disparate committees and demanding that the government release the prisoners and improve prison conditions. Though press conferences, pamphlets, protests and rallies, they tried to pressure politicians and prison authorities, and bring public attention to the vastly underreported numbers of imprisoned students and political leaders, and the unfair judicial processes waged against them.[22]

While the protests dissipated after the October massacre, cracks in the regime began to spread. For the most part, Díaz Ordaz was able to downplay the violence. Mexico hosted the Olympics, which began on October 12. Foreign newspapers and most of the local media portrayed what happened at Tlatelolco as a violent confrontation provoked by the protesters. As the student movement began to falter, family members and defense committees started to put pressure on the administration. The prisoners also held widespread hunger strikes, which the defense committees widely publicized.[23]

More surprisingly, however, were the growing calls for "judicial reform" from several prominent members of the mainstream legal community. The Lawyers Bar (Barra de Abogados) proposed a new version of Article 145, to strengthen the vague language.[24] Congress set up a special committee to discuss possible reforms of the article. Several prominent jurists, including Ignacio Ramos Praslow, one of the contributors to the 1917 constitution, spoke against the article, as did Luis Quintanilla del Valle, president of the Mexican Academy of International Law and former Secretary General of the Organization of American States.[25] There were many voices in favor of keeping the law as it was. Many of those testimonies came from leaders of the CTM and other labor organizations close to Díaz Ordaz.[26] This debate was not critical in the sense that it was a discussion of reforming a single law, and one that had not been used on the student protesters. Nonetheless, it heralded the weakening image of the president.

Luis Echeverría, the Secretary of the Interior, took advantage of some of these challenges and presented himself as a rational, lawful, and compassionate presidential

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21 Conversation with Rodolfo Echeverría with author, Puebla, 29 March 2016.

22 Ibid.; Romero, Oral History Interview; Mónica Quiroz Espinoza, "Los llamaban vándalos: La resistencia del movimiento estudiantil, el estado, la sociedad civil, la legislación y la práxis penal del Distrito Federal en 1968" (Tesis de Licenciatura, Instituto de Investigaciones Dr. José María Luis Mora, 2015).

23 "Penal de Lecumberri: Una Huelga de Hambre Por La Libertad" (Tesis de Licenciatura, Facultad de Filosofía y Letras, Universidad Nacional Autónoma de México, 2011).

24 "La Barra de abogados Propone una nueva redacción para los Art 145 y 145 Bis," *El Día*, 7 November 1968. AGN, Fondo DGIPS, Box 1764A Folder 3.

25 "Ramos Praslow se pronuncia por la derogación del Artículo 145," *El Día*, 17 December 1968; "Frentes Politicos," by Francisco Cárdenas Cruz, *Excelsior*, 15 October 1968 AGN, Fondo DGIPS, Box 1764A Folder 3.

26 "Tres Testimonios Favorables al Art 145, Ante la Comision," *El Dia*, 19 October 1968. AGN, Fondo DGIPS, Box 1764A Folder 3.

candidate. Shortly after his inauguration in 1971, he issued an amnesty to prisoners and repealed article 145 entirely. The amnesty, however, did not apply to all political prisoners, and many refused to take it until all their colleagues were released. In addition, political repression and persecution continued throughout his tenure. Paradoxically, Echeverría continued to present himself as a compassionate and progressive leader both domestically abroad. He was resolute in promoting Mexico as a beacon for human rights on the international stage. He supported United Nations resolutions in favor of Palestinian self-determination, condemned dictatorships in Central and South America, and joined the Non-Aligned Movement.

Workers, Guerrilleros, and Lawyers in the 1970s

The period following the 1968 student protests is generally known as the "Dirty War" in Mexico.[27] It was a period of armed insurrectionary movements both in the cities and the countryside, fighting against the repressive politics of the State. The Echeverría government promoted human rights abroad but it applied brute force domestically. Splinter movements from within the student movement began forming urban guerrilla cells in Guadalajara, Monterrey, and Mexico City. Revolutionary peasant organizations defended communal lands with arms and attacked local government and army posts. The government responded with mass arrests, extrajudicial killings and forced disappearances. The two main agents of repression were the Mexican Army, and the Federal Directorate of Security (DFS), the Mexican equivalent of the FBI, first led by Fernando Gutierrrez Barrios and then by Miguel Nazar Haro.

The lawyers defending the *guerrilleros* and their supporters were often at a heavy disadvantage. The defendants were usually held several days before any official charges were made. Often they faced more than a dozen charges, ranging from possession of an illegal firearm to armed robbery, kidnapping, and murder. By the time lawyers met with the defendants, the visible signs of torture were accompanied by signed confessions. The lawyers mostly argued that the forced confessions and the tainted evidence should be rendered inadmissible to unsympathetic and dismissive judges. At the behest of their clients, the lawyers would also try to include in the defense the political positions, which also mostly fell on deaf ears.

According to José Luis Romero, there were, however, occasions when the evidence was so unsubstantial that defense lawyers were able to reduce the number of criminal charges, one time from 16 to 2. At other times, they benefited from small acts of resistance within the judicial structure. Romero recalls one instance when a leader of the Revolutionary Armed Forces of the People (*Fuerzas Revolucionarias Armadas del Pueblo*) was put in a line-up for identification. After the police officer identified him as the culprit, the court secretary deliberately and inconspicuously wrote down in the record, "He was not identified." Because

27 Alexander Aviña, "A War Against Poor People: Dirty Wars and Drug Wars in 1970s Mexico," in *Mexico Beyond 1968: Revolutionaries, Radicals, and Repression during the Global Sixties and the Subversive Seventies* (Tucson: University of Arizona Press, 2018), 134–54; Gladys McCormick, "The Last Door: Political Prisoners and the Use of Torture in Mexico's Dirty War," *The Americas* 74:1 (January 2017): 57–81; Gladys McCormick, "Torture and the Making of a Subversive During Mexico's Dirty War," in *Mexico Beyond 68: Revolutionaries, Radicals, and Repression during the Global Sixties and Subversive Seventies* (Tucson: University of Arizona Press, 2018), 254–72.

of the saturated work log of the court, the error was not rectified and that charge was dropped.[28] Nonetheless, these were very exceptional cases.

Once again, the most effective pressure came from the defense committees. In Guadalajara, one of the biggest defense committees was formed in 1973. By the early Seventies the city was a hotbed for radical direct actions by different guerrilla groups.[29] Dozens of militants, activists, and sympathizers were imprisoned in the notoriously violent and overcrowded Oblatos prison. In 1973, the state committee of the PCM sent a proposal to Luciano Rentería, a local lawyer and member, to start a defense committee. At first Rentería was hesitant. "Why should I defend them? They rob, steal and kidnap," he asked. However, after his son was arrested, he started going to the prison and met with the prisoners. They were also hesitant, in part because he was with the PCM, and because they thought any legal challenges would be hopeless. It was until Rentería started organizing the mothers of the imprisoned that the revolutionary youth began to welcome the outside legal assistance.

The Committee in Defense of Political Prisoners (CPDPP) had three main objectives. First to have the prison and state authorities respect human rights. The committee advocated that notwithstanding the real or alleged crimes of the prisoners, they, too, have human rights, among them the right to legal defense and sanitary conditions. Second, the Committee wanted the prison and state authorities to recognize their clients' status as "political prisoners," as opposed to the "common" prisoner. Finally, the committee fought to expand visiting hours, allow family members to bring the imprisoned food and clothes, and improve the general living conditions. The Committee also distributed leaflets and bulletins on the number and names of people arrested, missing, and deceased.[30]

The Oblatos prison played an important political role on the national stage, as did the CPDPP. On October 10, 1977, a riot broke out at Oblatos. The warden instigated the leader of the biggest gang inside to attack and kill the *guerrillero* prisoners. The latter fought back, killed the gang leader, and along with other prisoners took over the main yard. After negotiations among the inmates, the CPDPP, and the governor, authorities retook control of the prison. As details of the riot emerged, several prison officials were fired and a few were prosecuted.[31] The event brought attention to the violent conditions within Oblatos and the corrupt management of the prison system. It also became a catalyst for José López Portillo, the incoming president, to enact a new law of general amnesty in January of 1978. The prison was shut down and demolished a couple of years later. The prisoners were sent to different penitentiaries in Mexico City and to the newly built Puente Grande prison in Jalisco.

Beyond the prisoner rights committees, progressive lawyers took on more prominent roles in the new labor movement. After the relative calm of the 1960s, the movement for

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28 Romero, Oral History Interview.

29 Sergio Aguayo, *La charola. Una historia de los servicios de inteligencia en México* (México: Raya en el Agua : Grijalbo, 2001); Verónica Oikión Solano and Marta Eugenia García Ugarte, *Movimientos armados en México, siglo XX* (Zamora, Michoacán; México, D.F.: Colegio de Michoacán : CIESAS, 2009); Gustavo A. Hirales Morán, *La Liga Comunista 23 de Septiembre: orígenes y naufragio* (México, D.F.: Cultura Popular, 1977).

30 Pablo Valadez Huizar, *Clandestino: Historias de La Guerrilla Urbana*, Episodio 7, "En Defensa de los Presos," Video (Guadalajara, Jalisco: UDGTV Canal 44, 2016).

31 Antonio Orozco, *La fuga de Oblatos: Una historia de la LC 23-S* (Guadalajara: Taller Editorial La Casa del Mago, 2007); Jesús Zamora García, *La Penal de Oblatos: Historias siniestras de vida y muerte*, Colección Jalisco. Serie Edificios y Espacios Públicos (Guadalajara: Editorial Universitaria, 2011).

democratic unions exploded again in the Seventies. Valentín Campa and Demetrio Vallejo were released from prison with the 1971 amnesty and once again mobilized the railroad workers. This time, telephone operators, electrical workers, teachers, miners, and university employees joined the effort and formed their own independent unions. The Independent Workers Union (UOI), a confederation of unions, was formed in 1972 with three member unions. By 1976 there were 86 unions in the confederation. Juan Ortega Arenas, an old labor lawyer, was one of the founders of the UOI.[32]

In the mid Seventies José Luis Romero also worked with the insurgent labor movement. He developed a legal argument to support the formation of independent unions. In Article 123 of the Constitution, there is a section stating that workers "through a coalition" have collective rights, including the right to strike. Relying on that particular article, lawyers developed a common strategy in which workers would denounce their corrupt union leader, form a "coalition," have it registered before a public notary, and strike to get recognition from the employer and the Labor Department. And, if they were declared illegal, lawyers would use Romero's argument before the Conciliation and Arbitration Board (JCyA), the body in charge of recognizing newly constituted unions.[33]

Resolutions to labor conflicts would also occur outside of the courts. In 1975, Romero took on a case with Searle, a U.S. American business in Toluca, a few hours west of Mexico City. The workers belonged to the CTM and were promised a 19% wage increase but only got 2%. They formed a coalition and went on strike. The JCyA in Toluca declared them illegal and issued arrest warrants. Romero met with Porfirio Muñoz Ledo, the Secretary of Labor, who later brokered a deal where the workers got the full 19% increase and recognition for their union. Not long thereafter, Romero was detained by a government agency and taken to a military base where he was tied and blindfolded. He was released, without any official charges, a month later. He found out he was only released after his students and friends put pressure on the government. For instance, the journalist Miguel Granados Chapa wrote an effective Op-Ed on Romero's situation in *Excelsior*, one of the biggest national newspapers.

On another occasion, as Romero was simultaneously defending workers and *guerrilleros*, he was once again taken into custody. This time during the interrogation, Miguel Nazar Haro, the head of the DFS, came in and told Romero, "Listen, *abogadito* [little lawyer], drop your work. Remember that with me you won't even get a death certificate." Romero and other lawyers were increasingly enduring the extreme dangers involved in their work. Because most of them were working independently, there was a growing need for an organization where they could assist and protect each other. "We weren't organized or coordinated," he said, "lawyers who were in that situation started to connect with other lawyers."[34]

By the Seventies there were several legal organizations and bar associations in the country. However, they were either strictly professional organizations, concerned with issues affecting lawyers and law schools, or part of the political machinery of the PRI, loyal to the government and the courts. The National Association of Lawyers (ANA) was mostly a ceremonial professional organization founded by Miguel Alemán and in charge of the celebrations of the "Day of the Lawyer." The Revolutionary Lawyer Group (Agrupación de

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32 "Las 100 Luchas Obreras del Siglo XX," *Trabajo y Democracia Hoy*, Núm. 128, Año 24, México D.F., 2014.

33 Romero, Oral History Interview.

34 Ibid.

Abogados Revolucionarios) declared itself the "vanguard in openly and decisively backing the patriotic politics of President Echeverría."[35] The Federation of Mexican Lawyers was part of the National Confederation of Popular Organizations (CNOP) and fit well within the corporatist structure of the PRI.[36] The oldest association, the Mexican Bar and Association of Lawyers (Barra Mexicana, Colegio de Abogados, AC) occasionally voiced concerns over juridical issues, but would mostly focus on local deficiencies or individual cases of unethical conduct by lawyers or judges.[37] Jurists who wanted to form a progressive coalition could not even go through the PCM, which by the mid Seventies had been severely weakened after incessant leadership and sectarian fights.[38]

In Guerrero, a coalition of independent law firms (Bufetes Jurídicos Populares) distributed an overview of the deficiencies in the current legal associations in 1978. They condemned most of the bars and associations of becoming part of the failure of the justice system and accomplices to corruption and repression. There were two exceptions: the Bar of Lawyers of the Federal District, who had been investigating cases of forced disappearances in Mexico City; and, the Lawyers Association "Lic. Eustaquio Buelna" in Culiacán, Sinaloa. Founded in 1968 and led by Carlos Morán, the association had worked with different committees in search of the disappeared and on behalf of political prisoners. The conclusion of the Guerrero law firms was that the majority of lawyer organizations had not been preoccupied with social problems and only functioned to defend their own interests or to be a body in service of party and government. It is therefore an "obligation of democratic lawyers to form a common front to create an organization whose function is to focus on the social problems and to defend the rights and interests of the Mexican people." The Autonomous University of Guerrero (UAG), where the coalition was headquartered, issued a call for progressive and democratic lawyers to come to the university the following year.[39]

The National Front of Democratic Lawyers

Enrique González Ruiz and his brother, Lamberto, grew up in the north of Mexico. They went to the University in San Luis Potosí. After graduating from law school, Enrique worked a bit in local courts in the north and then moved to Mexico City in the early 1970s to pursue a graduate degree in law at the National Autonomous University of Mexico (UNAM). He worked in the office of the main lawyer for the university. After the university president asked the legal office to make provisions in order to prevent university workers from forming a union, González sided with the workers and left the position.[40]

González shared Romero's concern over the lack of a progressive legal organization. There were not that many progressive lawyers in the country, to begin with, so many of

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35 Informe IPS, 12 May 1972, Banquete asamblea para renovar comité ejecutivo de la Agrupación de Abogados Revolucionarios. AGN. Fondo DGIPS Box 1760A Folder 1.

36 "Programa de la Federación de Abogados Mexicanos para toma de protesta del nuevo comité ejecutivo nacional." AGN. Fondo DGIPS, Box 1760A Folder 1.

37 "Señalan las barras de abogados las deficiencias de la justicia local," *El Universal*, 6 June 1972. AGN. Fondo DGIPS Box 1760A Folder 1.

38 Barry Carr, *La izquierda mexicana a través del siglo XX* (México, D.F.: Ediciones Era, 2000); Carlos Illades, *La inteligencia rebelde: La izquierda en el debate público en México 1968-1989* (México, D.F.: Océano, 2012).

39 "Las organizaciones de abogados ante la problemática social," Bufetes Jurídicos Populares de la UAG, Chilpancingo, GRO, Septiembre 1978. From the personal papers of Lamberto González Ruiz.

40 Enrique González Ruiz, Interview by author, Mexico City, 11 April 2016.

them knew of each other. "We were finding each other as we engaged in the practice," González recalled. "We started finding each other, those who held on, who fought repression and resisted the offers of corruption."[41] By the late Seventies he was Dean of Academic Affairs in the Autonomous University of Guerrero in Chilpancingo.

In the Cold War Guerrero was an epicenter for violence and struggles for self-determination. Lucio Cabañas and Genaro Vázquez, peasant and community leaders, took up arms against the state in the late Sixties. The army occupied several outposts and villages to suppress the uprising. The growing local drug trade added an extra layer of violence and corruption to the region.[42] The university became a bastion for progressive academics and local activists. The Independent Law Firms of Guerrero were housed in the UAG and one of their objectives was to pressure the governor and the other local bar associations to comply with one of their mandates, which was to support and collaborate with the UAG's cultural and educational programs. The Law Firms joined the González brothers and issued a call for progressive lawyers to congregate in Chilpancingo.

In July of 1979 the UAG hosted the first meeting of "democratic lawyers." It is unclear exactly how many people attended — ome remember under 100; others recall over 200. Regardless, a significant number of lawyers and law professors from as far north as Sinaloa to as far south as Chiapas arrived. A few came from Guatemala. The announcement conceded that there would be a small number of lawyers, but it would be those who have committed their professional skills to the "working classes" and who had "chosen the hard road of defending the landless peasants, the exploited workers, the underserved tenants, and the imprisoned intellectuals." These democratic lawyers refused to legitimate the economic interests of the "bourgeoisie, the big industrial and commercialist classes, and the corrupt union leaders."[43] The themes of the meeting were: human rights in Mexico; the role of jurists in the struggle for social change; the juridical restriction of labor rights; lawyer organizations and their functions in the current environment; and legal education and research.

During the meeting several lawyers and organizations presented reports, submitted proposals, and established the parameters for a new association. The National Independent Committee in Defense of the Imprisoned, Persecuted, Disappeared and Political Exiles, (CNPDPPDEP) — the biggest defense committee in the country — presented a critical analysis of the 1978 Amnesty Law.[44] The attendees also compiled a list of 566 missing persons who had been taken into police or military custody. One of their resolutions was to pursue all legal means possible to pressure the local and federal governments to produce the "disappeared." Among the other resolutions was that they would give full support to workers rights; fight for the recognition and implementation of human rights; demand the abolishment of torture and forced detention; fight against the discrimination of women and indigenous minorities; and demand a return to the "spirit" of the 1917 Constitution, especially the defense of the Articles 123 and 27, which granted collective rights to workers and peasants.[45]

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41 Ibid.

42 Alexander Aviña, *Specters of Revolution: Peasant Guerrillas in the Cold War Mexican Countryside* (Oxford: Oxford University Press, 2014).

43 *Primer Encuentro Nacional de Abogados Democráticos*, Chilpancingo, Gro, Julio 1979, Universidad Autónoma de Guerrero, Mexico, 1981.

44 "Reporte del Comité Nacional Independiente Pro Defensa de Presos, Perseguidos, Desaparecidos y Exiliados Políticos," in Ibid.

45 "A la opinión pública nacional: Resoluciones del primer encuentro de abogados democráticos," in Ibid.

After four days the attendees officially declared the creation of the National Front of Democratic Lawyers (FNAD). They would hold their first official convention the following year in Culiacán, Sinaloa. Meanwhile, one of the main tasks was to recruit their colleagues and set up chapters in different states of the country. As an organization of lawyers, law students, and legal professionals committed to the interests and struggles of the "exploited," the objective of FNAD was to become a "force in the liberation struggles in search of a new judicial order that will be an expression of the interests of the working class." Through the use of their juridical knowledge, they would provide counsel to workers, peasants, and popular movements. The purpose was to "become an additional arm of this movement to contribute in the recovery and development of the historical initiative of the exploited. And to simultaneously stop and push back the advances of the state and the national and imperialist bourgeoisies who today are the main enemy of the Mexican people."[46]

One of the first actions of the FNAD was pressuring local governments to implement the Amnesty law of 1978. In June of 1980, a delegation of FNAD joined with the largest national defense committee, CNPDPPDEP, met with the undersecretary of the state of Nuevo León. Gustavo Adolfo Hirales Morán, one of the top brass of the urban guerrilla Liga Comunista 23 de Septiembre, was still being held in the state prison. Often state governments would bring up state charges and claim the general amnesty did not have jurisdiction. These legal battles were often long ordeals. However, the day after the meeting, a local judge issued an order and Hirales Morán was released from prison.[47] The combination of FNAD and the defense committees was starting to show its political power.

There was also a strong commitment to international solidarity. Among the resolutions of the first summit were solidarity with the struggle for national reconstruction of the Nicaraguan nation; support to Chicano organizations against discrimination and human rights violations in the United States; and solidarity with progressive lawyers in Argentina who were repressed by the military dictatorship.[48] In their first year they joined the American Association of Jurists (AAJ), and built ties with the National Union of Cuban Jurists, the Sandinista Workers Coalition of Nicaragua, and a lawyer's association in Colombia. In 1980, the Dirección Revolucionaria Unificada de El Salvador, a coalition of left-wing guerrilla forces, asked the FNAD for a study of the international implications of the revolutionary armed struggle in El Salvador.[49] The most celebrated international collaboration, however, was with a Puerto Rican nationalist militant.

William Morales was a member of the Armed Forces of National Liberation (FALN), an insurrectionary group of the Puerto Rican diaspora in the United States. Morales was arrested after a homemade bomb he was preparing exploded and blew off most of his fingers on both hands. After a daring and surprising escape from a New York prison, Morales fled to the north of Mexico. There he joined a local revolutionary group. In 1980

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46 *Declaración de Principios*, FNAD, Mexico D.F., Abril 1981.

47 Informe IPS, 9 Jun 1980, Estado de Nuevo Laredo [sic]; con la finalidad de que se le de amnistía a Gustavo Adolfo Hirales Morán, se entrevistaron con el Subsecretario Gral. de Gobernación una comisión del grupo denominado "abogados democráticos"; IPS Informe, 10 de junio 1980, Estado de Nuevo León, Al obtener beneficio de la ley de amnistía Gustavo Adolfo Hirales Morán recobró libertad a las 20:45. AGN. Fondo DGIPS, Box 1778A Folder 4.

48 "A la opinión pública nacional: Resoluciones del primer encuentro de abogados democráticos," in *Primer Encuentro Nacional de Abogados Democráticos.*

49 "Informe de la Comisión Nacional Coordinadora rendido por el compañero Manuel Fuentes," in *Declaración de Principios.*

police intercepted his guerrilla cell and in the shootout a police officer died. Morales was taken into custody and moved to Mexico City where he found out that the United States had already requested his extradition.

Among several lawyers visited Morales, Pilar Noriega of FNAD offered her services. Morales had heard of the organization and decided to work with them. The extradition process was long and frustrating. The hearings were often delayed. After consulting with Morales and several Puerto Rican groups, Noriega argued that since Morales was fighting against colonialism and for the self-determination of Puerto Rico, the Mexican government should stand by its own foreign policy principles and provide Morales with asylum or safe passage to another country.[50] There was pressure coming from both sides. Morales' defense team along with Puerto Rican supporters brought the trial to public attention. Noriega recalled how the campaign in favor of Morales was able to news on the case from the sensationalist sections to the front pages of national newspapers. Finally, after five years, the judge presented his opinion in favor of extradition. The Secretary of Foreign Relations, however, and much to the surprise and irritation of the United States, denied the petition and, after negotiating with the Cuban government, released Morales and sent him to Havana in 1985.[51]

Besides Pilar Noriega there were several prominent women lawyers in FNAD. Bárbara Zamora was a law student when she first attended the Chilpancingo summit of FNAD in 1979. She later became one of the leading land and *ejido* rights lawyer in the country. Carmen Merino, a human rights lawyer, worked with political prisoners and assisted Noriega with the Morales case. María Luisa Campos Linas worked with unions and labor rights.

Still, despite its anti-sexist intentions, the FNAD struggled with sexism. Noriega later reflected, "in the beginning it was very *machista*" — men took over most of the positions in the national and regional commissions. Her male colleagues would often tell her and Zamora that they had an advantage over the men because judges would allow the women to be louder and more combative in court. Not only was that not the case, according to Noriega, but they often struggled with judges, court officials, and prison authorities to call them by their professional title of "*Licenciada*," instead of the more informal and patronizing "*Señorita*." Although the women's movement had made its inroads in Mexican progressive circles, Noriega recalls that she and her female colleagues decided against forming female-only consciousness groups, believing they had more influence by constantly working alongside the men.[52]

In order for FNAD to become "another arm" of the working-class movement, the lawyers had to build a relationship with their clients. Besides trying to demonstrate their loyalty to their clients' causes through the legal work, FNAD also believed that the jurists' role in the class struggle was to use their legal knowledge in the orientation and preparation of the "masses" with the goal that they have enough elements to defend themselves ("*que permita su autodefensa*"). "Democratic lawyers," read one of the resolutions of the first convention, "must actively support the mass movements in the country, elevating their

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50 Noriega was also in contact and collaborated with the People's Law Office in Chicago, who had been Morales' lawyers in the United States. Pilar Noriega, Interview by author, Mexico City, 9 April 2016.

51 Ibid. For more on this case see Morales' autobiography William Morales Correa, *Desde la sombra la luz: Pasajes de mi vida*, Kindle Edition (CreateSpace Independent Publishing Platform, 2015).

52 Noriega, Oral History Interview.

revolutionary consciousness," by taking advantage of the contradictions in the legal system and exposing the "class-based interests" the system shelters.[53]

Several members of FNAD took jobs in public universities and high schools. There was, however, also a practical element to this decision. Teaching provided an additional income for lawyers who regularly worked pro bono or charged minimal fees. Still, educating and empowering the client remained a distinctive trait of the "democratic lawyers." As Romero later described, "You exercise your rights by using them and that's what we need to do: show the people that they have rights so they can use them — not the lawyer but the defendant… We should give them the instruments so that he [sic] can empower himself with these tools and validate them."[54]

The lawyers saw themselves as part of a longer history of resistance and struggle. They had many roles to play, not only within the parameters of the legal system but also in the external arena of political organizing. Furthermore, the lawyers could eventually take on a revolutionary position. Guillermo Staines Orozco, a lawyer from Nuevo León, best encapsulated this vision when he concluded in the first meeting the following:

> The jurist, the legal professional, the lawyer committed to the cause of socialism, to the proletarian revolution, actually plays an important part. He played it in the times of Roman slavery, during European feudalism, in the colonized countries, in the Mexican and the Russian revolutions. There are many examples, among which we can mention Lenin and Ghandy [sic], the Flores Magón brothers, who demonstrate that the lawyer, armed with the technique of the law and linked to the exploited classes in his laborious gait towards freedom, can produce in his actions important effects in the class struggle. He can defend revolutionary militants before penal authorities. He can propose legislative reforms. He can denounce corruption and the ruling arbitrariness. He can eventually become himself a revolutionary militant and use the technique that he is blessed with to change, to the extent that he can, the conditions of exploitation.[55]

The FNAD, however, did not last the decade. In addition to the repressive tactics of the State, the loose structure of FNAD led to the disintegration of the organization. Symptoms were already visible in the first years. Manuel Fuentes, a young member of the coordinating committee, wrote an evaluation of the organization's first year. The only criticism he made was after the first meeting the committee did not properly work with its original twenty members, and new members had to step in to contribute. There were, however, other serious internal problems. For instance, they did not have a good system of information on committee activities with all the attendees of the first meeting. Initially, this problem was due to a lack of economic resources — several members had stopped paying their dues — but soon thereafter it was because of the lack of "human resources."[56]

Although the FNAD set out to have a strong regional and national structure, in reality it was quite flexible and somewhat feeble. While this allowed the chapters and local

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53 "Conclusiones Generales de la Mesa 3," in *Primer Encuentro de Abogados Democráticos*.

54 Romero, Oral History Interview.

55 Guillermo Staines Orozco, "Algunas Consideraciones sobre el papel del jurista en el cambio social," in *Primer Encuentro Nacional de Abogados Democráticos*.

56 "Informe de la Comisión Nacional Coordinadora rendido por el compañero Manuel Fuentes," in *Declaración de Principios*.

lawyers to act independently — without the need to consult with regional and national committees or assemblies — it also led to a gradual deterioration of the organization. According to González, one of the aspects that made it so strong in the beginning was their decision to not build up leaders, or form a permanent leadership. This kept a somewhat horizontal, voluntary character to the organization but mainly it prevented the possibility of a top brass that could be corrupted by the State. "The State was an expert in corrupting social leaders with money, blackmail, political positions," González affirmed. For the most part, the flexibility helped them avoid conflict. "We weren't fighting for the space," González said, "since the space would not lead to economic or electoral advantages… nobody fought for the space, it was everybody's responsibility."[57] Nonetheless, it was a constant struggle to get lawyers who were already doing a fair amount of volunteer and pro bono work to sustain the basic structures to keep a national organization going.

The Human Rights Movement and the Gradual Collapse of the PRI

The incorporation of international law into domestic trials changed radically from the 1970s to the late 1980s. Lawyers who brought in international human rights conventions as part of their defense were frequently met with dismissiveness and even ridicule. "I remember when we started to cite international treaties of human rights," González remarked, "Well, it wasn't an exaggeration to say that they [the judges and court secretaries] laughed at us." When the lawyers invoked specific treaties signed by Mexico, "they mocked us at first."[58] That did not begin to change considerably until the early 1990s.

In its first meetings, FNAD devoted several discussion sections to the issue of human rights in Mexico. Human rights violations, the lawyers agreed, had to be denounced through "all possible means" of mass communication, judicial arenas, and through educational institutions and professional associations. In order to achieve an "authentic democracy," lawyers needed to foment, develop, and teach human rights at all educational levels. Their first resolutions noted that one of their positions was to denounce the "severe and continuous" human rights violations of the Mexican government and especially to expose the contradictions between the politics conducted by the government externally, which trumpeted Mexico's strong commitment to human rights, and what was happening domestically, state denial and repression of human rights within Mexico.[59]

Furthermore, lawyers wanted to wrest human rights discourse from the government's rhetorical arsenal. In the inaugural speech of the first official convention of FNAD, Victor Orozco, a lawyer from Sinaloa, asserted that human rights constituted "conquests" of the masses in Mexico and in the rest of the world. Even if human rights were initially inscribed in the "political declarations of the bourgeoisie" they will now "turn against them," and their defense will involve "all those interested in the establishment of a new regime, in the construction of a new world of equal opportunities for all."[60] Orozco and his colleagues wanted to emphasize that the "attack" on workers and peasants constituted human rights violations, not to mention the persecution of political dissidents. While to

57 González, Oral History Interview.

58 Ibid.

59 "Resumen de trabajo y conclusiones de la mesa 1 (los derechos humanos en México y análisis de las leyes de amnistía," in *Primer Encuentro Nacional de Abogados Democráticos.*

60 "Discurso oficial pronunciado por Víctor Orozco," in *Declaración de principios.*

them it was clear this was a global phenomenon, they also wanted the world to acknowledge it was happening in Mexico.

Mexican human rights organizations met an unexpected obstacle when they took their message abroad. Lamberto González was left confused and disconsolate when he attended a meeting in Peru of organizations working on forced disappearances in Latin America. His Latin American colleagues did not believe there were political disappearances in Mexico. After all, the Mexican government led many international condemnations of South American dictatorships. "They made us feel like we didn't belong," González lamented.[61] In an American Association of Jurists' meeting in Nicaragua, after the triumph of the Sandinistas, the organizers asked the FNAD delegation to withdraw some of the presentations because they did not want to have problems with the Mexican government.[62] These encounters, while frustrating to the participants, were some of the small ways in which grassroots human rights organizations had to chip away at the ersatz image of Mexico, which Echeverría built up in the 1970s.

Two tragic events in 1985 and 1990 finally unmasked the regime's external human rights reputation. On September 19, 1985, a massive earthquake ripped through central Mexico. Hundreds of buildings in the capital collapsed. After the slow and inefficient response from the local and federal government, citizens formed rescue patrols and built makeshift camps. This led to an organized and increasingly politicized civil society.[63] News of faulty construction, due to cheap materials and corrupt deals, and other abuses began to spread outside of the country. One of the more notorious cases was of a seamstress factory, which collapsed in the downtown area. The owners of the company moved quickly to recover some of the expensive equipment, but left the search for and rescue of the workers to the neighbors. Approximately sixteen women died. The survivors started a movement demanding better conditions and guaranteed protections. Newspaper articles, local and foreign, described the precarious workspaces, which other collapsed factories uncovered. Manuel Fuentes, a young FNAD lawyer, helped the seamstress movement become an independent union.[64] The earthquake literally exposed the working conditions of textile workers and forced the government to recognize the union and enact stricter regulations.[65]

The second event was the murder of a human rights lawyer in the north of the country. Norma Corona Sapién was the president of the independent Human Rights Commission of Sinaloa. She was murdered in May of 1990. Corona was investigating the murder of another lawyer and three Venezuelans in Culiacan, the state's capital. Her main suspect was a drug kingpin, who she alleged to have connections with the federal police. Two of her convicted killers were former police officers. Her murder drew national and international condemnation. The U.S.-based group Americas Watch joined other human rights groups in denouncing the growing number of unsolved murders in Mexico. In response, Carlos Salinas de Gortari, who had just taken office as president in 1989, created

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61 Conversation with Lamberto González Ruíz with author, Mexico City, 9 April 2016.

62 Noriega, Oral History Interview.

63 For more on the political and social aftermath of the earthquake see Louise E. Walker, *Waking from the Dream: Mexico's Middle Classes after 1968* (Stanford: Stanford University Press, 2015).

64 Fuentes, Oral History Interview.

65 Another important case of the 1985 earthquake happened with the collapse of the Attorney General's office [Procuraduría] As firefighters were looking through the rubble of the main parking lot they found the body of a lawyer in the trunk of a car. Tensions grew when the Attorney General was fired but quickly placed in another government position. Romero, Oral History Interview.

the National Human Rights Commission to assist the federal and state prosecutors. In 1992 the commission was established as a constitutionally mandated and officially independent, nonpartisan institution.[66] By the early 1990s, there were around 200 human rights organizations in Mexico.[67]

The difficulties of incorporating political and human rights in the Mexican courts forced the activist jurist to explore different avenues. The lawyers continued to exhaust the channels and mechanisms of the justice system, but, while they occasionally got successful results for their clients, the possibility of effecting meaningful reform was minimal. Taking a cue from the trajectories of the labor movement, and later on the student movement, radical lawyers learned that pressure had to come from outside the courts, and that they could still play an important part in that pressure. The jurists' educational role in denouncing government abuses while describing the corresponding constitutional and human rights at press conferences, in pamphlets, or as legal counsel of defense committees, helped maintain a persistent strategy in the struggle against an authoritarian government. While they used constitutional grounds to support workers and political dissidents, lawyers felt that by incorporating the language and practice of human rights they could expand that strategy further and even get recognition for their struggles abroad. This last goal proved to be difficult but instrumental in pressuring the government to give political, social, and legal concessions. Furthermore, the parallel and intersecting work of legal organizations, defense committees, and human rights groups provided an essential juridical foundation for an increasingly politicized civil society.

Legal organizations like the FNAD were only a part of a larger human rights movement and insurgency within civil society. The defense committees continued to spread and grow after the 1968 student movement. The political power that they began to acquire and the role they played in weakening the position of the PRI and the presidency should not be understated. Following the 1978 general amnesty, the CNPDPPDEP, by then the largest defense committee, continued to pressure the government for more expansive amnesties but especially for protections for the exiled and for investigations into the disappeared. In 1984, President Miguel de la Madrid issued an additional amnesty. In an official account, about 148 prisoners had been liberated, 2,000 arrest warrants annulled, 57 exiles returned, but there were no investigations or indications of the disappeared.[68] Rosario Ibarra de la Piedra, a leader of the CNPDPPDEP, became a prominent political figure and was part of the electoral opposition that nearly cost the PRI the presidency in 1988.[69]

After the 1988 elections political opposition to the PRI gained more ground. The elections were marred by controversy: on the night of the election, the opposition candidate, Cuauhtémoc Cárdenas was ahead, then, suddenly, the counting system "collapsed." When it

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66 "Mexico Arrests 4 in Killing of Human rights Activist. Her Death Prompted the Creation of a National Panel to Probe Abuses," Marjorie Miller, *Los Angeles Times*, 3 July 1990; "De pronto se supo quién mató a Norma Corona," Miguel Cabildo, *Proceso*, 29 September 1991; "Recuerdan a Norma Corona a 25 años de su muerte," Gerardo Ramirez, *Debate*, 21 May 2015.

67 Sergio Aguayo, "Auge y Perspectivas de Los Derechos Humanos En México," in *México a la hora del cambio*, by Luis Rubio and Arturo Fernández (México D.F.: Editorial Cal y Arena, 2015).

68 Pablo Valadez Huizar, "Clandestino: Historias de La Guerrilla Urbana," Video (Guadalajara, Jalisco: UDGTV Canal 44, 2016).

69 Sergio Aguayo, "Auge y Perspectivas de Los Derechos Humanos En México," in *México a La Hora Del Cambio*; Sergio Aguayo, *De Tlatelolco a Ayotzinapa: Las violencias del Estado* (México D.F.: Ediciones Proceso, 2015); José Agustín, *Tragicomedia mexicana 3. La vida en México de 1982-1994* (México, D.F: Planeta, 2006); Joe Foweraker and Ann L Craig, *Popular Movements and Political Change in Mexico* (Boulder, Colo.: Rienner, 1992).

finally was up and running, the PRI candidate, Carlos Salinas de Gortari, was well ahead. In the aftermath, all the opposition parties joined forces to demand a recount. Later, a broad coalition of these groups coalesced and founded the Party of the Democratic Revolution (PRD).

The growing political opening affected other organizations. Many lawyers believed that the FNAD's position was too radical; these lawyers believed that if they had a wider platform they could incorporate liberal lawyers, and perhaps even judges and magistrates. In September 19, 1991, the National Association of Democratic Lawyers (ANAD) was formed.[70] This was the final nail in the FNAD's coffin; the organization quickly dissolved. Most of the people involved in FNAD joined the new organization. Social movements continued to need legal counsel, lawyers were still persecuted, and the new political and economic realities of the expansive neoliberal policies of the Salinas administration required attention.

While perhaps broader politically, ANAD was predominantly focused on labor rights issues. They took on a prominent role in the different legal challenges to the North America Free Trade Agreement in 1994, joining forces with the National Lawyers Guild. Both argued in their respective countries and in front international agencies that the economic agreement was against the interests of industrial and farm workers. Although they continued to have a presence in different parts of the country, Mexico City became its main hub. As the PRD gained more political ground in the city, so did some ANAD lawyers. For instance, Jesús Campos Linas, an old labor lawyer, was elected to one of the local labor arbitration boards, where he served as president for over twelve years.[71] When Cuauhtémoc Cárdenas was elected mayor of the city, many ANAD lawyers worked in his and in subsequent PRD mayoral administrations.

Not all lawyers joined the new organization. The González brothers and Pilar Noriega, while sympathetic, decided against affiliating with ANAD. Enrique became a full-time professor and Lamberto and started an independent law firm with Noriega. Bárbara Zamora and Santos García formed the Land and Freedom Law Firm [Bufete Jurídico Tierra y Libertad] in 1990.[72] In 1992, President Salinas de Gortari, introduced a constitutional reform to Article 27, accelerating the breaking up of communal lands (*ejidos*), and eliminating the right for communities to petition for lands according to demographic census.[73] The firm has worked exclusively on land rights and resource allocation struggles of peasant and indigenous communities in Mexico. In one case involving a nahuatl-speaking community in Hidalgo, it took them seven years to get the tribunals to accept the testimonies of anthropologists to argue that in the community wills and estates were established through verbal as opposed to written accords.

Several of the legal struggles of the Seventies continued well into the Nineties and even up to the current decade. Article 102 of the Constitution was first enacted in the 1990s, expanding the types of complaints that could go directly to the national and state human rights commissions. However, it excluded complaints relating to labor rights. The

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70 Fuentes, Oral History Interview.

71 María Luisa Campos Aragón and Oscar Alzaga, eds., *Pensamiento, Trayectoria y Obra de Jesús Campos Linas: Homenaje y Testimonios Sobre Su Actividad Profesional* (Ciudad de México: Asociación Nacional de Abogados Democráticos, 2019).

72 Conversation with Bárbara Zamora with author, Mexico City, 19 March 2019.

73 For more on this see Teófilo Reyes Couturier, *Campesinos, artículo 27 y estado mexicano* (Mexico D.F.: Plaza y Valdes, 1996).

constitutional reforms of Article 102 in June 2011 finally codified that all rights guaranteed in the Constitution, should be considered human rights, including labor rights.[74]

The issue of forced disappearances is one of the darkest legacies of the Dirty War in Mexico. Despite the different presidential amnesties, the government not only denied any official responsibility of the army or the police in cases of the "disappeared" (*desaparecidos*), but also refused to open any investigations. It was not until the case of Rosendo Padilla Pacheco that the government acknowledged their role in the forced disappearances of the 1970s. Padilla was a peasant organizer and troubadour in the turbulent town of Atoyac, Guerrero. He was detained in August of 1974, taken to the local army base and disappeared. Local and federal authorities continuously dismissed his family's petitions. His daughter and son built a movement and campaign with other "disappeared" family members.

In 2000, Vicente Fox Quezada, the right-wing candidate who finally beat the PRI for the presidency of the country, promised to open up cases of the Dirty War. In 2001 he set up the Special Prosecutors Office for Social and Political Movements of the Past (FEMOSPP). Still, there was no progress with the particular cases, including Padilla's. Finally the family of Rosendo Padilla Pacheco took the case of his forced disappearance to the Inter-American Commission on Human Rights, which later turned the case over to the Inter-American Court of Human Rights. In November 2009, the court ruled against Mexico for the crime of forced disappearance.[75]

While the government opened up a series of investigations on disappearances in Atoyac and other towns in Guerrero, the processes have been slow and largely ineffective. However, it was a major step in having the government acknowledge culpability and increased the demands for compliance from international agencies.[76] However, as with the labor cases, lawyers and human rights activists have continued to denounce the slow, ineffective and negative actions of the courts and government institutions.

The dangers and threats to lawyers have also continued. Digna Ochoa, a well-known human rights lawyer, who had worked with the Zapatista Army of National Liberation (EZLN) in Chiapas and with environmental activists, was found dead in her office in October 2001. Many activists and several of her colleagues were certain this was murder; she had already survived a previous assassination attempt. The prosecutor for Mexico City ruled it a suicide.[77] This caused a great schism in the radical legal community. Many in ANAD accepted the ruling of the city prosecutor — still under a PRD government. Several

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74 Fuentes, Oral History Interview.

75 Silvia Dutrénit Bielous, "Rosendo Radilla v The Mexican Government: Visibility and Invisibility of Crime and Its Reparation," *Asian Journal of Latin American Studies* 27:3 (2014): 73–100.

76 Dutrénit Bielous; José Ramón Cossío Díaz, "Algunas notas sobre el caso Rosendo Radilla Pacheco," Anuario Mexicano de Derecho Internacional XIV (2014): 803–34; Julio Bustillos, "Caso Radilla. Paradigma de la protección constitucional de los derechos humanos frente a la responsabilidad del estado mexicano," Boletín Mexicano de Derecho Comparado XLV, no. 135 (2012): 989–1022; Carlos María Pelayo Moller, "El proceso de creación e incorporación de los estándares internacionales en materia de desaparición forzada de personas en México y su revisión por parte de la Corte Interamericana de Derechos Humanos en el caso Rosendo Radilla," Anuario Mexicano de Derecho Internacional XII (2012): 959–1021.

77 "Top Rights Lawyer in Mexico Found Slain in Her Office," James Smith, *Los Angeles Times*, 21 October 2001; "Mexican Prosecutor Finds Activist's Death a Likely Suicide," Mary Jordan, *The Washington Post*, 19 July 2003; "'Intentaron tildar a Digna Ochoa de loca, dijeron que fue suicidio'": Pilar Noriega," *Aristegui Noticias*, 19 October 2016, https://aristeguinoticias.com/1910/mexico/intentaron-tildar-a-digna-ochoa-de-loca-dijeron-que-fue-suicidio-pilar-noriega/, Accessed 30 May 2019.

members left ANAD. Those who were on the margins but still collegial with the organization, such as Zamora and García, broke completely with ANAD.[78]

Unfortunately one of the legacies of the long legal struggles has been a divided community. Resentments among the lawyers were palpable as I was looking for interviews. There were common accusations of betrayal, corruption, and egotism — especially between the different generations. In my brief conversation with Juan Manuel Gómez Gutiérrez he bemoaned that the younger generations never rose up to the occasion and joined him in the struggle. "Me dejaron solo [They abandoned me]," he lamented. Several of the lawyers I spoke with expressed mistrust towards José Rojo Coronado. He was part of the group of older lawyers who came in after the mass arrests in 1968, and, at least according to the young lawyers at the time, often railroaded the hearings and legal processes. There were even rumors that Coronado collaborated with the federal police. These types of rumors and accusations became commonplace among the Mexican left during the Cold War. This is part of the lasting legacies of the period: intense paranoia and broken camaraderie. The sense of community is also noticeably broken. "The problem we have," Noriega concluded, "is that we have not been able to come together, to create that system of solidarity."[79]

Organizations like the FSA and FNAD are examples of the effort to bring together the radical legal community into one space or on a unified platform. Although ultimately they were unsuccessful, the different attempts illustrate the shared vision of the collective and individual role of the radical lawyer. These encompassed full support for the marginal and the oppressed; politicizing and educating the people regarding the mechanisms of the legal system and the codification of law; and, finding spaces for interaction and coalition among themselves. These organizations also demonstrate the different strategies employed by the lawyers, not only in judicial arenas, but also through back-channel negotiations and mass political pressure. Finally, the history of radical lawyering in Mexico shows the converging trajectories of the movements to recognize the rights of political prisoners, labor rights, and human rights, all of which have been critical to the political transformation of Mexico beginning with the end of the Cold War.

The basic role of the radical lawyer is one of several common traits shared among progressive legal circles. Mexican lawyers also recognized their relationship with social movements as a legal appendage. They shared with the radical lawyering community in the U.S., especially the Guild, certain basic principles: the empowerment of clients through legal education; the belief that clients should decide, or at least agree upon, the legal strategies; the commitment to demystifying legal procedures and terminology; the use of judicial decisions to promote and publicize the political aspects underlying the trials; the appeal to a progressive interpretation of the rights and protections guaranteed in their respective constitutions; and, the corresponding adaptation and incorporation of international law and human rights to further underscore the abuses and illegalities of the State — especially during the Cold War, a period of increasing globalization but severe curtailment of domestic collective rights.

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78 Conversation with Bárbara Zamora.

79 Noriega, Oral History Interview.

Epilogue:
The NLG and Radical lawyering in the 21st Century

When I was conducting field research in 2015 I attended the National Lawyers Guild's annual convention in Oakland. I sat in on one of the plenary discussions where members discussed one of the more polemical resolutions: whether the Guild, as an organization, should endorse the prison abolition movement. With some exceptions, the lines of the debate were drawn along generational lines. The younger members argued that the whole prison system and the culture of punishment needed to be radically changed, while the older folks were skeptical of the alternatives or still wanted some kind of punitive site for white supremacists or fascists. Tensions ran high and the debate was postponed until the regional chapters of the Guild had a chance to discuss the issue, so that they could subsequently hold a membership-wide vote.

The young radical lawyers of the late Sixties have become the old guard resisting some of the ideas and actions of their younger colleagues. A frequent complaint I heard during the interviews was how the Guild dinners were now vegan — gone are the days when vegetarians, like Esther and Leopold Frankel, had to avoid or boycott the dinners because of the lack of consideration for alternative diets.[1] Another issue is the emphasis from the LGBT and Queer members of the Guild on the proper use of gender pronouns. It has been a frustrating process, as many of the older members believe the pronouns are irrelevant as long as they are doing the legal work. However, some are starting to come around. After the Oakland convention, Karen Jo Koonan reflected, "this is where they are going and we have to be there to help them and make sure the Guild survives and the work continues."[2] Because of the tense and divisive interactions in the Sixties between the young radicals and their older more traditional colleagues, people like Koonan are trying to maintain a productive intergenerational relationship.

On the local level there have been events and programs to keep this relationship going. In the Bay Area, David Weintraub has been involved in developing a mentorship program. In Chicago, Jan Susler, a member of the People's Law Office, has also been engaged with a similar program. However, she doesn't like the term "mentorship," she sees it more as an exchange of ideas and experiences. "The Guild, the face of the Guild, is changing in such a healthier direction that really is more representative of what the U.S. looks like now," Susler asserted. "And so I think there are a lot of young people, and a lot of young people of color, and a lot of young Queer people, and it's going to make the Guild more relevant, and it is making the Guild more relevant."[3]

Indeed the young people of color who came into the Guild in the late 1990s and early 2000s took up the challenge of the internal racial dynamics of the organization. In the 2004 convention in Birmingham, Alabama, a group of young lawyers and law students got together to form a new caucus within the Guild. They agreed that in the field of law, people of color are confronted with a "sea of white faces — on both the Left and the Right — who purport to 'speak' for us, to 'save' us…" Even in terms of working within the Guild they

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1 "Fresh cooked vegetables means 'fresh', cooked a minimum period of time to tenderize it and served promptly. It does not mean fresh out of a can or frozen-fresh…" Esther Strum Frankel to Ken Cloke, 30 January 1967. TAM-NLG, Box 45 Folder 4.

2 Karen Jo Koonan, Oral History Interview.

3 Jan Susler, Interview by author, Chicago, 25 September 2015.

concluded, "What does it mean to work 'for the people' when, as people of color, we are working within a field disproportionately dominated by white males? It means our very presence is an act of resistance."[4] They decided to come together with common goals to address the different types of racism within the Guild and the lack of representation in different leadership positions.

The group became The United People of Color Caucus (TUPOCC). At the Birmingham convention they produced the Birmingham Manifesto, which the National Executive Committee discussed and finally endorsed. The Manifesto has two main strategies for the Guild. The first is to focus on the recruitment and retention of people of color, and a stipend for students of color to attend the national conventions. The second is a two-year plan to foster a culture within Guild that encourages "self-criticism and an awareness of anti-racist practices," including an anti-racist workshop at every NLG annual convention with a concurrent workshop for people of color.[5]

The faces of the Guild have certainly changed. Still, the struggles and limitations continue. In cities like New York, San Francisco-Oakland, and Detroit, people of color have increasingly assumed leadership positions. However, the internal dynamics around gender and race continue to be contentious issues, especially with the incorporation of new expressions of identity politics. The biggest drawback of the Guild, according to many of the people I spoke with who are still engaged with the organization, is its limited recruitment. Some essentially indict the Guild for its inability (or unwillingness) to reach out to law students or build significant relationships with different communities. For others, the myriad of organizations which focus on specific minority communities or issues such as immigration or police brutality have drawn people away from broad-based organizations like the Guild. A few even contend that it's because the Guild's prioritization of criminal justice, mass defense, and international solidarity, has kept at bay people who focus on other areas or who lack concrete ideological positions on capitalism or imperialism. Regardless, there are attempts within the organization, like the folks in TUPOCC, who continue to push the platforms to encompass new political demands and to strengthen the spaces to elaborate new legal strategies.

The other main challenges for progressive lawyering in the Nineties and at the turn of the millennium are financial and logistical. The growing cost of law school with its burdensome student debts and the weakening of the Legal Services Corporation and Legal Aid societies have pushed young lawyer towards more lucrative options in large law firms. Many of these firms have formidable public interest sections but with limited political and economic scope. Financial troubles have also hit organizations like the Guild and the CCR. The latter underwent several attempts to restructure its decision-making and hiring processes as well as its internal finances and fundraising mechanisms. This led to a conflictive relationship between the board members and the staff. After a big reorganization in 1994, where an African American legal worker (who had health complications) was fired, the

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4 For some time, the subtitle of Guild conventions has been "Law for the People." Ranya Ghuma and Renée Sanchez, "TUPOCC: Notes on Changing the Fabric of the Law and of the Guild," *Guild Notes*, Spring 2005.

5 The Manifesto states, "We believe that meaningful social change and actual justice can only be attained when people of color and all other beleaguered communities are more than mere afterthoughts. Equality must be woven throughout the fabric of the organization. We seek to further educate ourselves and inform the larger NLG community about the issues that affect us and investigate the relationship of these issues to social justice. We strongly believe that this work cannot be done unaided, and we encourage support from our allies throughout the NLG in furtherance of our goals." For a full version of the Manifesto see Ibid.

whole New York staff of the Center went on strike for five months.[6] Finally most of the staff took severance deals and the CCR moved further away from a collective law firm model to a more hierarchical structure.

The Guild also had financial and mismanagement issues in the late Nineties, which required an arduous process of restructuring and strengthening of the National Office. However, the regional chapters maintained significant flexibility and some of the committees became practically autonomous offshoots — such as the National Immigration Project and Palestine Legal.

My assessment of these challenges and limitations are mostly derived from the observations of the interviewees. Younger radical lawyers would surely have a different perspective on the current situation of the Guild. The older Guild lawyers I spoke with finished their interviews with their thoughts on the present but also with reflections on the legacies and lessons of their individual (and collective) trajectories. For many, the most destructive aspect of progressive lawyering and radical politics was the sectarianism that spread through the Left in the late Sixties and Seventies. While some lament the animosity, alienation, and isolation caused by the ideology and extremism in this period, others celebrate the Guild's capacity to overcome the divisions and outlast the turmoil. Another common critique is the Guild's predominant focus on issues of criminal law, especially around mass defense, which often meant a neglect or subordination of other areas, such as family law or housing. Nonetheless, even among some of the critical voices, there was an overall recognition of the Guild's continuous attempt to thread together different social movements as they encounter the legal system and the preservation of its Popular Front origins of comprising a multi-issue, multi-constituent legal organization.

For the most part, lawyers who came of age in the Sixties did not have much faith in the legal system as a source for social change.[7] Those who were involved in and politicized by the Civil Rights Movements saw the courts as important and useful in the sense that they could help open up spaces for the larger political movement. Walter Riley, who was a CORE field organizer in North Carolina before becoming a lawyer, said, "In the Black movement — in particular, in the early part of the Civil Rights Movement from the late Fifties when I was involved into the Sixties — we had a sense that it was in the legal arena that we had a chance for justice, because in the political arena, it was still a tremendous struggle." During that period, they believed that "in order to make advances in the political and social arena, we had to use the legal arena. We had to use the law. And the law, even with the terrible judges, there was a chance that we could get some room for hope."[8]

But for those who came of age later, who the anti-war and Black Power movements radicalized, there was an immediate disillusionment with the courts. Once somebody said to Dennis Cunningham, one of the founders of the People's Law Office in Chicago recalled,

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6 For more on the strike and the different perspectives from CCR members, and former members, see Albert Ruben, *The People's Lawyer: The Center for Constitutional Rights and the Fight for Social Justice, from Civil Rights to Guantánamo* (New York, NY: Monthly Review Press, 2011).

7 This sentiment was expressed by most of the interviewees, but was also iterated in the various contemporary publications of essays and interviews. Gerald Lefcourt, ed., *Law Against the People: Essays to Demystify Law, Order, and the Courts* (New York: Random House, 1971); Jonathan Black, *Radical Lawyers: Their Role in the Movement and in the Courts* (New York: Avon, 1971); Marlise James, *The People's Lawyers* (New York: Holt, Rinehart and Winston, 1973); Ann Fagan Ginger, *The Relevant Lawyers: Conversations out of Court on Their Clients, Their Practice, Their Politics, Their Life Style* (New York: Simon and Schuster, 1972).

8 Walter Riley, Oral History Interview.

"We're going to have a revolution by injunction and indictment! We're going to do it all through the legal system." "No," he reflected, "The legal system has gotten more and more crooked since those days with the things that count, because the whole system has gotten more crooked. The civil rights law has just gone down, down, down in forty years."[9] "I think you should try to stay out of the courts unless you have no alternative," said Michael Deutsch, another member of the PLO. "You might have some little victories in the courts," but the whole idea of "revolution by litigation… obviously is never going to happen."[10] Yet, despite their distrust of the judiciary, they all agreed that their main role was to provide legal support, technical advice, and political solidarity to their clients in the courts.

"The thing that kept the Guild going was the work," Karen Jo Koonan asserted. "You could talk until you're blue in the face, until six in the morning, about the latest Maoist theory. But in the morning you gotta get up and go to court and represent these people who just got arrested. That's what I know has kept the Guild going all these years, from 1937, because it's practical." She continued,

> We had a very practical function to play: to provide the structure to create a new generation of people's lawyers; to represent people; to be the translators to the people who were being impacted by the legal system so they that they can understand what was happening to them. You didn't have to be a lawyer, but the focus on the work is the thing that got the Guild through red-baiting, got the Guild through all kinds of struggles over the years, and got the Guild through this phase because the work was always there. People needed representation, people needed lawyers and legal workers to wear the hats and be legal observers and teach people what an arraignment means and try to help empower people.[11]

The decades after the Cold War didn't provide any respite for radical lawyers. In the United States, conservative judges continued to take up federal court seats; there was no substantive criminal justice reform. Rather, there was an extraordinary enlargement of the prison system; civil rights gains were rolled back; conspiracy laws and government agencies' surveillance powers were expanded after the Patriot Act of 2001; various Supreme Court decisions defanged affirmative law, such as the Reconstruction statutes or the Alien Torts Claim Act; and, the capacity for legal services offices was also reduced and resources slashed. Most of the lawyers who worked through the Sixties and Seventies agree that the current situation is politically bleaker and legally more limited than when they became radicalized. Despite the setbacks and eventual defeats of some of the political and social gains from the labor, civil rights, and anti-war movements, many of the older lawyers continue to practice law and continue to have faith in the potential power of social movements.

Since the waning of the Civil Rights Movement in the late Sixties, there have debates around successful and ineffective litigation. In 2003, Jules Lobel, a long-time member of the NLG and CCR, published *Success Without Victory: Lost Legal Battles and the Long Road to Justice in America.* Lobel argues that the legacy of unsuccessful litigation is political rather than legal. Organizations like the NAACP-LDF and ACLU share in the predominant utilitarian view of the law in the United States, where losing cases can be counterproductive because it can

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9 Dennis Cunningham, Oral History Interview.

10 Michael Deutsch, Oral History Interview.

11 Karen Jo Koonan, Oral History Interview.

potentially bring in bad precedent.[12] However, Lobel contends that success and failure are not mutually exclusive, "but are intertwined in a dialectical tension." Many such cases lost in court but succeeded in inspiring political movements. For instance, the fugitive slave cases of the mid nineteenth century, Albion Tourgee's anti-segregation arguments in *Plessy v Ferguson*, Susan B. Anthony's early trials in the 1870s, the litigation against United States' military involvement in Indochina, the Dominican Republic and Nicaragua, were all unsuccessful in the courts but contributed to "cultures of resistance," which led to more impactful political movements.[13] Conversely, as I discuss in this dissertation, court victories, whose legal gains were rolled back or reversed by federal courts or conservative legislation, had a larger political impact on grassroots organizations and the radical legal community. Trials such as *Dombrosky v Pfister*, *US v US District Court*, Chicago 8, Camden 28, the Wounded Knee trials, *Filártiga v. Peña-Irala*, among many others, gave social movement organizations breathing space to organize, the moral high ground to mobilize, and, among the legal community, a sense of possibility as to how to develop innovative and effective legal strategies. "Success and failure must be radically redefined," Lobel concludes, "[i]nstead of measuring success and failure in terms of achievements, we should view success as the living out of values, persistence in the face of great odds, and the strength to stand up for principle even when defeat seems inevitable."[14]

The history of radical lawyers is therefore not a story of success or failure, but rather of continuity. Litigation has, in some form or another, been a constant aspect of radical challenges to the legal and political system. Even the most extreme forms of confrontation have undergone some type of extension and translation into legal arenas. The dialectical relationship between the judiciary and social movements has put both parties in offensive and defensive roles. Moreover, litigation has an important political role: giving breathing space to social movements and providing short-term gains and long-term strategies. In turn, social movements provide the framework for the construction of alternative spaces for the radical legal community. This last process is also an ongoing endeavor, as these spaces incorporate the ideals and politics of the broader movements.

In the face of what seems to be a never-ending fight, a law student in 1971 asked Edward Dawley, the old civil rights lawyer from Virginia, why take on this burdensome responsibility? In his answer, Dawley evoked the mythical figure of the stubborn yet determined Sisyphus, pushing his boulder up the mountaintop over and over again. "What can the lawyer do?" Dawley asked rhetorically, "Why not try to do something impossible?"[15]

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12 To those organizations, "To succeed means to win concrete results, to change the legal rules, to win damages for your client, or to obtain a court injunction. The utilitarian perspective is premised on a sharp divide between winning and losing, which in turn relies on a separation of law and politics." Jules Lobel, *Success without Victory: Lost Legal Battles and the Long Road to Justice in America* (New York: New York University Press, 2003), 3.

13 "The women's rights arguments before the Court in the 1870s were never cited or even referred to when those arguments were revived in abortion rights and women's rights litigation one hundred years later. If success can be measured only by direct result, immediate change, or easily perceived impact, then these earlier cases were unmitigated failures. But, if success can be viewed like the pentimenti of a painting, as an unseen underside necessary to the final perceptible painting, then these cases take on a different hue. Success inheres in the creation of a tradition, of a commitment to struggle, of a narrative of resistance that can inspire others similarly to resist." Ibid, 7.

14 Ibid, 267.

15 Ginger, *The Relevant Lawyers*, 271.

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