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THE ROLE OF THE RADICAL LAWYER AND TEACHER OF LAW: SOME REFLECTIONS

I have recently been referred to by the establishment press as a "*radical* professor of law." This has occasioned sharp inquiries from both my academic colleagues on the one hand and my friends in the people's movements on the other, as to whether I am comfortable with the characterization.

At the heart of each inquiry is an unspoken challenge. As a "radical" teacher of "law," am I not caught in an impossible dilemma? Am I not torn by what appears to be an irreconcilable conflict between the objectives of a radical commitment to a society founded on the common good—in which the exploitation of man by man and woman by man is forever eliminated, a society in which war and poverty and racism are dim memories of a barbaric past—and the harsh realities of a profession in which I function as teacher and lawyer—a profession which is an integral part of a mechanism which is used by the dominant class groups in society to maintain ruling class power, property, and class rule?

> [For those who may wince at the use of the term "the ruling class" as "alien jargon," they should know that as a concept it has always been a part of the vocabulary of American politics, first appearing in James Madison's Federalist Papers and reappearing constantly throughout our history in the speeches and writings of such diverse figures as Wendell Phillips, William Lloyd Garrison, Clarence Darrow and Eugene V. Debs, to mention only a few.]

My colleagues in academia press me least. To some of them, unhappily, an adjustment to the gap between ideals and the reality of the legal system has become a way of life. But to my colleagues in struggle, and particularly to those who have newly come to the battle, the questions are often more pressing. Is it not a total contradiction to be a "radical" teacher of law, a "radical" lawyer—a contradiction which can only be resolved by exculpatory proclamations that "law is illegal" or hortatory pronunciamentos that the "only struggle is in the streets?"

To these earnest and deeply troubled lawyers I have but one reply. Yes, the "radical" teacher of law, the "radical" lawyer, lives, functions, struggles, in the midst of contradictions; his or her life is itself a contradiction. But this should be no shock, no surprise. Every radical who has honestly attempted to study society, as one great student of society once remarked, not for the purpose of understanding it but for the purpose of changing it, knows that "there is nothing that does not contain contradiction; without contradiction there

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would be no world." [Mao Tse-tung, On Contradiction, a lecture delivered at the anti-Japanese Military and Political College in Yenan in August 1937. International Publishers, 1953, p. 16.]

It should not so disturb us to discover that the role of a radical teacher of law, or a radical lawyer, plays itself out within the framework of a vast contradiction—is itself a contradiction. One of the most honored teachers of all contemporary radicals, Friedrich Engels, wrote over a hundred years ago that

> "life consists just precisely in this—that a living thing is at each moment itself and yet something else. Life is therefore also a contradiction which is present in things and processes themselves, and which constantly asserts and solves itself; and as soon as the contradiction ceases, life too comes to an end, and death steps in." [Engels, Anti-Duehring, New York, 1939, p. 133.]

Let me be very blunt. The role of the radical in the law is the same as the role of the radical in any arena of life. It is to study in depth and in precision the *particularity* of the contradictions he or she operates within in order to understand how best to participate in the resolution of these contradictions in a forward motion; in a manner which assists in the resolution of the principal contradictions of society in the direction of the emergence of a new society free from the oppression, the brutality, the frustration and despair of the old.

Such a study requires first of all an examination of the contradictions within the institutions in which we operate as lawyers and teachers, as they exist *today*, not yesterday or fifty years ago. It requires an examination of the *particularity* of the contradictions in these institutions in this country at this moment. We cannot be content with analyses which rest upon examination of the particularity of legal institutions or ideologies of, for example, Czarist Russia, or industrial Britain in the nineteenth century, or imperialist exploited countries of Latin America in the twentieth century. As a well-known teacher of the science of the laws of motion of society once wrote:

> Processes change, old processes and old contradictions disappear, new processes and new contradictions emerge, and the methods of resolving contradictions differ accordingly. In Russia the contradictions resolved by the February Revolution and the October Revolution, respectively, as well as the methods used to resolve them were basically different. The use of different methods to resolve different contradictions is a principle which Marxist-Leninists must strictly observe. The dogmatists do not observe this principle. They do not understand the difference between the various revolutionary situations, and consequently do not understand that different methods should be used to resolve different contradictions; instead they uniformly adopt a formula which they fancy to be unalterable and inflexibly apply it everywhere. This can only bring setbacks to the revolution or make a great mess of what originally could have been done well. [Mao Tse-tung, On Contradiction, p. 23.]

Unless our examination of the institutions within which we operate proceeds upon the basis of a "concrete analysis of concrete conditions" [Cf. V. I. Lenin, Collected Works, Vol. XXXI, p. 143] as they exist *today*, in *this* country, at *this* moment in our history, we will continue to be subject to a rash of analyses about the role of radical lawyers which are essentially one-sided and based upon sweeping generalizations about the oppressive nature of the legal

superstructure which radicals, Marxist and non-Marxist alike, have written about and polemicized against for many years.

A number of radicals have recently clearly recognized the truth which has been apparent for many years to most blacks in this country as well as to large numbers of working people—that the instrumentalities of justice provide justice only for the rich and powerful. This has encouraged useful and helpful probing into the class nature of the system of justice. But this exposure cannot by itself substitute for a fully rounded definition of the role of a radical lawyer or teacher of law at this precise moment in our history. Blacks, browns and working people, the oppressed sections of society, who daily live with the clubs of the police and the callousness of the courts, rarely need lessons in the "demystification" of the institutions of justice. Their crying need is quite different: what course of conduct will result in a favorable resolution of the fundamental contradictions of the society they live in, a resolution which will once and for all eliminate the oppressive role of present institutions of "justice," and class rule itself.

Analysis of the Particularities of the Contradictions

Let us turn then to the task at hand, the analysis of the *particularities* of the contradictions we live with today as radical lawyers or teachers of law. The reader will have to bear with me because such an analysis, to be of any use, to say nothing of avoiding making "a great mess of what originally could have been done well," must be based, not upon radical sounding one-sided rhetoric, or fire and brimstone generalities from another day and another age, but upon what that master of socialist methodology called "the most essential thing in Marxism, the living soul of Marxism, the concrete analysis of concrete conditions." [V. I. Lenin, Collected Works, Vol. XXXI, p. 143. In criticizing a contemporary, Lenin wrote: "He gives up the most essential thing in Marxism, the living soul of Marxism, the concrete analysis of concrete conditions."]

We live today at one of the most historic turning points in American history. The nation is at the edge of events which may shape the destinies of millions for years to come and we radical lawyers are caught in the very center of the interplay of contradictions which are conditioning this course of developments.

1. *Ruling Powers Edging Toward Open Terrorist Dictatorship*

On the one hand the dominant section of the American ruling circles, represented by the Nixon-Agnew-Mitchell-Pentagon clique, is moving rapidly and openly in the direction of experimentation with sweeping repressive measures of a legal and extra-legal character. These measures range from the nationally directed plan to uproot and destroy the cutting edge of black militancy, the Black Panther Party, through the device of massive frame-up trials, the contrived prosecutions against the national white leadership of the anti-war movement and the expanding youth culture revolt, to the hundreds of local prosecutions in every section of the country of the black and white opposition leaders.

The wholesale utilization of "legal" forms of repression of political opposition has now been coupled with extra-legal measures of murder, assassination and the active encouragement of open vigilantism of a mass character. This all has an ominous and familiar ring.

We are in a transition period in which the dominant sections of the ruling powers are edging toward a substitution of the present form of rule by the capitalist class—the form of rule classically known as bourgeois democracy—by another form of rule—the open terrorist dictatorship, classically known as fascism. It is simply not helpful to evade this question—to avoid the word "fascism" because it evokes emotional connotations of horror and nightmare emanating from an earlier era.

We Americans are masters at running from political reality when that reality is distasteful and shocking to our image of ourselves. For a hundred years the word "slavery" was erased from any considered analysis of the reason for the continuing oppression of black people. Only the recent powerful upsurges of the blacks themselves have forced the word "slavery" back into the contemporary political and juridical lexicon. Nor is the practice of "fascism" an "alien" method imported from abroad and antithetical to our cultural patterns. The Southern slave masters utilized the form of "open terrorist dictatorship" after the destruction of the Reconstruction governments, and clung to the essence of its form of rule until shaken by the first waves of black upsurge in the sixties. Americans invented "genocide" on the Trail of Tears of the Cherokee Nation a hundred years before Buchenwald. In words which today invoke a prophetic chill, an astute Southern politician said thirty years ago that when fascism came to the United States it would come "wrapped in the American flag."

It is desperately critical for all Americans to consider carefully the dynamics of the contradictions which shape the contours of this transition period in which the ruling class is *edging* towards a qualitative change in form of rule. But it is especially important for radical lawyers and teachers of law to grapple with these questions since the particularities of the contradictions dominant in this period of transition shape our role and our responsibilities.

It is essential, I think, to recognize that the ruling class turns to fascism, to an open terrorist dictatorship, abandoning its classic form of class domination, bourgeois democracy, out of *fear* and not out of strength. Faced with a growing radicalization of large sections of the people, an ever-increasing inability to solve the immediate and pressing problems of the people, which in turn leads to further radicalization, the response of the rulers has been to turn increasingly to intermediate forms of repression which pave the way, unless checked, to the ultimate transition to the open terrorist dictatorship.

Georgi Dimitrov's Warning

An astute and experienced student of the transition period from the rule of bourgeois-democracy to the rule by open terrorist dictatorship, Georgi Dimitrov, the Bulgarian Communist who won the admiration of millions throughout the world in 1934 because of his courageous stance before the Nazi

tribunal during the historic Reichstag Fire Trial, warned that "the accession to power of fascism must not be conceived of in so simplified and smooth a form, as though some committee or other of finance-capital decided on a certain date to set up a fascist dictatorship."

[Stenographic report of the Proceedings of the Seventh Congress of the Communist International, 1935, printed by the Foreign Languages Publishing House, Moscow, 1939, p. 127. I commend these proceedings to the careful study by all radicals, communist and non-communist, Marxist and non-Marxist alike, not in the spirit of any dogmatic application of its entire analysis to the world of the 1970s, but for the insight it may give on occasion to the problems of the present. In this respect I find myself in agreement with Howard Zinn's recent comment that in the study of the history of the past "the crucial element is the present and the question of what we, the receivers of any assessment, will do in the present." *The Politics of History*, Howard Zinn, Beacon Press, 1970, p. 28.]

This is not to say that the coup d'etat blow is utterly impossible in the current American scene. The events following the Cambodian invasion have evoked too many parallels to that once fictionally regarded motion picture "Seven Days in May" to dismiss the military coup d'etat as an American impossibility relegated to the late late show. But the dynamics of the present situation point in a direction less dramatic, but equally dangerous: the increasing utilization of legal and extra-legal measures which repress the leadership of the revolutionary forces and which curtail and limit even the most elementary democratic liberties of the large masses of people who are thrown by events into an increased radicalization.

Thus the ultimate fascist danger and the sweeping intermediate repressive steps which pave the way to the change in form of state rule must be viewed as one side of the basic contradiction.

2. *Growing Radicalization of Vast Numbers of Americans*

The other side of the basic contradiction is the unprecedented and extraordinary growing radicalization of vast numbers of Americans who are experiencing the inability of the rulers to solve any of the immediate problems of this society.

There is a new renaissance of black struggle in the heartland of the South on a level of militancy and unity which leads one white Mississippi newspaper to say recently "the deepest, most fundamental crisis since 1860 stares us in the face." [Greenville, Miss. Delta Times, May 17, 1970.]

This time the upsurge in the South is coupled with the perspective of black struggles of every form in the Northern urban areas, which will shake the country to its very core. These struggles are merging in time, if not in form, with the unprecedented motion of millions in opposition to the insanity of our military adventures, spearheaded by a youth movement which has already shaken the highest circles with fear. They will be accompanied by the inevitable development of the broadest economic battles of working people seeking to remove from their shoulders the burdens of growing unemployment and an economic crisis which now no one can ignore.

A Crisis in Government Begins to Develop

These two phenomena are occurring simultaneously and are reacting upon each other. The rulers are unable to solve the problem of extricating themselves from an unpopular and disastrous colonial war, so they seek to avoid the nightmare of both military defeat and increased economic crisis at home by turning to the "solution" of extending and enlarging the war. This in turn sets into motion the most extraordinary reaction among millions of people reaching up into conflicts and splits in the highest circles of government. A crisis in government begins to develop in which the very *forms* of bourgeois parliamentarism are under attack by the ruling powers. For a moment, but an important moment, the structure through which the ruling class has maintained its power for the entire history of the country, the very form of representative government, an "independent" legislature, becomes itself an obstacle to the dominant governing circles, and the object of its attacks. In the same sense the present Mitchell-instigated prosecution of the Black Panther Party, the anti-war leadership, the youth culture leadership, and the dozens, if not hundreds, of political trials to come, contain the seeds of the potential ultimate thrust of the rulers—the abandonment of all bourgeois-democratic forms as a method of rule and the substitution of the open terrorist dictatorship. This is a characteristic of the present period which must be understood and studied particularly by the radical lawyer.

For years, the ruling class has governed through the utilization of the forms of political democracy, principal among them the formal constitutional protections of political and individual liberties contained in the Bill of Rights. The many political prosecutions already held, now in progress, and yet to come, are shaped by this newly emerging contradiction. Although utilizing the *form* of a judicial proceeding and supposedly bound by the old rules of law, they cannot achieve their objective of mass repression and terrorization without in fact undermining and abandoning one after another of the most elementary bourgeois-democratic rights—the right of citizens to bail, the right under the First Amendment to organize an opposition political party, the right to privacy against government wiretapping under the Fourth Amendment, the right to an independent jury of one's peers under the Sixth Amendment, the very right to a fair trial by an impartial judge under the Fifth Amendment. These rights, and many more, formerly called, if you will, the "trappings of bourgeois justice," the so-called "rights of man," were grafted onto the constitution of the propertied classes in an earlier revolutionary era to obtain the support of the masses of people for the struggle against feudalism or foreign imperial control.

Now, in a new era, these forms become dangerous to the ruling class, an obstacle to their plans, and must be undermined, ignored and ultimately totally abandoned by them. The ruling class begins to turn upon its own ideas, its own forms, its own institutions.

In every institution the contradiction begins to break loose. It is a moment of splits, of indecision—the old ideas and the old forms retain some strength and some support even in high circles. The impact of the new contradictions

affects every institution in the judicial system from the trial courts to the Supreme Court itself, as indeed it affects every institution in political life. As the major contradictions intensify—the growing dissatisfaction and increasing radicalization of millions on the one hand and the increased legal and extra-legal repressive measures moving in the ultimate direction of open terrorist dictatorship on the other—the internal stresses within the judicial system intensify as the pressures mount to eliminate or ignore the oldest and most elementary substantive and procedural forms of fairness and individual liberties. As in the parliamentary arena, we are approaching a crisis of government within the judicial arena as well.

Role of Radical American Lawyer Today

What is the role and responsibility of the radical lawyer or teacher of law at such a moment in our history? Earlier in this paper I said that the role of the radical in the law is essentially the same as the role of the radical in any arena of life: to utilize his or her skills to participate in the resolution of these contradictions in a forward motion. The responsibility upon us all at this moment is awesome. The stakes are high; for those of us in this country who call ourselves radical, never higher. There lies ahead a perspective of rapid radicalization of millions which could lead to a realization of the goal which must not be merely a paper slogan but our constant central strategy—the concept of power to the people.

On the other hand it is not written in stone that the other pole of the major contradiction may not temporarily prevail: that the dominant sections of the ruling class may succeed in substituting the open terrorist dictatorship as the form of rule. And it is at this point that we must be brutally honest with ourselves. On the one hand the open terrorist dictatorship would mean the probable deaths of thousands—if not hundreds of thousands—of the finest sons and daughters of the American people, both black and white, to say nothing of the possible destruction of the entire world, in a nuclear holocaust. On the other hand, in a country in which even remnants of democratic liberties survive, the people, despite the heaviest of repressive measures, still have the possibility of organizing and fighting openly for their needs and perspectives.

Even Temporary Victory for Fascism Would Be a Disaster

It seems almost pathetic that one should have to spend any time at all arguing that a victory, even temporarily, for fascism in this country would be a disaster not only for the millions here but for the people of the entire world. Unfortunately there are a few among the left who are captivated, as were their analogues in Germany in the fateful last days of the Weimar Republic, by the wishful illusion that open terrorist dictatorship would move people more speedily to radicalization and militant struggle. That illusion should have been shattered in the concentration camps of Belsen and Dachau, on the battlefields of World War II and in the ashes of Hiroshima. More fundamentally, such an illusion runs counter to what Lenin once called "the fundamental law of all

great revolutions:" that the masses of people must learn through their own political experience in struggle. [V. I. Lenin, Selected Works, Vol. X, p. 136, "Left-Wing Communism, An Infantile Disorder."]

It is precisely for these reasons that radicals and radical lawyers must fight skillfully and tenaciously for every scrap of democratic liberties. This is particularly true at a moment when masses are in motion and are groping for solutions to fundamental problems. At such a moment the ability of radical leadership to exercise that leadership openly and legally is crucial. This is exactly why the ruling class turns at such a moment *against* its own concepts of bourgeois-democracy and seeks to isolate and destroy the radical leadership, so that the crucial element of theoretical and political leadership required if the motion of the masses is to be transformed into the highest level of radicalization—the taking and democratization of power—will be temporarily eliminated, or seriously restricted.

It is within this context that the role of the radical lawyer or teacher of law begins to emerge more clearly. It is to utilize to the utmost all of his or her skills and energies to assist in a *forward, successful* resolution of the major interacting poles of the central contradictions of the day. On the one hand the radical lawyer must assist in the increasing and exploding radicalization of masses of people learning from their own political experience. On the other hand, all of the lawyer's skills and energies must be utilized to resist in every way the efforts of the dominant sections of the ruling class to solve their crisis, even if temporarily, by substituting the open terrorist dictatorship for the present forms of bourgeois-democracy, both within the parliamentary and judicial systems.

I suggest that these two aspects of the role of the radical lawyer are not isolated, are interrelated and interact each upon the other. That such a role may often place the radical attorney in what seems to be a contradictory position, a changing position, is inevitable. That his or her position may not necessarily at all times be the same as a radical defendant in a political trial is also true. But, as we have remarked before, contradictions are not in and of themselves reflections of weakness. Quite to the contrary, they are reflections of life, and if understood and mastered, they are the key to forward motion.

Special Features of Role and Responsibilities of Radical Lawyer

Let us consider first the special features of the role and responsibilities of the radical lawyer or teacher of law in participating in the resistance to the efforts of the rulers to edge towards an abandonment of the forms of bourgeois-democracy. It is *precisely* because of the lawyer's classic role in the *maintenance* of the system of bourgeois-democracy as a form of class domination that a radical lawyer who understands the dynamics of the period is peculiarly able at this moment to assist in the essential struggles, both in the judicial and legislative arenas, against those transitional reactionary moves and measures which directly facilitate the substitution of the open terrorist dictatorship as the form of class rule.

History is filled with the ironies of reversal of role—conflict often results in the negation of certain characteristics and the creation of their opposite. Under the system of bourgeois-democracy the lawyer more than often plays out the role of guaranteeing the existence of the facade which masks the oppression lurking beneath the superstructure of "rights and liberties." The lawyer becomes identified with these "frills," these "rights," these "liberties," the term depending upon the analysis of function in the system. The lawyer's particular role in the system is to "make it look good," to provide at least the "appearance" of justice, as one Supreme Court opinion so candidly once put it. [See Mr. Justice Black in *Offitt v United States,* ____ U S ____, p. ____.] But it is this very role assigned to the lawyer which enables the lawyer to be particularly effective at the present moment in a struggle to safeguard and to preserve these forms as the ruling class moves, out of fear and desperation, to abandon them and destroy them.

But this requires flexibility, skill, and above all, understanding on the part of the radical lawyer. He or she must find every opportunity to expose within the framework of the judicial arena itself the extraordinary fact that the rulers and their servants in the judicial system, be they prosecutors or judges, are turning upon their *own* system, are abandoning their *own* stated rules designed once in a by-gone day to embody the then revolutionary principles of fairness, equality, justice and liberty.

Struggle to Preserve and Protect Elementary Liberties

When the radical lawyer aggressively struggles for the right of citizens to bail, or against the concept of preventive detention with its overtones of Dachau or Buchenwald, or against the undermining of the Fourth Amendment guarantee against wiretapping, or against forced and coerced confessions, or for the promised right of a fair jury of one's peers, he or she is not engaging just in an important struggle for the rights and even liberty of the particular political defendant on trial. More importantly, the lawyer is participating in a political struggle of the greatest significance: the struggle to preserve and protect the most elementary democratic liberties and safeguards not only for his or her clients then on trial, but for all the people.

Such a struggle, if it is waged aggressively, if it is not perfunctory or routine, if it is related to and becomes a part of the experience of thousands beyond the immediate confines of the courtroom, teaches a profound lesson. It exposes who is really in "contempt of court," who is really "undermining the principles of a system of justice." It is not the radical lawyers who are meeting their responsibilities to the people by fighting insistently and courageously for the preservation of those elementary rights and liberties which are supposed to protect *all* the people, but rather it is the judges and the prosecutors who, in obedience to the needs of their frightened masters in power (it was Jefferson who wrote of Federalist judges too obedient to the rich and wealthy), are undermining, ignoring and destroying the liberties of the people.

"Delegitimizing" Legal Institutions Too One-Sided an Objective

It is in this context that I say to my radical colleagues at the bar, whose courage and skill I admire, that their frequently expressed formulation of their central role and objective as being that of "delegitimizing" the institutions of the law is at once too narrow and too one-sided. In its one-sidedness it obscures, and even hinders, the fulfillment of the more complex, more critical role, which a study of the *particularity* of the present contradictions places before us. The struggle to preserve the elementary forms of procedural guarantees designed originally to protect individual liberty and the right to a fair trial is *not* a struggle to "delegitimize" or "demystify" these forms. The struggle is to *defend* these forms; to *protect* them; if you will, to *legitimize* them against the efforts of the rulers to *delegitimize* them.

Who Is Conspiring Against the Liberties of the People?

There is no contradiction between such an approach and the necessary exposure of prosecutors and judges who, at the government's bidding, brush aside and trample on elementary rights. Such an approach is not only in the interest of effectively protecting and defending one's political clients, a not unimportant consideration, but also permits the radical lawyer to emerge as the champion of the people's liberties which the ruling class is abandoning. It provides a focus for the organizing of massive support among the broadest sections of the people to whom the protection of the "right" of American citizens to liberty and justice remains an important question. It permits the development of alliances, even if temporary, with forces who for their own reasons are not yet prepared to abandon these elementary democratic forms; alliances which are essential if masses of people led by radicals are to frustrate the designs of the rulers and move forward to higher objectives.

But most important of all, it permits the raising of the central political questions: who is conspiring against the liberties of the people? Who is undermining and subverting the people's heritage of freedom? And the answer to these—that it is the ruling class itself which is moving toward the destruction of the most elementary liberties of the people—is critical to a further radicalization of the people.

The Example of Havana Lawyer Fidel Castro

True, it is not always simple, to wage this struggle with dignity and power, so that this central question repeatedly emerges. I commend to my radical colleagues at the bar the often-mentioned and little-studied proceedings in a Cuban courtroom in Santiago in 1953, one year after the Batista coup d'etat which eliminated the presidential election scheduled for June 1st. A twenty-seven-year-old Havana lawyer, Fidel Castro, stood trial with one hundred and twenty-two co-defendants for an attack upon the Moncada military barracks. This was a trial taking place *after* the Batista coup d'etat, under conditions of terror.

"All the approaches to the courthouse were blocked by armored cars. Lining both sides of the road from Boniato prison to the courthouse, a distance of six miles, were 1,000 soldiers with automatic weapons at the ready." [Huberman and Sweezy, Cuba, Anatomy of a Revolution, Monthly Review, Vol. 12, July-August 1960, p. 30.]

The proceedings of this trial are wonderfully instructive on many counts which go beyond the present scope of this paper and ought to be carefully studied by radicals whose knowledge of the trial is unhappily only too often confined to a recollection that it was the occasion of the now-famous utterance, "History will absolve me." For example, Castro's response to the prosecutor's question as to why he had not used "civil means" to accomplish his purpose was a brilliant summary of the point of view that revolutionary military measures are correct and will receive the support of the people only when the people are convinced by their own experience that all other channels of struggle are closed and futile. Thus, in response to the prosecutor's question, Castro said, "Simply because there is no freedom in Cuba, because since the 10th of March [the coup d'etat] nobody can talk. I already said that efforts were made but the government, always intransigent, did not want to give ground. I accused Batista before the tribunals of justice, but the courts did not resolve the case, as we expected."

Castro's reference to his "accusation" of Batista refers to a rather astounding action he undertook *as a lawyer* two weeks after the Batista coup d'etat. He appeared before the Urgency Court in Havana and submitted a written complaint charging that Batista and his "accomplices" had violated six articles of the Code of Social Defense for which the punishment prescribed was one hundred and eight years in prison. He demanded that the judges do their duty, writing in his brief:

> Logic tells me that if there exist courts in Cuba Batista should be punished, and if Batista is not punished and continues as master of the State, President, Prime Minister, Senator, Major General, civil and military chief, executive power and legislative power, owner of lives and farms, then there do not exist courts, they have been suppressed. Terrible reality?
>
> If that is so, say so as soon as possible, hang up your robe, resign your post.

To those who today sometimes fail to consider the *particularity* of every situation and instead engage in sweeping generalizations that *any* affirmative utilization of existing legal procedures is "illusion-creating" and not a "radical" form of struggle, I commend to their attention this extraordinary petition filed by Fidel Castro two weeks *after* the Batista coup d'etat.

During the Moncada Barracks trial a year later, after the first unsuccessful military assault on the open terrorist dictatorship of Batista, Castro returned again and again to this theme: it was the regime and its servants in the judiciary who were undermining the integrity of the Cuban judicial system—not the rebels. He asked for, and was granted, permission to sit with counsel for the defense as a lawyer. He was so effective as a lawyer in demolishing the prosecution's witnesses and in establishing evidence proving the Batista officers guilty of torturing and murdering the captured rebel prisoners, that he was excluded

from the courtroom on the pretext that he was "sick and needs absolute rest."

The next day Dr. Melba Hernandez, one of the two women who had participated in the attack on Moncada, interrupted the proceedings when the chief judge announced that the trial would proceed without the presence of the "sick" prisoner-lawyer. She walked to the bench, saying, "Mr. President, Fidel Castro is not sick. Mr. President, here I bring a letter from Dr. Fidel Castro, written in his own hand and addressed to this respectable and honorable court." The paper, hidden in her hair, was then read by the judges. The full text of it is well worth study by radicals both from the point of view of style and content. But what is most revealing is the constant emphasis upon the concept that if the "honor" and "integrity" of the Cuban system of justice is being undermined, it is being undermined by the surrender of the court itself to the demands of the fascist regime. Thus, after exposing the falseness of the pretext of illness and condemning the brutal conditions under which he and his fellow prisoners were restrained, Castro concludes his petition to the Court in these words:

> I request the Court to proceed to order immediately my examination by a distinguished and competent doctor such as the President of the Medical Association of Santiago de Cuba. I propose also that a member of that Court, especially appointed, accompany the political prisoners on the trips that they make from this prison to the Palace of Justice and vice versa. That the details of this brief be communicated to the Local and National Bar Associations, to the Supreme Court of Justice, and to as many legal institutions as that Court esteems should know these facts.
>
> The importance and the category of the trial that is being held imposes exceptional obligations.
>
> If it is carried out under the conditions which I have denounced, it will not be more than a ridiculous and immoral farce with the full repudiation of the nation.
>
> All of Cuba has its eyes focused on this trial. I hope that this Court will worthily defend the rights of its hierarchy and its honor which is at the same time, in these moments, the honor of the entire judicial power before the History of Cuba.
>
> The action of the Court up to now and the prestige of its magistrates accredit it as one of the most honorable of the Republic which is why I expand these considerations with blind faith in its virile action.
>
> For my part, if for my life I have to cede an iota of my right or of my honor, I prefer to lose it a thousand times: "A just principle from the depth of a cave can do more than an army."
>
> (Signed) Fidel Castro Ruiz

The petition caused consternation in the courtroom. The regime retaliated immediately and, despite the certification of court-appointed physicians as to his perfect health, the army refused to permit the judges to order his return to the courtroom. Finally, on October 16th he was brought in secret before the Court. Only the three judges, the two prosecutors, six reporters (prohibited by the censorship from reporting the proceedings) and an armed guard of one hundred soldiers were present in a room in the Civil Hospital. Here, Castro, lawyer and political defendant, spoke at great length in his final defense. It was a learned, dignified and brilliantly courageous statement. It teaches much on questions which go far beyond the immediate scope of this paper. In it, Castro

the lawyer and Castro the radical synthesized the contradiction between the role of the lawyer in defending the *legitimacy* of the procedural and substantive forms of political liberty betrayed by the dictatorship and the role of the radical, who utilizes every avenue, every arena, to advance the radicalization of the masses of the people.

His opening analysis takes the political offensive and attacks the regime for undermining and destroying the institutions of justice. The entire text must be read to grasp its full power—the audacity, the courage, the dignity with which he uses the occasion of his summation to proclaim boldly the full program of the July 26th Movement, accepting the responsibility which he enunciates in these words: "the revolutionaries must proclaim their ideas courageously, define their principles and express their intentions so that no one is deceived, neither friend nor foe." His central objective as a radical, therefore, is to use the courtroom—yes, even the courtroom of the fascist dictatorship—as a forum from which to defend, proclaim and teach the ideas, the principles, the programs which will liberate the people. But central to the ideas and principles which he seeks to announce, over the head of the regime which is attempting to silence him and the movement he leads, is that it is the Batista regime which is destroying the institutions of Cuban law and justice, that it is the Batista regime which is destroying the Constitution of 1940, and it is the regime which has shown "contempt" for the law. So he opens his summation:

> . . . . an unheard-of situation had arisen, Honorable Magistrates. Here was a regime afraid to bring an accused before the courts; a regime of blood and terror which shrank in fear at the moral conviction of a defenseless man—unarmed, slandered and isolated. Thus, having deprived me of all else, they finally deprived me of the trial in which I was the principal accused.
>
> Bear in mind that this was during a period of suspension of rights of the individual and while there was in full force the Law of Public Order as well as censorship of radio and press. What dreadful crimes this regime must have committed, to so fear the voice of one accused man! . . . .
>
> As a result of so many obscure and illegal machinations, due to the *will* of those who govern and the *weakness* of those who judge, I find myself here in this little room of the Civil Hospital—to which I have been brought to be tried in secret; so that my voice may be stifled and so that no one may learn of the things I am going to say. Why, then, do we need that imposing Palace of Justice which the Honorable Magistrates would without doubt find rather more comfortable? I must warn you! It is unwise to administer justice, surrounded by sentinels with bayonets fixed; the citizens might suppose that our justice is sick . . . and that it is captive.

In the same spirit, Castro proves in one of the most erudite and eloquent arguments ever heard in any court of law that the right of insurrection against a tyrant is a "fundamental tenet of political liberty." His argument that the right of insurrection against tyranny is a *legal, legitimate* right recognized by the finest minds of all humanity "by men of all creeds, ideas, and doctrines" includes among its authorities

> "the philosophers of ancient India, the city states of Greece and republican Rome . . . John of Salisbury . . . Saint Thomas Aquinas . . . Martin Luther . . . Phillippe Melancthon . . . Calvin. . . Juan Mariana, a leading Jesuit philosopher . . . the French

jurist Francois Hatman . . . the German jurist John Althus . . . John Milton . . . John Locke . . . Jean Jacques Rousseau . . . the Declaration of Independence of the Congress of Philadelphia, on the 4th of July, 1776 [and] . . . the French Declaration of the Rights of Man. . . ."

Castro concludes his summation by returning to the question of who is in fact destroying the law.

> Honorable Magistrates, I am that humble citizen who one day came in vain to punish the power-hungry men who had violated the law and had torn our institutions to shreds. Now that it is I who am accused, for attempting to overthrow this *illegal* regime and to *restore the legitimate constitution*, I am held for 76 days and am denied the right to speak to anyone, even to my son; guarded by two heavy machine guns, I am led through the city. I am transferred to this hospital to be tried secretly with the greatest severity; and the prosecutor with the Code in his hand, solemnly demands that I be sentenced to 26 years in prison.
>
> You will answer that on the former occasion the court failed to act because force prevented them from doing so. Well then—confess: this time force will oblige you to condemn me. The first time you were unable to punish the guilty! Now you will be compelled to punish the innocent. The maiden of justice twice raped by force!

It is difficult to embellish with one's own conclusions this extraordinary example of a lawyer and radical leader who under the most adverse conditions combined both the denunciation of the destruction of the elementary forms of justice and liberty by the open terrorist dictatorship and the promulgation in the courtroom of a political program designed to achieve the ultimate goal of the radicalization of masses of people—the overthrow of a tyrannical regime. Only a few comments are appropriate in the light of the previous discussion.

Castro's conduct, both as a lawyer and political defendant, was at all times aggressive, dignified and calculated to inspire respect and admiration among the people. He took deeply seriously the proceedings, not because they held in balance his personal liberty or life but because, as he put it, they held in balance the liberties and future of the Cuban people.

"Our Justice Is Captive"

But perhaps most important of all, he never fell into the trap of losing sight of the real enemies: the regime, the ruling circles, the army. He did not single out primarily the judges sitting in the courtroom, or the "forms" or "trappings" of the judicial system itself. Quite to the contrary, his imagery was always the reverse—"our justice is captive"[of the regime], "the maiden of justice twice raped by force." He viewed the primary responsibility of the radical lawyer, and indeed the radical leader, to use the attack of the enemy in the courtroom as an opportunity to launch a counter-offensive.

But this counter-offensive was never permitted to be detoured into the dead-end of an individual struggle against the Court itself or the judges. This would have served no constructive political end whatsoever. It would have blocked an opportunity to center the attention of the people upon their main enemies: the dictator, the army, the ruling class. [It would have blunted, if not made impossible, the emphasis upon the illegality of the regime and the responsibility of the dictatorship for the destruction of the liberties of the people.]

But most serious of all, it would have facilitated the development among the broadest circles of the people of a grotesque caricature of reality—the myth that the radical lawyer and the radical defendant are in fact the principal underminers of the system of "justice," of "democratic liberties," rather than the ruling class itself.

Distorted Image of a Political Trial Today

Today in the United States such a myth is facilitated by the distorted image of a political trial as primarily a contest between political lawyers and defendants and a "hard pressed," if "irascible" judge. The development of such a caricature of the radical lawyer or defendant in the present period would be disastrous. It would undermine the effectiveness of radical lawyers and radicals in general in participating in the organizing of powerful movements to oppose the transition measures of repression and reaction. And, most serious of all, it would blunt the radicalization of the millions in struggle, since it would mask the reality of who is the real enemy of the elementary liberties of the people.

Skill, Flexibility, Patience and Courage Required

To understand the particularity of the contradictions which shape the present struggle, and to mold one's role as a lawyer or teacher of law in such a fashion as to facilitate the resolution of the contradictions in a positive direction—which at this historic moment may mean participation in a gigantic step forward in the history of humanity: the taking over of the control of the political, economic and cultural institutions of this country by the people—is, I confess, a most difficult and complicated task. It requires the utmost in skill, in creative flexibility, in patience and in courage. But it requires initially the willingness to study in depth the particular characteristics of the individual case or people's movement in which the radical lawyer is involved, so as to discover in *that precise situation* the most effective way to facilitate the interplay of *both* poles—the defense of the elementary forms of democratic liberties there under attack and, utilizing the arena the enemy has chosen, the development of a political counter-offensive which deepens the understanding of masses of people and accelerates their already swirling motion.

No one blueprint will provide the best course of conduct for every situation. In some cases the key may be found in an all-out fight against the steady and flagrant erosion of the right to bail, particularly for black militant leaders—a struggle which has already begun to develop in trials involving the Panther Party. In other situations it may be found in the opening up of a massive and national struggle against current wholesale wiretapping in flagrant violation of the constitution—an issue which may emerge out of any one trial of a political person on any charge. In still other situations the key may be found in the development of a full-scale struggle for the constitutionally guaranteed right to self-defense in which the needs of a given political trial may call for political defendants, particularly when they are spokesmen of political parties or organizations, to represent themselves in the courtroom. Similarly, the other pole,

the radicalization of millions now in motion, is assisted in many different ways. It may be furthered by skillfully placing the ruling military-political clique on trial as the real conspirators in trials charging conspiracy against anti-war activists or by exposing as the real "law breakers" the racist remnants of the system of slavery, when black men and women are placed on trial for alleged violations of "law and order."

But one thing is essential to any given solution of a particular problem. This is a political understanding that in *this period* in our history the effective development of a massive defense of the elementary forms of democratic liberties led by radicals is not antithetical to, but in fact accelerates, the radicalization of the millions who are daily being thrown into motion by the attacks and blunders of the governing circles. Such an understanding will permit the radical lawyer, the radical defendant, to become the master, rather than the victim, of the contradictions.

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December 3, 1970

TO THE MEMBERS OF THE NATIONAL LAWYERS GUILD:

During the past year the Guild membership has become increasingly involved in a divisive issue which threatens the existence of our organization - the proposal to open up membership to persons who are neither lawyers nor law students but are workers in private offices, Guild offices and non-profit legal organizations. It has become clear, whatever may have been the original intent of the proponents, that if this proposal is adopted it will change not only the basic structure of the Guild, but its nature and direction.

The undersigned have recently served as Presidents of the National Lawyers Guild. We are deeply concerned with its welfare and are most anxious to avoid an organizational crisis which will interfere with the substantive work being carried on by the Guild. Because we believe that the above proposal has already created deep divisions within the membership of the Guild, which will inevitably widen as the convention approaches, and because we believe that the adoption of the proposal would destroy the value and effectiveness of the Guild, we have decided to state our position now to the membership.

The proposal was submitted to the National Executive Board meeting at San Francisco last June without prior notice. Because of lack of advance notice, many board members who would have wanted to discuss and vote on the proposal, were not present. The following action was taken by the Board:

> M/S/P that the NEB strongly recommends the admission to the Guild of legal workers (secretaries, clerks, organizers), that this question be placed on the agenda at the next convention, and that in the interim the chapters be requested to act upon this recommendation. The motion was adopted in principal only, subject to the exact wording of a proposed constitutional amendment to be drawn up by a committee of the women's caucus.

In accordance with this motion, the women's caucus, meeting at New York in October 1970, proposed the following categories of persons who, it was urged, should be admitted to membership in the Guild:

[1] all workers in private law offices, law schools, and non-profit legal organizations. For example: secretaries, receptionists, bookkeepers, office managers, file clerks, copiers, librarians, messengers, legal organizers and law clerks.

[2] all workers in offices of the National Lawyers Guild.

[3] legal workers within movement groups (legal liaisons, legal defense organizers, lay advocates) and others who work closely in an ongoing relationship with the Guild.

Two aspects of this procedure deserve comment, since they throw light on the political considerations which underline the proposal. First, it will be noted that the June resolution requests chapters to act upon the recommendation prior to the convention. We understand that at least two chapters have already done so and that others have the matter under consideration. It must have been clear to the proponents that the National Executive Board has no authority to amend the constitution. We believe this patently illegal procedure was undertaken so that the change would be a fait accompli and the issue would become moot by the time of the convention.

This tactic may be good politics, but it is not fair to the membership since it would foreclose the kind of open discussion which such a proposal for fundamental change requires.

The second point to note is that the motion refers the exact wording of the proposal to the "women's caucus". This approach reveals the kind of sectarian political influences which would beset and destroy the Guild, if the proposal were adopted. Since June the proponents have treated the proposal as the property of the "women's caucus", and those who have questioned or opposed it have

been accused of anti-women prejudice. A recent example was the decision of the "women's caucus" to walk out of the New York NEB meeting rather than remain and discuss a question concerning the proposal which had been raised by a member of the Board. The walkout caused the adjournment of the meeting without consideration of the matter.

We cannot agree that this is a "women's" issue. The subject of women's equality is an important matter for the Guild to deal with in its own membership and as a political issue, but we resent the position that the merits or demerits of the proposal should be considered in the context of the argument (made by one of its proponents at the last board meeting) that any male Guild member who opposes the proposal manifests his chauvinism.

We oppose the proposal to open membership in the Guild to "legal workers" primarily because we believe that it is intended to, and even if not intended, will inevitably result in transforming the Guild into a battle ground for the contending political groups and ideologies which are increasingly tearing apart the "movement" in the United States. And the Guild has not been without recent experience of the damaging effects of these conflicts.

Many of us as individual lawyers and in the operation of Guild law centers are constantly required to decide which organization, group or individual under attack should receive legal assistance within the framework of our limited capacity. These unavoidable decisions have inevitably been affected by the political affiliations and philosophies of those involved in making such decisions. But, by and large, we are able to cope with this difficult problem because of our common frame of reference in the legal profession. While some deride the fact that lawyers, and law students who intend to become lawyers, do have this common occupational frame of reference, it has served to provide a minimum unity and cohesiveness which has enabled the Guild to survive many major crises in the 30 years of existence. It has enabled the Guild to fulfill the limited but vital role which lawyers alone can perform in our society by providing legal defense to the people and their organizations during periods of social and political ferment. An organization composed of lawyers and law students contains an inbuilt limitation which tends to partially insulate it from the fratricidal political divisions which have decimated and destroyed so many political organizations of the left.

A point of view, which is variously stated by proponents of the motion, is that the Guild must become a revolutionary organization whose membership should be limited to those who consider themselves as revolutionaries first and secondarily as lawyers, law students, legal organizers or legal secretaries.

There are several points to be made with respect to this position. First, there is no reason, of course, why a lawyer cannot be a revolutionary. Sam Adams, Lenin and Castro are examples which readily come to mind. But it should be noted that these leaders of revolution carried out their revolutionary activities, not as lawyers, but as political organizers.

If the Guild is to remain an organization related to the law and the courts, and to be composed primarily of lawyers and law students (a position which we understand the proponents accept) then we believe it to be a romantic and dangerous illusion to act upon the assumption that such an organization should or can be a center, or even (as has been suggested) provide the leadership for revolution. Those who desire to become revolutionaries, should join or form their own revolutionary organization. And they should devote their energies and talents to the revolution rather than to the destruction of an organization which serves the vital and immediate needs of those who are engaged in the day to day struggle to achieve equality and independence in a racist society, of those who fight to maintain their fundamental democratic rights in a growing atmosphere of repression, and those who oppose and expose the imperialist role of our government in its foreign policies.

The Guild is now a vital, ongoing, useful organization. It performs an essential task on behalf of those people who are seeking to make radical changes in our society and who are therefore the inevitable objects of governmental repression. If the Guild were just another political organization which could be easily replaced or whose functions could be adequately taken over by others, we would not have the deep concern which we seek to express to you. The elimination of the Guild, as the only existing organization of radical lawyers and law students, from American political life would leave a void which could not be filled. The history of the Guild has demonstrated that, in periods of repression, or when the necessities of history called for some special effort on the part of the lawyers, the Guild was present and fulfilled an important role.

In opposing this proposal, we do not intend to suggest that law workers (however this group may be defined) should not organize themselves. Indeed, the Guild should support and assist in the development of skilled and effective para-legal personnel in a mutually cooperative relationship. The course and rate of development of an organization of law workers, including its political orientation, should be determined by its own needs and on the basis of its own experience. However, to harness this development to the commitments of the Guild would, in our opinion, destroy our organization without necessarily benefiting the other.

The subject is one which is vital to the continued existence of the Guild and should be discussed by Guild members between now and the convention next summer. We will be glad to hear from any of you who would like to comment on our views.

Yours sincerely,

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REVOLUTIONARY ANALYSIS AND LAWYERS WORK

A Reply to Arthur Kinoy

The Kinoy article ("The Role of the Radical Lawyer and Teacher of Law: Some Reflections", Guild Practitioner, Sept. 1970) raises basic questions as to the nature of the period in which we live and the role of "radicals" in such a period. Kinoy has presented an analysis and proposed a role which is essentially reformist although discussed in his article as revolutionary.

Notwithstanding a couple of comments to the contrary, it is clear that Kinoy views the current period as one of increasing repression with a real and growing threat of fascism. There is, of course, no denying the increase of repressive techniques and methods by the ruling powers and their law enforcement institutions, from the local police to the courts. Similarly, there is no doubt that certain very important elements of the ruling class propose to accelerate and expand this repression and institute a fascist rule draped in the American flag. However, Kinoy's error is in his view of these developments as defining the nature of the current period. To put it another way, the present period's prime character is one of increased conflict between the ruling powers and the oppressed peoples (Blacks, Puerto Ricans, Chicanos, Indians and the Youth Culture within the country). Increased repression is only one domestic aspect of this increased conflct - other domestic aspects are the bombings and bomb threats of police and corporate headquarters, the sniping attacks on police, the burning of ROTC headquarters, increased support for a Vietnam victory in the War, etc. In short, there is <u>both</u> increased repression and increased revolutionary violence and pre-revolutionary organizing.

It is critically important to understand the nature of the current period and the significance of the difference between the Kinoy analysis and that presented here. In that regard, consideration of other periods in recent U.S. history is helpful. Both in the 1930's and early 1950's there were moves to the right taken by certain representatives of the ruling powers which were described as efforts of these forces to substitute open terroristic rule for the bourgeois democratic forms previously used. However, those two periods were obviously distinguishable and the motivations of those seeking a change in the forms of rule were similarly different.

The 1930's were characterized by increased conflict between a growing working class and unemployed movement and a ruling class intent on preserving its system. It is probably accurate to say that the effort of those elements of the ruling class which wanted to abandon the old bourgeois forms of rule was motivated by a fear of a rising movement which appeared for a threatening few moments to be moving towards a revolutionary position demanding fundamental changes in the relationships of powers in the society.

In contrast, the prime character of the early 50's ("the McCarthy period") was not increased conflict between two growing, antagonistic forces, but a move to constrict democratic

processes and to substitute for those processes an openly revealed rule by terror. In that period it should be obvious that the move towards fascism was not motivated out of fear of a rising revolutionary movement - not only was there no revolutionary movement but even those small segments which might have been a source for the development of radicalism were badly fractured and beaten.* It is important to recognize that this analysis of the early 50's does not fit into the analysis of fascism made by George Dimitrov who generalized that the ruling class moves to fascism out of fear and not out of strength. It is well past the time to stop depending upon quotations and speeches made by stars of the communist constellation under differing historical circumstances for an analysis of what is actually happening in the United States.

In this regard, Kinoy's reliance upon Fidel Castro's defenses in the Moncada barracks trial is particularly inappropriate. A legal tactic under the conditions in 1953 Cuba is hardly an automatic political precedent for 1970 United States. The significance of that tactic in advancing "the radicalization of the masses of people" may well be questioned in light of both the secrecy of the trial and the decimation of the July 26th Movement in the immediately ensuing years. Further, the mere fact that Castro adopted a particular tactic renders it neither sacrosanct nor correct.

Thus, the recent past of this country's history illustrates the difference between a period of increased conflict and a period whose prime character is increased repression. While Kinoy states there is increased conflict, his entire emphasis is upon repression and his strategy for the radical lawyers and for the movement generally flows from that emphasis. It is understandable based upon an analysis that centers on repression that one views the defense of constitutional liberties as the critical task in the radicalization of the people.

However, if one views the current period as one of increased conflict with a growing revolutionary movement then the task of radicalization - that is, moving people to think and act in a revolutionary manner - does not involve shoring up the "best" bourgeois liberal aspects of a system which must be smashed, but rather of attacking all aspects of the system including the legal institutions and processes which effectively and inherently deny the very rights and liberties they proclaim. More revolutionary truth is contained in acting upon the fact that the system cannot obtain the justice it speaks of than to pretend that this justice can be obtained

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* The reasons for the move toward fascism in the early '50's are beyond the scope of this paper. However, these reasons probably are found in the efforts of more conservative representatives of the ruling class to obtain a greater part of the political control which had been centered in liberal bourgeois forces for the past eighteen years.

under this system if only the rulers would stop adopting fascistic means.

This does not mean, of course, that there will be or should be no battles to secure the rights proclaimed in the Constitution and in Court decisions which have more precisely and somewhat concretely spelled out these rights. But let us not fool ourselves about those battles. They are reformist in nature for they are fundamentally directed not at changing the relationships of power to any of the state institutions but rather at making these institutions function more effectively by appearing to be what they can not be - instruments of a neutral justice. Kinoy and others have argued that these battles are important because they teach people in struggle that the rules cannot secure the justice they proclaim. This justification has been repeated time and again for many years with the prime result that a lot of so-called revolutionaries have spent a lot of time prettying up a system of injustice.

What has been wrong with these battles is their content. For a revolutionary in a period of increased conflict, of growing radicalization and pre-revolutionary activities, issues concerning court proceedings, police activities, electronic surveillance, detention camps, are all matters concerning thepower and control of the state apparatus. The nature of power and its seizure, the nature of the state and the smashing of the present state - these form the content of revolutionary struggle around legal institutions.

The past battles around constitutional rights have been both reformist and deceiving. Kinoy's article is a good example of this. For example, Kinoy writes "Who is undermining and subverting the people's heritage of freedom? And the answer to this -- that it is the ruling class itself which is moving toward the destruction of the most elementary liberties of the people -- is critical to a further radicalization of the people." (Emphasis supplied.) To talk of this country as having a heritage of freedom where the people have elementary liberties certainly does not lend to a revolutionary understanding of this country. This is, after all, a country born in the mass destruction of the Indian nations of the North American continent, initially developed upon the slave labor of kidnapped Africans and further industrialized upon the blood and sweat of exploited immigrants. The point is that the content of past legal struggles has always centered on something that purportedly has existed in this country but is being threatened by the ruling class. This content is consistent with the view that repression is the major issue. It stems from a liberal conception of present U.S. society which assumes that the people have rights in this society and that the struggle is to firmly secure, to preserve these rights for the people.

Kinoy's approach here is similar to his apparant view that there is a right to revolution, a right of insurrection against a tyrant. To talk of rights in this context might have some public relations value, but it certainly is nonsense as a matter of analysis. There is no "right" of revolution. History vindicates only revolutionaries who succeed. The "right" becomes one only after success; with

failure, the revolutionary, throughout history, has been found to have no right -- except, of course, the "right to be shot or jailed. It is confusing to talk in terms of rights when a dialectical process of history is involved.

Revolutionary content in a struggle around rights does not say that rulers cannot secure the justice they proclaim; rather it says that the system, by its very nature, cannot grant justice. It is not a question of one set of rules as against another -- a Nixon against a Kennedy, an Eisenhower against a Truman. Rather, a revolutionary content will say that the determinant of the measure of justice given in this system is the need of the system for the use of the state and its instrumentalities -- including the courts -- to crush movements that threaten its effective functioning or existence. This is not reflected mechanically nor always directly. And sometimes rather than crushing by blood or repression the institutions work out a response which dilutes and then absorbs the movement. However, in terms of an historical process it should be made clear that justice is not an abstract right but essentially a weapon involved in the struggle between the system and those who would change it or destroy it. An analysis of rights, thus, ultimately involves an analysis of the battles raging between the system and the oppressed peoples.

Revolutionary content in a "political case" would center not on rights but upon the struggle which the case reflects; for it is the outcome of this struggle (and not the case) which is primarily relevant to the development of revolutionary consciousness and movement. Further, the existence and vitality of the rights are, as discussed above, historically dependent upon the outcome of the struggle.

What has been said before does not define the role of the revolutionary as a lawyer functioning within the legal system. His or her functioning has particular characteristics involving, among other elements, acceptance of a privileged status in the legal system, and intimate involvement with the doctrines which proclaim rights and justice. His or her functioning as a lawyer has, therefore, significant and inherent restrictions. However, the particular confines of lawyers' work should not be used to define the tasks of a revolutionary movement. Equally, a revolutionary analysis should not be tailored to the contours of lawyers' work so as to make that work appear more significant, perhaps even revolutionary.

The revolutionary as a lawyer must frankly face the reformist nature of the lawyer's work. It is important for him or her to avoid the tendency to define this work as revolutionary. On the other hand, the revolutionary lawyer should recognize the possibility of developing revolutionary content to the political cases in which he or she is involved and should appreciate the practical importance to the revolutionary movement in an acquittal, a reversal, a reduction of bail, etc. which replenish the human power of a revolutionary movement.

It should follow from the above that the National Lawyers Guild, whether viewed as a lawyers' organization or an organization of people involved in law work, is not, by its very nature, a revolutionary organization. It is an organization containing persons of a variety of ideologies and tendencies. Its unity is perhaps best defined as a unity of persons seeking to use their law work on behalf of oppressed peoples and their movements. Some of these people are most concerned with application of constitutional provisions when these movements are under attack; others are most concerned with seeking to have the legal institutions cause the system to respond favorably to certain demands of these movements; others are most concerned with some of the things discussed in this paper. It is natural that conflicts do and will develop between these different viewpoints within the Guild. This does not signify weakness. It is important for us to recognize and appreciate that the growth and strength of the Guild has been and will remain dependent upon both the unity of its members and their conflicts.

Jonathan W. Lubell

The significance of the proposal to open membership in the Guild to persons who are neither lawyers nor law students but are workers in private offices and non-profit legal organizations, requires consideration, first of all, of what the present struggle for revolutionary change involves. While the Goodman-Rabinowitz letter frankly assesses some of the possible ramifications of the proposal for the Guild, Ernie and Victor's deep concern for the organization should be weighed within the larger framework of the nature of the struggle for revolutionary change today.

It is no accident that the legal workers' proposal is made at this time. It is symptomatic of the fundamental features of today's revolutionaries. First, they see the struggle for revolutionary change as not only a movement for social change, to seize state power in the future, but also a movement that revolutionizes and liberates the relationships between people --- relationships which are marked by the oppression, exploitation, racism and sexism of the society which they seek to change. Second, they see that, insofar as they can and wherever they can, this revolution must be undertaken today --- that it cannot wait for the seizure of state power.

The significance of these two features cannot be underestimated. It has changed both the appearance and possibilities of a revolutionary movement. Yet, there are many people who have for years been involved in the radical movement who do not see these changes. The question is asked what changes do the young radicals really want? The most accurate answer is probably everything --- not only change in the ownership of the means of production, but also, and equally, changes in the relationships between men and women, between adults and youth, between the intelligentsia and the manual worker, between whites and Blacks, Chicanos, Puerto Ricans and Indians, changes not only in job relationships but also in family, sexual and all other human relationships. History has shown us that, unfortunately, changes in the ownership of the means of production has not eliminated sexism which existed long before capitalism and which maintains the oppression and subordination of women, nor has it eliminated elitism which permits the use of a society-defined status to exercise power over the lives of others not occupying a similar status, nor has it eliminated racism which supports the setting aside of a distinctive racial group for discriminatory treatment and oppression.

To change the conditions of human relationships before a socialist revolution is of great importance in assessing the possibilities of a revolutionary movement. This attempt is obviously directed at eliminating the contradiction involved where people who are struggling to change society continue a course of life and a life style which in almost all respects embrace the values --- both social and personal --- of the society which they seek to change. It is a contradiction which, on the one hand, enables unprincipled compromise and corruption to take hold and, on the other hand, makes it easier for agents to infiltrate such a movement.

There is, moreover, another and more profound significance to the attempt to currently revolutionize relationships which has to do with conditions and consciousness. In undertaking armed struggle in Uruguay the Tupermaros stated that no longer were they willing to wait for a change of conditions to effect the consciousness of the people. Rather, they stated, revolutionaries must seek to effect those conditions -- to redefine those conditions and thereby change the consciousness of the people. The consciousness of the need of armed struggle would develop among the people as the conditions of struggle against the rulers of Uruguay change from strictly parliamentary to one including armed struggle. The principle --- made again and again throughout the world --- is that revolutionary consciousness is developed not spontaneously from conditions of which the people are conscious but ,rather from revolutionaries effecting those very conditions in certain ways. We can talk till our tongues fall out about the "new socialist man and woman" that is supposed to come with the revolution without changing anyone's consciousness about revolution. Young women and men changing the conditions of their relationships today --- seeking to redefine themselves--- to liberate themselves from the trinity of power and oppression --- status, sex and race --- have built a consciousness of the need for comprehensive, fundamental change which is present wherever there is a youth community,a commune,a collective.

The "legal workers' dispute" now raging within the Guild takes place within this context of young lawyers, law students and legal workers who seek to revolutionize, as much as they can, their current relationships. It is a difficult struggle --- one which challenges well-established ways of doing things, ways of seeing things. In the legal field it challenges the entire structure of relationships where power is vested in the attorney based upon his professional status and where sex discrimination has made it an almost universal fact that that power is vested in men and exercised on legal office workers who are women. One way the challenge is made to the institutional relationships is through the creation of law communes and legal collectives which seek to eliminate the use of the professional status as a power base to control the lives and functions of other members of the legal group.

It is both reasonable and natural that these young lawyers and law students would also seek to challenge the old institutional relationships reflected in the Guild. This challenge indicates their concern for the Guild --- that it reflect something new and healthy, rather than remain frozen to the old forms and old relationships which become increasingly less attractive to larger numbers of young people whose lives have been touched by the new culture. Their way of challenging these old relationships is to open the Guild up to all persons involved in legal work. Obviously what this says is that membership in the Guild should not be restricted to those who have the status of a lawyer or law student and should not exclude that portion of people involved in legal work who are predominantly women.

Ernie and Victor apparently believe that this would destroy the political effectiveness of the Guild as an organization of lawyers engaged in legal defense and constitutional rights struggles. I do not know why this result would follow from the admittance of legal workers. The strength and significance of the Guild was and is based upon the work of its members and not the fact that its membership was composed of lawyers (and, presently, law students). I do not see why that strength and significance should disappear because the present members are joined by other persons who are legal workers but not lawyers or law students. If tomorrow the membership of the Guild were to be so expanded, there is nothing the Guild is doing today that I know of which would be impaired. The regional offices, mass defense offices, conferences, counseling, military law and other activities --- which are the strength of the Guild--- would still be there and functioning.

Ernie and Victor write that they "primarily" oppose the proposal to open Guild membership to legal workers because it "will inevitably result in transforming the Guild into a battle ground for the contending political groups and ideologies which are inreasingly tearing apart the 'movement' in the United States." The basis for this position is that lawyers and law students who intend to be lawyers have a "common occupational frame of reference" and that an organization of such persons "contains an inbuilt limitation which tends to partially insulate it from the fratricidal political divisions." Upon examination, however, this position is highly questionable.

There is nothing that makes lawyers and law students less political, less ideological than other segments of the population. (One might well make a persuasive argument to the contrary.) What has enabled the Guild to avoid fragmentation has been the usually implicit, and sometimes explicit, agreement of its members --- representing various ideologies and politics --- that the Guild's most effective functioning required it not to attach itself to one or another ideological trend in the left. This agreement was based not upon the fact that the members were lawyers or law students but that they had a generally common view of the role of the Guild. In short, it is not something inherent in law training which has resulted in a common "frame of reference" but rather a political view of the most effective role of the Guild -- a view which is obviously not necessarily restricted to lawyers and law students.

I don't believe that Ernie and Victor would sharply disagree with the above. I think they would agree that the period in the history of the Guild when it most directly reflected one ideological trend to the exclusion of others was when it was composed only of lawyers. It appears that the nub of Ernie and Victor's position is the assumption that admission of legal workers indicates an abandonment of the view that the Guild can be most effective as an organization embracing various radical views and the adoption of the view that the Guild must become a revolutionary organization presumably following one or another ideological line. While there will probably always be some advocacy directed at changing the Guild into a revolutionary organization with a world outlook,

etc., the view of the overwhelming number of people who propose admission of legal workers is that the Guild should remain an organization related to the law and the courts and that its work is concerned with the legal system. What this view also says, however, is that if the Guild is to include a variety of political groups and ideologies it must reflect developments which run through most of the radical groups today. Perhaps the most significant of these developments is the recognition of the importance of a present-day struggle to change human relationships --- to attack social relationships which reflect the oppressiveness of the social institutions. I believe that the legal worker issue, with its accompanying conflict over sexism and professionalism, arises from this development. It is not an attempt to change the area of Guild work or to weaken that work. (In fact, a strong argument may be made that work in the legal area is strengthened by including all radicals working around the law and legal institutions.)

It might be said that insofar as the proposal to admit legal workers reflects views of some parts of the radical movement and not others, it attaches the Guild to one segment of the movement and will promote fragmentation. However, the opposite is equally true --- that the failure of the Guild to reflect the growing struggle to presently change human relations similarly attaches the Guild to a certain segment of the radical movement. That is why, perhaps, one hears, on the one hand, statements that lawyers will quit the Guild if legal workers are admitted and, on the other hand, statements from lawyers that the Guild is not their type of organization because of its elitism, sexism, etc.

I don't believe the solution can be found in the suggestion that "Those who desire to become revolutionaries, should join or form their own revolutionary organization." The point is that while this may be sound advice in terms of world outlook or political strategies, it doesn't answer those who say that their lives cannot be departmentalized, that while the Guild is a limited organization involved with the law and legal institutions, it is necessary for the quality of their lives that the relationships within the organization reflect a struggle against old values and old institutions.

I believe that the proposal to admit legal workers should be considered within the framework discussed above. It should be resolved at the Convention and its de facto resolution before then would benefit no one. I also believe that there are various ways to resolve the particular issue of legal workers short of adoption of the proposal as now written or of total rejection of the admission of any legal workers. The importance of this issue for the Guild and for its individual members is more closely related to a growing consciousness of what the proposal really involves than how it is specifically resolved.

Jonathan Lubell

HOW TO PROCEED WITH THE DEBATE?

A Response to Jonathan Lubell

I have just read Jonathan Lubell's reply to my article in the Practitioner. I do not have the time now to write the type of fully developed response which his article requires since, if I may be permitted a touch of levity, I am presently engaged in the "reformist" chore of trying to meet a November 1st deadline on the Chicago Conspiracy appeals. I will as soon as possible try to respond adequately to the serious and fundamental questions concerning not only the role of "radical" lawyers, but the strategy of the peoples' movements for revolutionary change which his discussion raises.

I feel however that it is necessary to raise sharply a few points at this time regarding the context within which the discussion ought to unfold:

1. I reject from the outset certain polemical techniques which his article utilizes which reflect unfortunately, I believe, the worst, rather than the best, of the past experiences of the left in this country. The irresponsible utilization of an emotion-laden label such as "reformist" is, I deeply believe, harmful to the unfolding of a fruitful and comradely, if I may use an old word, dialogue between fellow workers in the peoples' movement, who do not regard each other, unless I am very wrong on this, as enemies or irreconciliable antagonists. We desperately require at this moment reasoned, careful debate on fundamental questions of strategy and analysis of the period in which we live. Such a debate is not helped by a style of controversy which invokes at the outset of a discussion a pejorative label out of the past such as "reformist." For my part I reject the temptation to reply in kind by affixing to Jonathan's theories equally condemnatory labels out of the polemics of other times and other eras. It is far more fruitful to examine calmly the contents of each other's ideas and formulations than to cut off all debate from the beginning by invoking sweeping characterizations which construct barriers to communication. We political lawyers of all people ought to be sensitive to avoid a "jurisprudence of labels," particularly in politics.

2. In the same spirit I suggest we ought to avoid the distortion of what our brothers and sisters say in order to make our points. That argumentative technique too frequently used in the adversary arena of litigation, has no place in friendly, although sharp, political controversy. In this sense I object strongly to Jonathan's constant distortion of the analysis of the current period I begin to develop in my article. Anyone who reads the article will observe that the essence of my analysis of the present period is the unfolding of a <u>two-sided</u> contradiction. I, nowhere in the article, postulate the <u>one-sided</u> picture of the "danger of fascism" as the <u>central</u> or <u>sole</u> characteristic of this period which Jonathan attempts to ascribe to me. Quite to the contrary, the entire thesis of the article rests upon the proposition discussed almost on every page, of a two-sided contradiction which interacts upon itself. I repeat throughout the article that the "ultimate fascist danger and the sweeping intermediate repressive steps which pave the way to the change in form of state rule must be viewed as one side of the basic contradiction, the other side of which is the unprecedented and extraordinary growing radicalization of vast numbers of Americans who are experiencing the inability of the rulers to solve any of the immediate problems of this society." To characterize my analysis of the present period with the one-sided statement that "Kinoy views the current period as one of increasing repression with a real and growing threat of fascism" is either careless reading or unfortunate distortion. Jonathan must have been working

from a different article; surely not mine. My analysis of the current period may well be wrong, but it is simply not the one Jonathan ascribes to me. He conveniently ignores the duality, the dialectics of the analysis, if I may be permitted that phrase. I advance in the article as its central theme the following proposition, which I will here restate since those who read his "reply" and will not have seen the Guild Practitioner will understandably have an utterly distorted picture of what I wrote:

> "...the role of the radical in law is essentially the same as the radical in any arena of life: to utilize his or her skills to participate in the resolution of these contradictions in a forward manner. The responsibility upon us all at this moment is awesome. The stakes are high, for those of us in this country who call ourselves radical, never higher. There is a new renaissance of black struggle in the heartland of the South on a level of militancy and unity which leads one white Mississippi newspaper to say recently: "the deepest, most fundamental crisis since 1860 stares us in the face." This time the upsurge in the South is coupled with the perspective of black struggles of every form in the Northern urban areas, which will shake the country to its very core. These struggles are merging in time, if not in form, with the unprecedented motion of millions in opposition to the insanity of our military adventures, spearheaded by a youth movement which has already shaken the highest circles with fear. They will be accompanied by the inevitable development of the broadest economic battles of working people seeking to remove from their shoulders the burdens of growing unemployment and an economic crisis which now no one can ignore. There lies ahead a perspective of rapid radicalization of millions which could lead to a realization of the goal which must not be merely a paper slogan but our constant central strategy -- the concept of power to the people. On the other hand it is not written in stone that the other pole of the major contradiction may not temporarily prevail: that the dominant sections of the ruling class may succeed in substituting the open terrorist dictatorship as the form of rule."

This analysis of the present period may be troublesome to those unable to think in terms of contradictions, in terms of dialectics, but it is surely neither a one-sided simple prediction of a growing fascist danger, nor a "reformist" submerging of the perspective of mass radicalization and revolutionary change.

3. This distortion of the analysis developed in my article in the Practitioner is harmful not only in making difficult an honest debate over its implications but perhaps more seriously masks certain fundamental differences in analysis which ought to be aired. It is of considerable importance that Jonathan formulates the central "domestic" conflict as being between "increased repression" on the one hand and on the other "the bombings and bomb threats of police and corporate headquarters, the sniping attacks on police, the burning of ROTC headquarters, increased support for a Vietnam victory in the war, etc." Thus his formulation of the central characteristic of the struggles of the period emerges as "in short there is both increased repression and increasing revolutionary violence and pre-revolutionary organizing.

This is not the moment to debate in full the implications of this formulation either in terms of its accuracy in describing the characteristics of the struggle of the masses of people now developing or its implied assumption that "revolutionary violence" is at present, or ought to be, the central tactical road to the radicalization of the masses and the taking of power in this country. As a starting point it is important to recognize the cold fact that in the movements of struggle now erupting all over the country, among the Blacks, South and North, the Chicanos, the white and Black working class, the millions young and old who have moved against the war in Vietnam, the women who are fighting male oppression in hundreds of forms, the thousands of GI's who are resisting the military machine, the forms of struggle are myriad and erupt in every arena of life, in every institution in which people live, work and struggle. Any attempt to suggest that any <u>one</u> of these myriad forms including what is being characterized as "revolutionary violence" is the only, or even the central, form which these struggles are taking and will take, is an escape from reality. But more seriously it dangerously serves to isolate the revolutionary forces and blinds them from understanding the nature of mass struggles which they must immerse themselves in if they are to give the revolutionary leadership to millions of oppressed people which is necessary if the talk of taking power is to become something more than romantic chatter. True, Jonathan links "revolutionary violence" as a central characteristic of the period with the term "pre-revolutionary organizing" but he nowhere gives any dimensions to this concept other than the specific description of struggle and "conflict" in terms of "bombings and bomb threats of police and corporate headquarters, the sniping attacks on police, the burning of ROTC headquarters ... etc." Jonathan's formulations are close to those who seem to tell us that the only meaningful activity for revolutionaries in this period is the path of "revolutionary violence." All other forms of struggle are "reformist" in character. This is dangerous nonsense. Every revolutionary leader throughout history regardless of their profound differences on strategy and tactics, has always recognized the compelling truth of that starkly simple fact of life first taught by Marx and Engels that a revolution cannot be made without the people; that acts of "revolutionary violence" of even the most courageous band of individuals is no substitute for the activity of masses of people thrown into struggle against their oppressors -- that these struggles will take <u>many, many</u> forms and will emerge around <u>many, many</u> issues and the real responsibility of the militant revolutionary is to become thoroughly and honestly a participant in these struggles and able to give them radical content and leadership. Such a broad and creative view of the role and responsibilities of the radical uniformly held by all leaders of successful revolutions from Lenin to Mao, to Castro, to Ho Chi Minh, to Kim Il Sung, regardless of their differences, is not helped by narrow and dogmatic formulations which arbitrarily reserve the accolade of "revolutionary" activity to one tactic of struggle, "revolutionary violence," a tactic which itself is hardly applicable to all moments and all stages of struggle, and an approach which blandly characterizes all other forms of struggle as perhaps "helpful" but "reformist" in nature. Such a characterization is not only arrogant and elitist, reserving "revolutionary" activity to the "dedicated" and "courageous" tiny bands of activists. It is dangerously harmful to the unfolding of the second side of the basic social contradiction which Jonathan ought to be concerned with -- the perspective of the potential rapid radicalization of millions of people through the eruption of struggles of the most varied nature with the most unexpected scope and unpredictable intensity. Participation in these struggles, deepening their content and <u>teaching</u> masses of people, while one <u>learns</u> from masses of people may be just as "revolutionary" an act, perhaps in the long view of history a <u>more</u> revolutionafy act, than the isolated act of "revolutionary violence" which although surely

courageous, at certain moments in history is tragically misguided, isolating potentially revolutionary individuals from potentially revolutionary masses of people, leading only to the destruction of revolutionary leadership and the abandonment of the people to a clever demogogy of the reactionaries. This is a question which requires much fuller discussion -- the full answers to which may well shape the future, if not the very life, of the American peoples' movements. At the very least let us not be too quick before the discussion unfolds to leap to conclusions as to who among us is "truly revolutionary" and what activity is "reformist." No one person and no one grouping in the American left has yet earned the right, it seems to me, to claim a monopoly of truth on such fundamental questions. Let the discussion open, fully and freely, and not become choked off at its very outset by emotion-laden rhetoric or dogmatism inherited from past ways of work.

4. As I mentioned at the beginning of this comment I will of course address myself as soon as is possible to the kind of detailed, in depth, rejoinder which Jonathan's article requires and deserves. There is only one other aspect of the debate which I feel compelled to touch on, again even if briefly, because of its burning importance not only to radical lawyers but to every section of the peoples' movements. Jonathan's analysis proceeds upon an extraordinarily dangerous assumption -- that the struggle against fascism, against the possible qualitative change in the form of state rule by the ruling class to the open terrorist dictatorship -- is necessarily a "reformist" struggle designed to shore up and "pretty up" the system of capitalist justice and oppression. Such an assumption, which runs through his entire article, wishes away the brutal fact of political life which no radical in contemporary United States dares avoid -- that there <u>is</u> a critical difference between the opportunities which exist to organize and struggle against oppression in a regime in which the dictatorship of the ruling class operates through the forms of classic bourgeois-democracy and a regime in which the dictatorship of the ruling class operates through open terrorist means, having totally abondoned the facade of bourgeois-democratic forms. It took the death of millions of German workers and intellectuals and hundreds of millions of the peoples of the world to learn that lesson a quarter of a century ago. I suggest that it is no minor question to <u>either</u> the people of this country, the embattled peoples of Indochina, or the peoples of the entire world, as to whether there will be total victory of fascism in the United States or whether the peoples' forces in this country will be both wise enough and strong enough to defeat the ultimate fascist designs of the American rulers. Much hangs in the balance, including millions of human lives, if not the future of humanity itself. It is deeply true, and this requires much frank exploration, that in the past serious weaknesses were present in the approach of the left, both in this country and abroad, in its method of developing a struggle against the threat of fascism. These were weaknesses which often manifested themselves in a "reformist" submerging of the objectives of national liberation and the transfer of class power to policies which led inevitably to a "shoring-up" of capitalism and its political and economic institutions. These weaknesses were particularly evident in the United States and were centered too often around approaches which resulted in an abdication of leadership to the "liberal-corporate" wing of the ruling class and a constant strengthening of its political arm, the Democratic Party, thereby constantly subordinating the crying need for the building of a mass anti-capitalist peoples' policical instrumentality which could <u>simultaneously</u> lead and organize the resistance to the efforts of the most reactionary wing of capital to turn to measures of fascist rule, while at the same time teaching and preparing through struggle large masses of people for the only decisive and permanent response to the fascist danger -- the

taking control of the economic, social and political institutions of the nation by the people. Jonathan cavalierly dismisses the incisive writings of Georgi Dimitroff in 1934 about fascism as "speeches made by stars of the communist constellation under differing historical circumstances." This reflects a fascinating habit so many of us have fallen into in the left today. It is very convenient to resort to "the little red book" or the writings of Che or Ho or Fidel when these quotations serve our immediate purpose but when analyses of masters of scientific socialism run counter to current tactics or slogans they are dismissed almost without consideration or study as obviously written under "differing historical circumstances." The fact of the matter is that Dimitroff's detailed analysis of the transition period to fascism in modern capitalist countries is well worth careful reading today. At the very heart of Dimitroff's analysis was a stern warning against a "reformist" distortion of the struggle against fascism which he feared would blunt the essence of his position. At the core of his analysis was the concept that through the organization of the broadest masses of the people against their immediate oppression and the driving threat of fascist terror the radicals could help these masses understand through teaching, example, and experience in the struggle that the only real defense of liberty and freedom from fascist rule lay in the taking of political power, in a revolutionary change in society. True, it is crucial to the development of clear thinking on the left today to probe deeply into why this keen analysis of Dimitroff was bypassed, watered down and so often totally ignored by the left, both in this country and abroad, in the 30's, 40's and 50's. But it is equally important that we not be victims of the past--that the errors and mistakes of the past not blind us to the realities of the present. An effective and successful struggle against efforts of the ruling class to substitute open terrorist rule is an essential ingredient in the struggle for the radicalization of the masses and the taking of power by the people. It is not at all helpful to arbitrarily decide that such a struggle is automatically "reformist" in nature. Quite to the contrary, it is very likely that such a struggle cannot be successful unless it is an integral part of a perspective of mass radicalization and overall struggle to take the destiny of the nation into the hands of the people.

I of course agree with Jonathan that the Guild "is not, by its very nature, a revolutionary organization" and that it "is an organization containing persons of a variety of ideologies and tendencies." Jonathan's response to my article in the Practitioner of necessity broadened the base of controversy from the original focus on the "role of radical lawyers" to questions of sweeping general concern to every section of the peoples' movements. I do not feel that anyone should be disturbed that such discussion and debate takes place within the Guild, as well as within any organization of people concerned with social struggle in any of its aspects. It is healthy that we talk out among ourselves, and openly before the people, these questions which inevitably shape our individual views towards immediate tasks and problems, so long as we do not demand that the Guild qua Guild necessarily adopt our own overall views and theories. This is why I welcome this debate, be it in the Guild, or elsewhere, at the same time as I concur with Jonathan's conclusion that "it is important for us to recognize and appreciate that the growth and strength of the Guild has been and will remain dependent upon both the unity of its members and their conflicts."

Arthur Kinoy

Since its turn to the youth at its New York convention the Guild has become-shall we say- relevant. That it was in its doldrums, despite its useful past,cannot be denied. The older members of the Guild who enthusiastically supported the new emphasis on law students at New York were not prepared for its full consequences. They could hardly swallow the admission of law students- now they gag on legal workers.

Mind you I am not saying that it is right or wrong to take in legal workers, at this point, but I am leading up to a question. Given an organizational question on which the division is,in the main,between those who have built the Guild in the last few years and others,which side should one take? Over many, many organizational years I have learned that organizational questions and forms are not abstract,but they vary with the problems, the situation,and most of all with the people being organized.

Let us be practical (if that is not too reformist an idea). Suppose you could prove, and of course you cannot, that admission of legal workers would be bad for the Guild, what about the morale factor. What would be the effect on the young active workers in the Guild. They feel already that the emergency brake is engaged a little. What if they should feel that the car has to be driven with the brakes on all the way? Many dire consequences might flow.

I am trying desperately not to sound arrogant(which as you know is difficult enough for me) when I say that, with all its opiate virtues, nostalgia is hardly a political or organizational guide. Every argument I have heard presented by my generation against the legal worker proposal is based upon the past- and even the distant past. At those times the political situation was different; the composition and attitude of lawyers and bar associations was different; the situation within the Left was different; and most important the main task or tasks of the Guild were different.

For some time now I have tried to figure why this "relatively" unimportant question has developed such a deep fissure.Listen to my theory. The proposal was made in the broadest, least justifiable, and most-suspicion creating form. It almost looks(if I may be permitted some frank talk) as if someone were trying to create an old-young split. In fact I find it difficult to believe that the left-leaning youth in the organization can actually believe that, either in dedication, or value to the Guild and its

program, the yesterday-hired typist compares with the active core of the Angela Davis or Soledad Defense Committee--- yet the former is accepted and the latter are rejected by the proposal.

Now briefly on the merits. As one of the first lawyers or law student whose right to practice law was challenged by reactionary forces(1936), and as one who was as active as anyone in the country on the contempt fight of the Foley Square lawyers and William Patterson etc., I reject the idea that the main defense of the lawyer under attack is to be made within the bar. I believe it is the people's organizations in general, the unions, the minority organizations and the radical organizations, which will be decisive in this fight-- and it is coming, have no doubt about that.

I believe legal workers should be invited into the Guild. Notice I said invited, for I do not think it depends on whether someone has an interest in law but whether his or her work is useful or helpful to the Guild's program. I believe each chapter should have the right to admit legal workers within the confines of a very general constitutional provision-like the following:

> men and women who, in their work, have demonstrated a dedication, and usefulness, to the Guild and its program by work in Guild national or regional offices, official Guild projects, defense committees or other organizations.

In conclusion, I believe we would be playing into the hands of our enemies if we let this issue either split us or occupy the major share of the Convention's time. We should hammer out at this Convention- allowing ample time for it- the Guild's program on such subjects as analysis of the judicial system; the judiciary; the right of a lawyer to fight for his client; the role of conscience in the bar, and the judiciary; and the proper function and functioning of a radical lawyer.

Abe Grossman

ARGUMENT AGINST THE BALLOT REFERENDUM ON THE LAW WORKER QUESTION

The question raised by the proposed admission of law workers in the Nat'l Lawyers Guild are among the most important we have considered since the founding of the organization. Which ever way the vote goes,the results will have enormous consequences for the Guild and its work. Perhaps one of the most important aspects of all this is the process itself of our decision-making. What is the best way to go about deciding these important questions?

First, we need a way of making the decision that is dynamic and amenable to the processes of compromise and conciliation -- a way which is dialectical, if you will. The convention gives us a chance to discuss and decide in the context open to all the possibilities which exist when people are gathered together to work out a complex problem. The ballot referendum is a bit too mechanical an approach. The limits of definitive, on-paper alternatives which are voted "yes or no" is a kind of unbending method of decision-making.It is sure to make most everyone uncomfortable, and the results will inevitably be challenged and reviewed no matter how the ballot is phrased.

Secondly, we need a way of making the decision which is "national" in form & content, i.e. we need to have Guild people from all over the country making a decision from a perspective which is appropriate to a national organization in 1971. The convention is the one opportunity we have for people all over the country, in chapters and at-large, to come together,share information and ideas. It is the one place where the Guild becomes a reality as a national organization. No newsletter or mailing can accomplish this.It is true that not all the membership comes to a convention, but attendance is quite reflective of the constituant groupings of the Guild.The ballot referendum will be a national enterprise in name only. At best, the individuals voting will have had the benefit of local chapter discussions, which may be quite distorted or inadequate. At the worst, many will vote without any extensive discussion or analysis of the issues at all.

Thirdly, we need a way of making the decision which will lead to a binding up of wounds and a unity for going forward. The convention has the potential to be a place where people can relate in a full and caring manner. Some have supported the ballot referendum because they fear the convention will be stampeded into a decision; they fear that rudeness and intimidation will rule and political argument will be silenced. But, everyone cares too much about the Guild and the merits of this issue to let that happen. The ballot referendum, on the other hand, is the rudest method of all-- a crude way of saying: "Let's just get this thing over with in the quickest,simplest possible way, and get on to the real business of the Guild." It is a way of intimidating the discussions of professionalism and chauvinism that have been struggling to the surface in the Guild. And as to rudeness, no scenes I have witnessed in the Guild equal moments when a couple of old antagonishts, carrying the baggage of thiry years of ideological dispute go at each other. The insults over the Czech question far surpassed anything yet heard by me on the law worker question. The convention can be a bad scene, or it can be a great scene. The ballot is sure to be interpreted as a way of cutting off struggle and a way of avoiding questions --- and, that is a bad scene with no possibility of redemption.

Finally, I think that the results will be the same on the ballot or at the convention.* Given this, which method will be best for the Guild? The convention is a method that gives us an opportunity for sensitive adjustment a method that insures the best possibility for a contemporary national perspective on the problem, and a method that gives us an opportunity to treat each other as comrades in struggle and love, and not as isolated voters at desk-top polling places.

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* If it is felt that the results will be different in a ballot from the convention, then the motives of each of the writers who are strongly urging a position must be examined with care.

ARGUMENT FOR THE BALLOT REFERENDUM ON THE LAW WORKER QUESTION

1. The matter would then be decided by all members of the Guild or at least those who bothered to do the minimally necessary task of voting; rather then by the smaller and necessarily less representative group which attends the convention.

2. The convention shows promise of developing significant program for the organization and striking out in long neglected areas. If the legal worker issue is dealth with in Boulder it will dominate the convention and lessen the chances both of program development and implementation and of everyone going home friends. If dealt with prior to the convention by a referendum it will be out of the way in Boulder and no matter what the outcome will not get in the way of other convention business.

3. As a consequence of number one, a decision by referendum is likely to be more palatable to the loosers. No matter which way the vote those whose position has lost can and perhaps will feel that they can live with it since it was the majority view of the organization.