

# national lawyers guild

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# REVIEW

*A journal of  
legal theory  
and practice  
“to the end  
that human  
rights shall  
be more  
sacred than  
property  
interests.”*

—Preamble, NLG  
Constitution



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The first two features in this issue look inward at the Guild itself. “Transformational Movements: The National Lawyers Guild and Radical Legal Service” by Jules Lobel seeks to explain why the Guild, virtually alone among the radical-progressive organizations founded to better conditions for struggling and disenfranchised groups during the Great Depression, has “survive[d]... with its fundamental mission intact.” Throughout the twentieth century it has become something like a sociological rule that activist associations, formed in response to social or political crises, will either fizzle out with the end of the particular problem for which they were created or moderate their radical values as the political climate changes and the audience for systematic social change diminishes and grows less attentive. The Guild has proven itself a striking exception to this rule.

Despite a history of episodic internecine conflicts, some of them factional and contentious, and a period of fanatical state persecution during the McCarthyite period, for 79 years the Guild has been an unyielding force for legal, political, and social change. Among the reasons for this, Lobel argues, is the Guild’s commitment to remaining an internally democratic and egalitarian organization. The Guild has always eschewed ideological tests as a matter of principle and been open to dissenting points of view from members. The Guild has never structured itself hierarchically, like a corporation. It has never lapsed into oligarchy. There have been no perpetual presidents. The Guild has always remained a proudly bottom-up organization with a membership free and bold enough to challenge leaders when disagreements arise.

Perhaps even more importantly, Lobel explains that despite being mostly comprised of educated professionals (lawyers), the Guild has never thought

*Continued next page*

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**Jules Lobel**

**TRANSFORMATIONAL MOVEMENTS:  
THE NATIONAL LAWYERS GUILD  
AND RADICAL LEGAL SERVICE**

Movements seeking fundamental social, economic and political change have faced a recurring dilemma in the United States and other nations. During activist periods such as the 1930s and '60s, powerful protests inspire important constitutional and legal reforms and weaken the power of entrenched elites. Yet once the social movement ebbs, the activists' broader egalitarian economic and social demands are left unrealized, and the movement has been unable to sustain itself. Some scholars believe that this recurring pattern is inevitable, and that the most poor people's movements can do is win reforms during periods of crisis or upheaval. This article argues that transformational movements can outlive the momentary crisis in which they arise and play a long-term role in creating a constitutional order that enshrines social and economic equality. Moreover, legal organizations can be an important part of such movements.

This article addresses the role of social movements in egalitarian constitutional transformation by focusing on a legal organization, the National Lawyers Guild. The Lawyers Guild is one of the few organizations committed to social and economic equality founded in the 1930s and 1960s that survive today still committed to radical change. That it has survived with its fundamental mission intact suggests that such institutions can outlive the insurgent period in which they are created. This article analyzes why the National Lawyers Guild has been able to sustain itself for what is now almost 80 years with its commitment to social and economic transformation undiminished, and what lessons can be gleaned from the Guild's history for legal and other social justice organizations' potential to sustain social movements.

In their influential book, *Poor People's Movements: Why They Succeed, How They Fail*. Francis Fox Piven and Richard Cloward argue that poor people's movements are unable to sustain themselves over time or change the

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basic constitutional order much, but can only seize the moment presented by societal crisis to create maximum disruption and achieve incremental reforms.<sup>1</sup> They analyze the mass movements of the '30s and '60s and argue that once the mass upsurge subsides, the progressive, mass organizations that were created inevitably either “fade away” or abandon “their oppositional politics.”<sup>2</sup> And indeed, that is precisely what happened to the civil rights organizations, welfare rights and unemployed groups and trade unions of those eras. Piven and Cloward therefore argue that movement leaders should not concern themselves with building formal organizations if they want to achieve the maximum constitutional or societal change.

This article argues to the contrary. To achieve socioeconomic constitutional transformation requires not simply a constitutional moment, but a long-term constitutional movement. The reform/reaction cycle can be overcome, but only by a sustained movement for transformative change. Such a movement requires the development of radical civic, community, economic, political and legal organizations. These institutions must seek economic transformation, yet also be prefigurative of a just society in that their internal workings and practice reflect the democratic, egalitarian society they aspire to create.<sup>3</sup> That so few mass radical organizations have been able to survive with their mission intact raises the question of what such organizations can do to sustain themselves and play an important role in building social movements over the long haul. The National Lawyers Guild, created in 1937 has survived where many others failed or were coopted, and played a significant role in the movements for equality of the 1930s, 60s, and today. This article asks and tries to answer why the Guild has been able to do so.

That a legal organization is one of the few out of the hundreds of unions, unemployed groups and professional associations created in the 1930s to survive as a radical egalitarian group still committed to a transformative agenda suggests that perhaps the lawyers' role lends itself to such sustainability. Indeed, cause lawyering constitutes a significant aspect of the lawyering profession,<sup>4</sup> and legal organizations devoted to progressive causes proliferated in the 20th century<sup>5</sup> and have proven to have long-term durability. But of all these organizations, only the Lawyers Guild is a mass membership organization committed to radical, egalitarian transformation of society.<sup>6</sup>

Two characteristics of legal organizations could explain the proliferation and durability of progressive legal institutions dedicated to cause lawyering. The first is the enormous role that law, and particularly the constitution, has played in the United States movements for social change. It is no accident that in the United States, many of the sweeping political changes of the last century have come through Supreme Court pronouncements—ending racial segregation,<sup>7</sup> according women a right to choose whether to end a pregnancy,<sup>8</sup> or more recently recognizing gay couples' right to marry.<sup>9</sup> While academics

have debated the efficacy of these judicial interventions,<sup>10</sup> in the United States, as Tocqueville noted almost two hundred years ago, almost every political issue becomes a legal one.<sup>11</sup> Therefore progressive legal organizations have what amounts to a privileged position on the American political scene, making them easier to sustain.

Second, legal organizations and progressive lawyers can provide concrete services to the community served by the organization, be it defined by race, ethnicity, gender, poverty or geography. While that may also be true of other professionals who perform a valuable community service,<sup>12</sup> legal organizations provide a service often directly tied to justice and therefore political change. Service tied to political change fosters the sustainability of legal organizations committed to political causes such as ending discrimination based on status. The Lawyers Guild, however, has developed a radical, egalitarian practice of service, differing drastically from the mainstream view of the lawyer/client relationship. That redefinition of legal service is of critical importance in explaining why the Guild has survived with its commitment to fundamental socio-economic change intact.

This article views the history of the National Lawyers Guild through the lens of the overall movement for economic and social justice in America. The Guild's survival and important role in various struggles for justice provide valuable insights for the building of that movement. The Guild's durability and continued radicalism has been a function of (a) its development of a revolutionary view of legal service, (b) the independence and autonomy it has scrupulously maintained from the government and political parties, (c) its diverse and tolerant leadership which has been open to incorporating major changes in the organization's direction, but not its overall principles.

Part I sets forth the historical and theoretical background to the problem of how to develop a sustained movement for fundamental economic and social change. The next four parts address the National Lawyers Guild's history—its founding period, its ability to survive the end of the reformist period and the onset of reaction, its turn to the Southern radical civil rights movements in the '60s, and its rebirth and transformation as a part of the new left movements of the late '60s and early '70s. A critical thread that runs throughout the Guild's history is its pioneering of a radical vision of the provision of legal services, which along with its tolerance for difference and independence from the state and political parties allowed it to sustain itself as an organization committed to social and economic transformation.

## **I. The dilemma of the reform/reaction cycle**

The United States went through two periods of radical upheaval in the past century, resulting in what Yale Law Professor Bruce Ackerman has termed, transformative constitutional moments.<sup>13</sup> Ackerman sought to understand

the “processes that allowed Americans to transform moments of passionate sacrifice and excited mobilization into lasting legal achievements.”<sup>14</sup> Yet, while both transformative periods, the 1930s and 1960s, resulted in important constitutional and economic reforms, the underlying goals of many movement activists for economic equality and transformation were eventually dashed. Perhaps more importantly, the radical movements and organizations that were the real engine of those changes in the ’30s and ’60s either no longer exist, or have been bureaucratized and deradicalized.<sup>15</sup>

While Ackerman addressed how important constitutional reforms are institutionalized, an important question he never considered is how transformational movements can be sustained beyond the constitutional moments in which they flourished. Gary Bellow, a founder of Neighborhood Legal Services and later Professor at Harvard Law School recognized the need to answer that question when he noted that legal victories could be easily circumvented, thereby requiring continuing pressure from outside governmental institutions to be maintained. Bellow argued against either a “service model” of lawyering or a law reform model, and sought instead to create “lawyer organizers” who could leave behind organized poor people to continue the struggle for economic justice.<sup>16</sup> The history of the ’30s and the ’60s illustrates the difficulties of sustaining such an approach over the long term.

In the 1930s, strong, radical trade unions, unemployed organizations and a host of other radical groups emerged that challenged the status quo and utilized rebellious tactics such as plant takeovers, sit-down strikes, and unemployed encampments in Washington to propel important New Deal reforms.<sup>17</sup> However many activists goals were not simply union recognition and a contract, or unemployment or retirement insurance, but to dramatically transform the inequality that existed between manager and worker and create a socialist society.<sup>18</sup> Some of those aspirations were reflected in a constitutional form by Franklin Roosevelt’s call, in his 1944 State of the Union Address, for a Second Bill of Rights providing for basic economic rights such as the rights to a job, decent wage, medical care, housing and good education.<sup>19</sup>

Yet with the enactment of reforms, such as the National Labor Relations Act, the period of labor unrest subsided.<sup>20</sup> Eventually the unemployed movement died and radical unions were generally either crushed or integrated into the established order so that they no longer reflected the radical egalitarian goals of many activists who fought to create them. Today, we seem in many ways further from the goals of an equal economic order than in 1944, and the institutions or organizations of the ’30s either no longer exist or are no longer engines of radical protest.

So too, the 1960s confluence of the Civil Rights and student movements resulted in a period of intense, often radical activism that resulted in impor-

tant constitutional and legal reforms such as southern Blacks achieving the right to vote, ending segregation and eventually electing thousands of Blacks to important offices, including that of President of the United States. The student movement helped change American universities and culture, the anti-war movement pressured the government to withdraw from Vietnam, and the women's movement succeeded in gaining broad recognition for the principle of women's equality. The period also spawned a remarkably successful gay and lesbian movement, which appears to be on the cusp of sweeping away legal discrimination based on sexual orientation.

Nonetheless, as in the 1930s, the broad aspirations for economic equality and transformation shared by Martin Luther King and many other activists were dashed once the conservative reaction set in. We now honor King as a great civil rights leader with a holiday, but ignore his plea for economic equality. King's dream of economic equality and justice, reflected in his support for the Memphis sanitation strikers demands for economic justice and his organizing a poor people's campaign,<sup>21</sup> has been quashed. Our society has ironically become more inclusive, yet grossly more unequal over the last half century.<sup>22</sup>

The legal struggle for a more just society paralleled the broad political movement. Eventually the mass movements of the '30s combined with President Roosevelt's nomination of progressive justices led to the Supreme Court's affirmance of the National Labor Relations Act, Federal minimum wage legislation and other New Deal legislation.<sup>23</sup> However, by the 1950s, after the militancy of the '30s had ebbed, the Court issued a series of opinions that aided the deradicalization of the labor movement.<sup>24</sup>

So too, the Civil Rights movement began with the momentous *Brown* decision, but the Court could never bring itself to declare an affirmative right to equal or integrated education,<sup>25</sup> and eventually the ringing pronouncements of *Brown* were negated. As the distinguished legal historian Paul Finkleman has noted, it is ironic that fifty years after the decision, "many scholars and some civil rights activists regard the decision as a failure."<sup>26</sup> Harvard civil rights professor Charles Ogletree concludes, "that fifty years after *Brown* there is little left to celebrate,"<sup>27</sup> while the great civil rights activist and professor Derrick Bell wrote that "[b]y dismissing *Plessy* without dismantling it, the Court seems to predict if not underwrite eventual failure."<sup>28</sup> Or as Bell went on to explain, the passage of years has transformed the *Brown* ruling "into a magnificent mirage, the legal equivalent of that city on a hill to which all aspire without any serious thought that it will ever be attained."<sup>29</sup>

In addition, the attempt to connect constitutional rights to socio-economic equality failed. The 1960s poor people's movements inspired progressive lawyers and academics to articulate constitutional rights as a means to achieving social and economic equality—either through the equal protection or

substantive due process clauses.<sup>30</sup> The Supreme Court, however, decisively rejected these theories.<sup>31</sup>

A response of left academics, social movement theorists and political activists to this cyclical tension of reformist upsurge followed by conservative reaction has been to stress the need for organization.<sup>32</sup> Mass organizations would presumably lead struggles in times of crisis and mass protest, and would survive the period of reaction to inspire and lead future protests when a new crisis occurred.<sup>33</sup> Eventually, these mass organizations could, through democratic means, either achieve state power or force the elite to undertake fundamental economic and social changes.

In Europe, this organizational impulse often took the form of mass social democratic parties rooted in the labor movement pursuing social and economic equality by winning elections.<sup>34</sup> In contrast, United States organizing resulted in the formation of industrial and craft trade unions, other civic organizations, but never resulted in a social democratic or labor party as in England or Continental Europe. In the absence of a social democratic or labor party alternative, progressive lawyers and others on the left often attached themselves as the left wing of the Democratic Party. Ultimately, those European parties, as is the case with American trade unionism, became bureaucratized and coopted into the system so that they no longer seek social transformation. Indeed, in countries such as Greece, the main alternative to the crushing economic conditions of the past decade has arisen outside of the traditional socialist or leftist parties.<sup>35</sup> In the United States, the most recent dynamic upsurge challenging the existing social and economic order was the Occupy Movement of 2011, which also burst onto the political scene outside of the established unions or progressive civic organizations.<sup>36</sup>

During the 1930s and '60s, American activists devoted considerable attention to creating mass organizations that they hoped would become permanent fixtures for egalitarian change in the American political landscape. Yet as Piven and Cloward cogently analyze, those organizations by and large either collapsed or were coopted once the upsurge subsided. They argue that the focus on building organization is both futile and dangerous. It is dangerous because movement leaders do not escalate the momentum of popular protest since “they are preoccupied with trying to build and sustain embryonic formal organizations. . . .”<sup>37</sup> “[B]y endeavoring to do what they cannot do, organizers fail to do what they can do.”<sup>38</sup> “Organization-building activities tended to draw people away from the streets and into the meeting rooms.”<sup>39</sup>

Organizational building is also futile for Piven and Cloward because mass organizations are generally not sustainable as radical groups. For example, they argue that “the flaw” in the organizational model is “quite simply, that it is not possible to compel concessions from elites that can be used as resources to sustain oppositional organizations over time.”<sup>40</sup>

Piven and Cloward's perspective presents a bleak view of the potential for fundamental social-economic transformation. As Cloward noted in a 1998 interview, "Our view is the poor don't win much, and they only win it episodically. You get what you can when you can get it—and then you hold onto your hat."<sup>41</sup> For Piven and Cloward, "Organizers and leaders cannot prevent the ebbing of protest, nor the erosion of whatever influence protest yielded the lower class. They can only try to win whatever can be won while it can be won."<sup>42</sup>

Piven and Cloward are undoubtedly correct that neither organizers or leaders—nor lawyers for that matter—can prevent the ebbing of protest. But they dismiss the possibility of creating institutional forms which will outlast the temporary eruption of protest and help sustain a long term movement for social and economic transformation. The National Lawyers Guild presents one such institutional formation.

The Guild is obviously not a mass organization of the poor. Lawyers are professionals and not generally poor. The Guild therefore has access to more resources than a mass organization of the poor. Nor is the Guild a national labor union. Moreover, as already mentioned, radical legal organizations might be different from organizations of workers or other radical professionals because of the legal profession's unique role in the political life of the country.<sup>43</sup>

Nonetheless, the Guild is a mass membership organization, although its membership has never exceeded 10,000 members. The Guild's ability to maintain itself as a radical organization over a substantial period of time thus presents the real possibility that insurgencies might leave something to outlast the particular reforms they win. The Guild's history suggests that radical organizations born out of crisis can survive and help sustain an ongoing movement for economic equality through its inevitable ebbs and flows, and that such organizations will be not obstacles but valuable instruments in future upsurges. Indeed, while the Guild is small, it has made outsized, significant contributions to sustaining insurgent movements not only in the 1930s but also in the 1960s and '70s, and more recently in aiding the Occupy Movement. Moreover, it has held fast to its support for fundamental economic and societal transformation.<sup>44</sup>

The first feature of the Guild that has fostered sustainability was its development of an egalitarian, innovative model of legal service, which challenges the traditional narrow model of lawyering. One important component of a movement organization's ability to sustain itself over time is its ability to provide a service to some constituency. Unions provide services, more or less effectively, to their members. The Guild has rendered important services, not simply or primarily to its members, but to a broader poor, working class and activist community. It developed an egalitarian, community oriented model of legal service, where the lawyer views himself or herself as part of the community to be served and not as an aloof professional in a hierarchical relationship to that community.

The Lawyers Guild pioneered a new, non-traditional, egalitarian, community-oriented form of lawyering which has proliferated in the past few decades. In recent years, academics and activists have shown interest in non-traditional models of lawyering which some term “community lawyering”<sup>45</sup> or collaborative lawyering,<sup>46</sup> others “rebellious lawyering”<sup>47</sup> and others “accompaniment,”<sup>48</sup> all of which describe a type of legal practice which the Guild initiated as an organization in the 1930s and ’60s. The Guild’s focus, which developed slowly but which escalated dramatically in the ’60s and ’70s encouraged lawyers to participate in, serve and accompany new popular movements, allowing the Guild to sustain itself where other groups might have stagnated or withered away.

Second, the Guild fiercely preserved an independence and autonomy from government funding, the governmental apparatus and political parties. Guild lawyers in the ’50s were held in contempt by the courts and disbarred or otherwise disciplined, but nonetheless fought for the right of lawyers to vigorously represent their clients, a fight they ultimately won. The Guild also asserted its independence from the Democratic and Communist parties, both of which had aided in its formation.

Finally, along with a democratic tradition and a steadfastness to principle, the Guild has historically exhibited a tolerance and even appreciation of dissent and differing progressive positions, which sustained the organization despite bitter sectarian battles. The Guild was thus able to incorporate new leadership and reach out to young lawyers who felt the organization was able to accommodate new ideas.

## **II. The early Guild and the beginnings of an alternative model of legal service**

“The National Lawyers Guild was born in revolt—a revolt that embraced the entire intellectual life of the times,” wrote the Guild’s President, Tom Emerson, in a 1950 overview of the first fifteen years of the Guild’s history. From its beginnings in 1937 the Guild was almost torn apart by political controversies between different groups within it and by government repression. At various points in its history, it came perilously close to dissolving. Nonetheless it survives to this day as an independent radical organization that remains true to its rebellious roots. At its outset, it developed a concept of legal service that was very different both from the established bar and from the service orientation of, for example, mainstream trade unionism. That alternative perspective on service has developed throughout the Guild’s history and is a critical factor in explaining the Guild’s survival as a radical organization.

The organization was created by an amalgam of lawyers representing different perspectives. Perhaps most prominent at the outset were well connected liberal New Deal lawyers such as Morris Ernst who wanted to organize an

alternative bar association to the corporate controlled, virulently anti-New Deal American Bar Association in order to support the Roosevelt Administration. The founders also included Communist and socialist lawyers who believed in the necessity of socialist transformation of society and sought a socialist oriented organization of lawyers to aid political struggles and to push the Roosevelt Administration to the left. A third group were progressive civil libertarian lawyers such as Osmond Fraenkel and Tom Emerson who, unlike Ernst and his supporters, were unwavering in their view that Communists, like everyone else, were entitled to the full protection of the Bill of Rights. These lawyers were joined by hundreds of relatively low income, mostly big city, ethnic and racial minority lawyers who wanted an alternative bar association to press for employment for lawyers and other economic security measures and who were not represented by the ABA, or, in the case of African Americans, were barred from such membership.<sup>49</sup>

In part, the Guild was modeled after the American Newspaper Guild and the Screen Actors Guild, each organized in response to economic distress amongst professionals.<sup>50</sup> Ernst had helped Heywood Broun organize the Newspaper Guild in 1933, and by 1936 was urging lawyers to form a similar professional union.<sup>51</sup> The Screen Actors Guild and the Newspaper Guild had completely different organizational trajectories than the Lawyers Guild. Both became powerful, mainstream unions that were anti-communist and not particularly known for their support of progressive, egalitarian causes<sup>52</sup>

The Lawyers Guild was first organized pursuant to a conception akin to a union, with an important organizational function of providing economic services for its members. As the first *National Lawyers Guild Quarterly* issue pointed out, the economic situation for most lawyers in the 1930s was dire: the median income of lawyers in Manhattan was less than \$3,000, and nearly half made less than the \$2,500, which was the poverty line for a family of four.<sup>53</sup> Throughout the country, many lawyers lived at or near subsistence level.<sup>54</sup> Accordingly, while the Guild never became a trade union and its primary focus was undoubtedly to serve as a progressive counterweight to the conservative ABA, an important part of its early organizational success lay in its appeal to economically struggling lawyers. As the Guild's President noted in 1939, the organization directed its attention "to the economic position of the lawyer today."<sup>55</sup> Indicative of its commitment to the have-nots of the profession, the Guild's first by-laws set a membership fee of \$1 for lawyers making under \$1,500, which in New York was one-third of all lawyers.<sup>56</sup> At the end of its first year the Guild had 5,000 members, mostly lower income professionals, a figure that dropped to 4,300 after two years.<sup>57</sup>

The early Guild played an important role as a progressive bar alternative to the ABA. It supported the Roosevelt Administration's court packing plan, fought efforts to weaken the National Labor Relations Act, called for a full

scale Social Security program, and demanded an end to restricted suffrage. The Guild's International Law Committee issued an important legal report against the Roosevelt Administration's policy imposing an arms embargo on all sides of the Spanish Civil War, which was printed in the premier edition of the *National Lawyers Guild Quarterly*. At the second convention, a resolution was adopted condemning the arms embargo, which sparked a major debate over whether the Guild should take "political" stands, or restrict its opinions to strictly legal concerns.<sup>58</sup>

The Guild had an imposing array of impressive New Deal figures speaking at its conventions and participating on its Executive Board. Then Assistant Attorney General Robert Jackson and Senator Alben Barkley spoke at the first Guild Convention at which John P. Devenay, Chief Justice of the Minnesota Supreme Court, was elected President. Prominent figures such as the general counsel of both the AFL and CIO, Governor Phil La Follete of Wisconsin, Senator Homer Bone of Washington and Representative Maury Maverick of Texas were among those elected to the Executive Board. Black lawyers responded with alacrity to the Guild's appeal as the only integrated bar association, which, in contrast to the ABA, supported racial equality. Charles Hamilton Houston, dean of Howard Law School and chief litigator at the time of the NAACP joined the Executive Board.

By the late 1930s, however, the Guild was wracked with internecine, political battles. Ernst and his liberal New Deal followers sought to have the organization denounce communism and fascism, and bar communists and fascists from Guild office.<sup>59</sup> When the majority in the Guild, including many civil libertarians such as Fraenkel and Emerson refused to do so, Ernst and his supporters, including prominent Roosevelt Administration officials such as Assistant Secretary of State A.A. Berle and Solicitor General Robert Jackson left.<sup>60</sup> Membership plummeted to about 1,000 in 1940.

While the Guild's political positions and battles dominated the organization, it also developed proposals with respect to serving its members that were very different than that of other guilds or mainstream unions. While unions primarily or exclusively serve their members, and, at times, take positions at odds with the interests of the broader community,<sup>61</sup> the Lawyers Guild proposed various plans for lawyers to serve the wider poor and working class community. Those proposals were in tension with the positions of the mainstream bar, and sought to transform lawyers' relationships to poor and working people. These initiatives represented the beginnings of a radically different view of legal service than that espoused by the traditional bar.

In the 1930s, as today, most legal practices focused on well-to-do clients. The needs of working class and lower middle income people were underserved or not served at all.<sup>62</sup> In Philadelphia and Chicago, the Guild developed pio-

near programs for the establishment of neighborhood legal offices or legal service bureaus to provide service to working class neighborhoods not served by traditional legal practice or by the legal aid offices that served the bedrock poor. The Guild's approach was to both aid underemployed or unemployed lawyers, and serve the millions of low income Americans unable to obtain legal service from high cost traditional law firms. The Guild believed that the professional welfare of lawyers should not be divorced from the availability of legal services to low income groups and rejected solutions to the oversupply of lawyers that entailed restricting entry to the legal profession or eliminating representation by laymen before governmental administrative agencies.<sup>63</sup> Instead, the Guild proposed aiding lawyers by providing legal services to underserved low income individuals.

The Chicago plan was based on a report of the Chicago Chapter's Committee on Economic Welfare of the Legal Profession, authored by University of Chicago Law Professor Malcolm Sharp who was to become Guild President in the 1950s. The report, citing studies by the prominent Chicago Law Professor Karl Llewelyn and others, argued that the bar had "failed to provide for the legal needs of the masses of people," and proposed the establishment of a centralized legal service bureau, modeled after existing legal aid organizations, but charging low fees designed to serve working class people. The report claimed that the rise of an "organized low-income group movement," including trade-unions and agricultural and consumer cooperatives, "tends to encourage articulation of the individual legal needs of group members and to require their satisfaction."<sup>64</sup>

The report won praise in many legal circles, including an endorsement from Supreme Court Justice Harlan Stone, and was approved by the Guild. The proposal asserted that individualized law practice had failed to meet community needs, but, nonetheless, its model conformed to traditional professional practices with a centralized structure led by a governing board of directors and did not foresee changing the attorney-client practices of law firms, although future innovative developments were not prohibited.<sup>65</sup> Its recommendations did deviate strongly from traditional bar practice in urging that the work of the bureau be widely publicized and that the bureau might engage in a wider program of educating the public.<sup>66</sup>

The Guild proposal engendered widespread discussion. Follow-up reports viewed the proposed bureau as encouraging consultation "not only from the point of view of serving the clients that come to the bureau, but also as a means of educating the public to the value of legal advice." Its establishment would not only serve needs inadequately met by mainstream lawyers, but also serve "as a possible instrument for re-education of the bar."<sup>67</sup> Nonetheless, the proposal was apparently never implemented in Chicago due to a lack of funding to start what was envisioned as a fairly large scale office.<sup>68</sup> The Guild began to look for government funding, met with the Attorney General in

1941 and formally proposed the creation within the Department of Justice of a Federal “Ministry of Justice,” a main function of which would be to develop mechanisms for low cost legal service for low income groups. Throughout the late ’40s and early ’50s, the Guild reiterated the necessity of public funding for legal services for those who could not afford the fees charged by private attorneys.<sup>69</sup> It viewed legal services for poor and low income people not as charity but as a matter of constitutional right,<sup>70</sup> a right still unrecognized today outside of the criminal justice context.<sup>71</sup>

In Philadelphia, the Guild chapter endorsed and developed a more radical plan, which envisioned the transformation of the lawyer’s relationship to the community he or she served. The Philadelphia proposal, unlike that of Chicago, did not recommend a centrally controlled and directed legal services bureau. Rather, the Philadelphia Guild chapter proposed the creation of decentralized, autonomous, neighborhood law offices, staffed by lawyers rooted in their communities. It proved to be far more successful, eventually creating over twenty offices in working class neighborhoods, serving thousands of clients and lasting more than 25 years.

The Philadelphia Neighborhood Law Offices plan, originally conceived by lawyer, Robert Abrahams, was established under Guild auspices in 1939 as an experiment. It was directed by an all-volunteer committee of the Philadelphia chapter of the Guild. While all the members of the committee were also members of the Philadelphia Bar Association, a meeting with the leaders of the Association convinced the organizers that the Bar Association would refuse to sponsor it. So they turned to the Guild, which gladly adopted it, and, as a recognized bar association in Pennsylvania, provided supervision.<sup>72</sup>

Six neighborhood law offices opened in November 1939. All were operated on a part-time basis initially, staffed by lawyers who had some other active law practice. They generally were located in low-income Philadelphia neighborhoods that were neither the poorest “relief” areas nor middle class sections of the city. The offices were decentralized and largely autonomous, consisting of lawyers who became partners in their respective offices and who shared expenses and profits. Each partnership agreed to abide by certain standards of practice set by the Guild Committee and in return was permitted to state that it was a Neighborhood Law Office authorized by the National Lawyers Guild. The partnership also agreed to charge clients minimal fees set by the Guild, including a fixed charge of \$1 for a half hour interview. These lawyers did not have to be Guild members or members of any bar association<sup>73</sup>

The Guild committee also formulated five maxims of practice for a successful Neighborhood law office:

- Preventive law is to justice what preventative medicine is to health
- It is the dignity of the client, not that of the lawyer, which counts

- The lawyer should not be remote from his client either in geography or in understanding
- The lawyer who makes a mystery of his fees makes a critic of his client
- The lawyer who gives a service earns a fee.<sup>74</sup>

The committee, therefore, urged the lawyers in these offices to live and actively participate in the neighborhood where the office was located. As Abrahams noted in the *Lawyers Guild Review*, “the neighborhood lawyer, in order to establish his practice, must be more than a man who merely sits in his office wishing he were downtown,” but must “participate in the life of his neighborhood.”<sup>75</sup> To Abrahams, all the maxims could be boiled down to one: “Be a part of the neighborhood you aim to serve.”<sup>76</sup> The offices were located on convenient streets, and some became known as five and dime offices, because they often were situated on busy blocks which had a five and dime store or a movie theatre, attracting a lively walk-in clientele.

As the first maxim suggested, the offices focused on preventive law, with most of the clients seeking advice on contractual or other matters in the hopes of avoiding litigation. Fewer than 5 percent of the clients sought advice on litigation. In addition, the overwhelming majority of clients were first-time users of lawyers: over 80 percent of the clients seen by the offices had never before entered a law office.<sup>77</sup>

The Philadelphia Neighborhood Law Office plan was successful beyond the expectations of its founders. To the committee’s surprise, almost 150 lawyers expressed an interest in participating before the offices even opened. While the committee contemplated starting with four offices, they were initially able to operate six and two more opened shortly thereafter. By 1941 the committee was able to staff 10 offices. Despite some vigorous opposition from elements in the bar who felt threatened by the plan, the offices did well. When the experimental eighteen-month period was over, the program was made permanent. While the founding committee anticipated that some subsidies would have to be paid to allow the offices to sustain themselves at the outset, the offices quickly became self-sustaining, and the Guild committee spent less than \$100 total in the first few years to establish the program.

A decade later the offices were providing a reasonable income for the lawyers, serving over 4,000 clients annually, and still charging \$1 for an initial half-hour consultation. The whole plan evidently served an important, unmet public need, and received enormous favorable publicity, being touted in local newspapers and major national magazines such as the *Saturday Evening Post* and the *Atlantic Monthly*.<sup>78</sup> Within the first few years of the Neighborhood Law Offices operation, over 30 lawyers’ committees from other cities visited Philadelphia to observe the neighborhood offices, including a delegation from the California Bar Association, the ABA and the Pennsylvania Bar Association, each of which issued reports.<sup>79</sup>

By 1964, 25 years later, the Neighborhood Law Office program in Philadelphia was still going strong. It had expanded to 24 offices, having served 100,000 clients. Inflation had resulted in the half hour consultation fee rising to \$3. In 1956, with the National Lawyers Guild under attack by the government, the Philadelphia plan came under the sponsorship of the Philadelphia Bar Association.

The success of the Philadelphia experiment undoubtedly owes a great deal to a dedicated committee of founders, most of whom stayed with the organization for many years. Abrahams also attributed the vitality of the Neighborhood plan to its reliance on “individual initiative” and the absence of a “government subsidy.” “Such government subsidy may destroy the essential simplicity of the scheme and load it with a bureaucracy. . . much of the success of the Plan in Philadelphia is due to the absence of any sort of bureaucratic domination or governmental tie-in.”<sup>80</sup>

Curiously, the Philadelphia Neighborhood Law Office plan was not emulated in other cities, despite its evident success, the same needs in many other urban centers, and the enormous interest the plan sparked. Perhaps one reason was that the Guild and other critics of the established bar began to have an effect on the ABA and traditional bar associations, putting pressure on these traditional organizations to develop programs such as bar referral plans in Chicago, Philadelphia, Los Angeles and other cities in an attempt to make lawyers’ services more accessible to lower income groups.<sup>81</sup> Those efforts may have undercut the need to emulate the Guild program.

The Guild’s attempt to establish voluntary neighborhood legal services offices was only a small part of the organization’s life in the ’30s and ’40s, and is often overlooked or briefly mentioned in studies of the Guild. The plan had only a modest impact on the provision of legal services for poor and working people. However, this little known experiment was, in the view of historian Gerald Auerbach, a critical part of the Guild’s legacy, which lies in “its diffusion of professional participation, its sensitivity to contemporary social and legal problems, and its commitment to innovative means toward fulfilling obligations traditionally ignored.”<sup>82</sup> As Auerbach points out, the “neighborhood law office was part of a more ambitious guild proposal to shift the professional ethos from traditional individualism that best served corporations and corporate lawyers to cooperative planning that met the needs of the bar’s middle stratum and their potential clients.”<sup>83</sup> Guild publications suggested the “development of cooperatives” to provide for low cost legal services as well as a “drastic revision of our methods of practice . . . encouraging the development of group practice.”<sup>84</sup>

Even more importantly, the neighborhood law office experiment represents the Guild’s ongoing commitment to bring law to the people and allow lawyers to experience and accompany people in their day-to-day struggles. Wisconsin

Law School Dean Lloyd K. Garrison, a prominent early Guild member, told the Second NLG Convention in 1938 that “we ought to lend more of a hand to each other and to the people, to get down closer to the life of the people and the life of our forgotten brethren of the bar,” and “to do this we must give thought to creating new kinds of organization, and new centers of cooperative activity.” He criticized the detachment of most successful lawyers of the day from “the living sources of the law, and from the day to day ills and aspirations of the multitude,” arguing that creating such new forms of organization could occasion “such a release of creative energy and such a humanizing of the bar as would mark a new era in the history of our profession.”<sup>85</sup> The Neighborhood Law Offices program and the Chicago chapter’s proposal for a legal services bureau represented a broad challenge to the traditional view of the lawyer and his or her relationship to the population and could be viewed as a precursor of the modern legal services program.<sup>86</sup>

### **III. The Cold War, anti-communism and the fight to survive**

The 1950s anti-communist hysteria, McCarthyism and conservative reaction led to the demise or co-optation of virtually all the left wing unions and political organizations that had remained from the progressive wave of the 1930s. Even most civil liberties and civil rights organizations such as the ACLU and NAACP Legal Defense Fund cooperated in the Government’s anticommunist crusade against free speech and civil liberties.<sup>87</sup> While the Guild was sorely tested, severely decimated and almost destroyed by the government’s attacks on it, the organization survived as a radical organization which maintained its support of civil liberties for all, including Communists. The Guild was weakened but unbowed. Its survival was due primarily to two critical factors. The first was its staunch independence both from the government and from political parties, Democratic, Republican and Communist. The second was its diversity of leadership with somewhat differing views and perspectives, but united in their opposition to the government’s crusade to destroy the Guild and refusal to abandon the organization.

The Guild emerged from the war years of the 1940s in fairly strong shape. In recognition of the Guild’s role in the American war effort, the State Department appointed the organization as an official consultant to the American delegation at the founding convention of the United Nations.<sup>88</sup> While the Guild had suffered a serious loss in membership during the political fights over barring communists and other political issues in the late ’30s, by 1947 it had over 2,500 lawyer members and more than 500 non-voting affiliated students, and was actively engaged on a multitude of social, economic and political issues.<sup>89</sup>

The Cold War and anti-communist hysteria in the United States was looming and soon posed a new threat to destroy the Guild. In September 1950, the House Un-American Activities Committee (HUAC) issued a report titled “The

National Lawyers Guild: Legal Bulwark of the Communist Party.”<sup>90</sup> The report was engineered and written substantially by the FBI and J. Edgar Hoover to counter the Guild’s investigation and special report on unconstitutional Bureau practices<sup>91</sup> The HUAC report accused the Guild of being a subversive organization and the “foremost legal bulwark of the Communist Party.”<sup>92</sup>

The Guild, led by its President, Yale Law Professor Thomas Emerson, vigorously refuted HUAC’s charges in a lengthy response entitled, “The National Lawyers Guild: The Legal Bulwark of Democracy.”<sup>93</sup> It argued that the defense of the rights of communists or other disfavored groups is essential to democracy and liberty, and that the Guild had always opposed loyalty oaths which have been associated with authoritarianism and repression. It would “not abandon its defense of civil liberties because it subjects us to illogical and irresponsible charges from the Committee on Un-American Activities.” Moreover, the Guild took the offensive, arguing that “the report of the Committee is an indictment, not of the Guild, but of the Committee itself.”<sup>94</sup>

The Guild response also demonstrated the falsity of the committee’s assertion that “the National Lawyers Guild has faithfully followed the Communist Party line throughout its existence” and was thus dominated and controlled by the Party. Of course, the Guild had many positions in support of trade unions, civil rights, civil liberties that the Communist Party also supported. But the Guild had also adopted a number of important positions that conflicted with the Communist Party position, such as: (1) strongly condemning the Soviet invasion of Finland in 1939 during the period of the Nazi-Soviet Pact, (2) not adopting the Communist Party position of “keeping the United States out of Imperialist War” during the period when the Soviet Union and Nazi Germany had agreed to the pact, (3) disapproving of the expulsion of Yugoslavia from the International Association of Democratic Lawyers following Yugoslavia’s break with the Soviet Union and eventually in 1951 voting to disaffiliate with that organization because of its action against Yugoslavia, (4) supporting the United Nations in “opposing the aggression of North Korea against South Korea, and (5) submitting an amicus brief in a case on behalf of an individual accused of disloyalty because of his membership in the Socialist Workers Party, a Trotskyist group that the Communist Party hated.<sup>95</sup>

The HUAC report, however, seriously weakened the organization. Within days after the HUAC report appeared, many Guild members resigned. Even more important, the Guild found it virtually impossible to recruit new members, as young lawyers were afraid that their careers would be destroyed by association with an organization that the government designated a communist front.<sup>96</sup> Several years later, in an atmosphere in which State bars had initiated disbarment and suspension proceedings against a number of Guild members, Attorney General Brownell took action which he and Hoover believed would finally destroy the Guild. Speaking at the 1953 ABA national convention in

Boston, Brownell announced his intention to place the National Lawyers Guild on the Attorney General's list of Subversive Organizations.

Brownell and Hoover almost succeeded. Almost immediately after Brownell's announcement more than 700 Guild members resigned. By 1955, the Guild's membership had declined by 80 percent from its 1947 level, to 500 members. The Guild fought back, successfully waging a five-year legal battle to prevent the Attorney General from listing the organization. In 1958, following extensive litigation, the Justice Department dropped its effort, officially stating that key government witnesses were no longer available to testify. Yet the real reason was that the government recognized that it could not win on the merits, as various internal Justice Department memos concluded. As one memo written by Oran Waterman, head of the Justice Department's Internal Security Division explained:

We now have no credible evidence tending to prove that the National Lawyers Guild was formed by the Communist Party . . . it has deviated [from the Party line] in . . . significant respects . . . and as yet the bureau has not furnished the explanation therefor, if any.<sup>97</sup>

The Guild survived, but at a terrible cost. Virtually the entire energy of the organization in the '50s had been devoted to its own defense. With an aging membership, isolated by the government and the mainstream bar from other legal organizations and any governmental influence, the long-term survival of the Guild looked bleak.

That the Guild survived the splits in the late '30s and repression of the '50s is primarily a testament to the loyalty, bravery and commitment to principle of two allied but disparate groups.<sup>98</sup> One was made up of communist and socialist activists—but they probably could not have maintained the Guild on their own. The other was a group of dedicated civil libertarians who were unwilling to compromise their principles to curry favor with either the Roosevelt Administration or the Truman and Eisenhower Administrations. Nor would they refuse to work with Communists. But these lawyers were not communists, and steered the Guild in an independent, radical direction. Robert W Kenny, a California State Senator who became President of the Guild in 1940 at a moment of grave internal crisis, disregarding the risks to his political future, and remaining President for eight important years, was an key member of this group. So too were Tom Emerson, a civil libertarian lawyer and Yale law professor, who courageously accepted the Presidency of the Guild in 1950 during a period where the organization was under serious attack, and Osmond Fraenkel, an ACLU stalwart, who played a critical role in defending the organization from Brownell's attack.<sup>99</sup> That these two allied but ideological disparate groups stayed with the Guild is a testament to their ability to work together and compromise to maintain an independent Guild. As Emerson pointed out when he left the Guild's presidency, while the Guild

was on the defensive, “we have maintained our independence and preserved the integrity of our position over the years.”<sup>100</sup>

By 1960, the survival of the Guild was again in doubt, but this time because many members doubted the organization’s reason to continue. Ironically, once the battle against Brownwell’s attack was won, many Guild members asked themselves, “What else did we [the Guild] have to live for? We had established our legitimacy, but now what?”<sup>101</sup> As aging members died and almost no one joined, it was hard to see any light at the end of the tunnel. The treasury was depleted, only four active chapters remained, and the once highly regarded professional journal, *The Lawyers Guild Review*, was forced to cease publication due to lack of funds and interest.<sup>102</sup> The low point was reached at the 1960 Guild Convention, where serious consideration was given to dissolving the organization, a suggestion which was quickly rejected.<sup>103</sup> The Guild needed a miraculous transformation and infusion of new energy and members to survive.

#### **IV. The Guild and the southern civil rights movement— the deepening of egalitarian lawyering**

The Guild’s revival in the ’60s was spurred by a dramatic turn to doing what it had done so well in the ’30s and ’40s—providing legal aid and support to those who were not served by the mainstream bar. In its early days, that support was evidenced by Guild lawyers’ work with trade unions or other groups engaged in struggle, as well as the innovative legal services experiment of the Neighborhood Law Offices. In the ’60s the Guild turned South, to provide legal services to civil rights workers in Mississippi and other Southern states where traditional lawyers would provide none. The Guild’s southern work during the ’60s is widely credited with reviving the organization.

The renewed energy that went into the southern civil rights work also deepened the radical service concept that the Guild had developed in the ’30s. The Guild was serving a poor, oppressed underserved community. But perhaps even more importantly, the Guild developed a different conception of the lawyer-client relationship, one that was democratic, non-hierarchical and more egalitarian than either the Kennedy Administration’s professional, neutral and elitist relationship to the civil rights activists, or the NAACP’s attempt to direct and manage the civil rights activists in conformity with its overall legal strategy.<sup>104</sup> Rather, the Guild lawyers were there to serve the civil rights activists, to follow their lead, not direct them, to assist southern black lawyers in presenting their cases, and to provide witness for and protection to the grass roots activist movement as opposed to leading or directing it. They provided their skills and insights in service of that movement. The lawyers were to be the secondary, not main actors. It was not to be the typical lawyer/client relationship.

The Guild became involved in southern civil rights work because of the paucity of lawyers in the South available to represent movement activists. For

example, in Mississippi, out of 2,100 lawyers only four—three blacks and one white—were willing to represent civil rights activists.<sup>105</sup> The situation in other southern states was little better.

In early 1962, Len Holt, an African American lawyer from Virginia spoke at the Guild Convention about the civil rights movement's desperate need for legal assistance. Holt gave a stirring, emotional and eloquent speech highlighting the inspiring resistance by the black movement to segregation and the pressing need to protect demonstrators from the unconstitutional attacks by local governments and the Klan. The ABA was unwilling to act, Thurgood Marshall and the NAACP Legal Defense Fund were overwhelmed with desegregation cases, and the Kennedy Administration was unreliable. Holt recounted numerous instances where the Justice Department or the FBI undertook investigations of cases where the "violations of Negro rights were absolutely clear," but had "done nothing."<sup>106</sup> Holt's speech, according to Ernie Goodman, a longtime Guild lawyer and leader of the Detroit chapter that hosted the convention, "changed the whole complexion of the convention, and as it turned out, of the Guild itself." He "dramaticized . . . the need for more lawyers to go [South] to participate in the movement directly. . . . Nobody who attended that convention will ever forget . . . his impassioned appeal for help."<sup>107</sup>

Goodman argued that the Guild remake itself by filling the void that the ABA's inaction created. The Detroit Guild chapter, with over 150 members, including 60 that had joined since 1960, and a strong group of African American members and leaders such as future Congressmen George Crockett and John Conyers, and future Federal District Court Judge Anna Diggs, was "the most active—and certainly the most optimistic—chapter in the Guild."<sup>108</sup> The Detroit chapter strongly supported the Guild's throwing itself into legal support for the southern civil rights movements. Despite the Detroit chapter's enthusiasm, New York City Chapter President Victor Rabinowitz had reservations about the project, worrying that it might turn the Guild into a one-issue organization.<sup>109</sup>

The 1962 Convention, inspired by Holt's appeal, voted to create a Committee to Assist Southern Lawyers (CASL) with the mandate to meet the need for legal representation for those engaged in the active struggle for civil rights caused by the failure of the bar in the southern states to do so. "The Bar has generally defaulted," read the resolution, on "the responsibility to make effective in practice the fundamental right of all persons, regardless of color or economic status, to competent, fearless legal representation."<sup>110</sup> In addition to mobilizing Guild members and other lawyers to assist southern lawyers representing civil rights protestors, CASL also launched a public campaign urging other bar associations to take similar action.<sup>111</sup>

Three weeks later, Goodman and two young Guild lawyers appeared at Holt's invitation at a rally in Petersburg, Virginia, defending non-violent protestors

from state repression. Martin Luther King was the main speaker on the podium that day, but Goodman had ten minutes to announce CASL's new program. Goodman promised the two thousand people crowding into Petersburg's First Baptist Church that the Guild would help provide lawyers that were sorely needed. "Every Guild member from New York to Hawaii—from Florida to Texas," Goodman proclaimed, "is being canvassed and asked to commit himself to give voluntary, unpaid assistance to any lawyer in the South who requests such assistance in any case involving the system of segregation." Already, more than 40 lawyers had agreed to do so, and more commitments were coming in each day.<sup>112</sup> When Goodman and the two other Guild lawyers showed up at court the next day to assist Holt in a hearing involving a leader of the Petersburg movement, Holt was moved to write Reverend King that "Seldom have I seen or heard of a white lawyer serving as a defense counsel for a Negro in a racially controversial case who gave the appearance of being [an] assistant to the Negro lawyer."<sup>113</sup> Holt added that the Guild lawyers had "only got travel expenses."

The Guild thus became the first, and for many months the only, bar association in the nation to provide legal support to southern civil rights protestors. While numerous Guild lawyers volunteered, the response to the Guild effort was mixed even amongst the few southern civil rights lawyers, with some wary of association with an organization still tainted as communist. Holt proposed that the CASL directly represent "victims of southern injustice," but CASL's mandate ruled out such direct representation, and practical considerations led Goodman and Crockett to defend the assistance to southern lawyers approach. The Guild did assist Holt in arguing two "omnibus" challenges to segregation in the Virginia cities of Lynchburg and Danville, suits which the NAACP opposed as too complex and impossible to win. By the fall of 1963, Guild volunteers had assisted in 23 cases.

A breakthrough for the Guild's southern work occurred with the organization of a two-day seminar in Atlanta in 1962 on Civil Rights and Negligence law, with the primary aim of educating southern lawyers about how to litigate civil rights and tort cases. The conference, attracting 60 lawyers from across the country, was notable for its unprecedented interaction between black and white attorneys in a public gathering.<sup>114</sup> Martin Luther King Jr. was the banquet speaker and the conference generated an enormous reservoir of good will amongst southern black lawyers toward the Guild.

The next year, a follow-up, second workshop on Civil Rights and Negligence Law was planned for New Orleans in October. In the midst of the conferees' discussion of legal tools to cope with the enormous power of the state, the conference was invaded by Louisiana police officers who arrested local Guild attorneys Ben Smith and Bruce Waltzer. Simultaneously, over 100 policemen raided the offices of the Southern Conference Educational Fund, carted away all

of its records and arrested Dr. James Dombrowski, the organization's director. Guild President Benjamin Dreyfus, who was at the conference, immediately sent a telegram to Attorney General Robert Kennedy urging federal intervention. Ten days later, Assistant Attorney General Burke Marshall responded to Dreyfus that "Neither the information contained in your communication nor that which I have received from other sources discloses any basis for action by this Department."<sup>115</sup>

While the Justice Department believed that there was no basis for federal intervention, Guild attorneys Arthur Kinoy, Bill Kunstler and Ben Smith filed an innovative federal action seeking immediate injunctive relief preventing the enforcement of Louisiana's subversive control laws and ordering the return of all the seized papers and documents. This lawsuit represented an important step in the Guild's development of an alternative perspective on legal service. Instead of Guild lawyers basing their decision to bring the case on a traditional analysis of whether the doctrinal law and past precedent supported the claim and offered a good chance of legal success, the key question was whether the lawsuit would aid the developing civil rights movement.<sup>116</sup> Remarkably, two years later, the Supreme Court in the landmark opinion *Dombrowski v. Pfister* held that the federal court did indeed have the power to enjoin a state's enforcement of laws that had a "chilling effect" on the plaintiffs' exercise of their first amendment rights. While *Dombrowski* has been significantly undercut by later opinions, it was an important victory for the civil rights movement.

Guild lawyers continued to provide support for the movement throughout 1963. In Danville, Virginia, police had badly beaten nonviolent marchers, and over the summer seven hundred people were arrested for violating overbroad and vague ordinances prohibiting demonstrators from "shouting, clapping or singing." Len Holt and his small band of black attorneys were overwhelmed and the SCLC turned to the NAACP Legal Defense Fund and the Federal Government for help. Attorney General Robert Kennedy called the SCLC leaders in mid-June, but simply urged them to cancel the demonstrations, which the SCLC local leaders refused to do. The Legal Defense Fund was only marginally more helpful, agreeing to take over the defense but only if they had complete "control" over the cases, and if Len Holt were removed from the litigation.

The SCLC local leaders rejected the Legal Defense Fund's conditions, and Holt turned to the Guild. Arthur Kinoy, Bill Kunstler and the CASL's lawyers responded by coming to Danville without charge, and Crockett was on the phone to Holt every day. Kinoy and Kunstler pioneered the use of a little known and never utilized reconstruction statute providing for the immediate removal of civil rights cases from state to federal court. As in *Dombrowski*, the question the lawyers grappled with was not primarily whether this legal tactic had a strong chance of success in the courts, but whether it could aid the Danville civil rights movement.<sup>117</sup> While LDF Director Jack Greenberg (who

had replaced Thurgood Marshall when he was nominated for a federal appeals court judgeship) disapproved of the removal tactic, and even other Guild lawyers were dubious about its chance of success, the lack of any other alternative made the lawyers agree to file the removal petition. The District Court judge, not unexpectedly, denied the petition, but Chief Judge Sobeloff of the Fourth Circuit Court of Appeals granted the plaintiffs an injunction preventing state prosecution until a hearing could be held, which the lawyers considered a victory since it allowed the movement needed space to continue.<sup>118</sup> Eventually, the full Circuit Court of Appeals denied the removal petition by a 3-2 vote, but the Guild's tactic had given a significant boost to the movement organizing.

The escalation of the civil rights movement's use of direct action and the Guild's legal support put pressure on the Kennedy Administration and the ABA to do something. In 1963, in response to the violence in Birmingham Alabama, President Kennedy called a White House meeting of an "elite corps" of lawyers to enlist them in providing leadership in quelling racial unrest and supporting the Administration's civil rights legislation. Detroit Guild leaders George Crockett and John Conyers were invited to the White House meeting, where Kennedy called for biracial committees of lawyers who would volunteer their services in support of civil rights. The White House meeting resulted in the formation of the Lawyers Committee for Civil Rights Under Law, in part motivated by a desire to head off Guild representation in the South. The Committee began to encourage lawyers around the country to live up to their professional duties and represent individuals arrested during civil rights protests.<sup>119</sup>

While Crockett and Conyers were encouraged by Kennedy's convocation of the meeting, they were disappointed with its results. They criticized Kennedy for being more concerned with the reduction of tensions and the cessation of mass protests than with the elimination of their causes.<sup>120</sup> The President's Committee did start sending lawyers to the south who eventually did directly represent some clients. But the contrast between the President's Committee's legal help and the Guild's was stark. The Committee's lawyers required that their minister clients agree not to violate Mississippi Court injunctions in return for representation, did not think of themselves as civil rights lawyers but rather as professionals upholding the rule of law, and attempted to deradicalize the movement's actions and provide "objective" legal assistance without succumbing to the "emotionally charged atmosphere" of the demonstrations. Indeed the co-chairmen of the committee criticized Martin Luther King's "Letter from Birmingham Jail," arguing that the solution to the "civil rights problem" was not to be found in civil disobedience, but "by reliance upon the administration of the law through due process."<sup>121</sup> In contrast, the Guild lawyers saw themselves as collaborators rather than directors of the civil rights movement, as taking direction from the grassroots activists, as being a part of the movement for change, and as using the law in service of that movement.<sup>122</sup>

In late 1963, a simmering disagreement among Guild members about the Southern work threatened to split the Guild. Detroit members, led by Goodman proposed to change the New York emphasis of the Guild, to drastically cut or even eliminate the national office budget, and to focus the Guild's energies exclusively, or at least primarily, on the civil rights movement in the South. For Goodman and his supporters, the revitalization of the Guild was dependent on its throwing its members and resources into the revolution taking place in the south, and not continuing to turn out a *mélange* of resolutions and reports on a multitude of issues. New York City Chapter President Victor Rabinowitz, and some New York Board members such as Bella Abzug, felt that "Ernie had eyes only for the civil rights movement and its needs" and "feared that the Guild was forgetting other critical issues, such as the Smith Act, social legislation, violations of the First and Fourth Amendments, racial discrimination in the North, our foreign policy with respect to Cuba, and the overwhelming fear of nuclear war. . . ." After hours of sometimes vituperative debate, Goodman's motion to make supporting the civil rights struggle the "primary" emphasis of the Guild was adopted by a vote of 8-6, with a number of New York members abstaining. The meeting also agreed to schedule a special convention for February 1964 to be held in Detroit, not New York.<sup>123</sup>

The discussion of Guild work in the south dominated the February 1964 Convention. Rabinowitz, a civil rights activist himself who was a strong SNCC supporter and was defending his daughter Joni on charges related to her involvement in civil rights protest in Georgia, argued against Detroit's plan to focus Guild work very heavily in the South. But the debate was not close, many New York members disagreed with Rabinowitz, and even he with characteristic humility and honesty later recognized that Goodman "was probably right."

At the behest of R. Hunter Morey, the legal coordinator for the Council of Federated Organizations (COFO), a coalition of civil rights groups in Mississippi, who described an "urgent need" for legal assistance for the Mississippi 1964 summer freedom project, the Convention voted to send Guild lawyers to participate in that project.<sup>124</sup> The Convention also agreed to move the Guild's National Office to Detroit and elect Goodman President of the Guild. What had prevented a split was Goodman's and Crockett's diplomacy and commitment to the Guild, as well as the New York members' willingness to compromise and accept Goodman's views and leadership. After the Convention, Rabinowitz and other New York City chapter members participated fully and enthusiastically in the Southern project.

The Guild opened a southern regional office in Jackson, Mississippi, run by George Crockett. Courageous and diplomatic, Crockett had a personal demeanor that was "measured and cautious," belying his radical credentials. Rabinowitz noted that George "kept his cool throughout," and managed to stabilize the situation as much as possible.<sup>125</sup> The operations of the Jackson

field office were to make lawyers immediately available where needed, or as Crockett described it, “to put a client in touch with a lawyer.”<sup>126</sup> In addition to the Jackson office, Guild lawyers operated primarily from three field bases at Greenwood, Hattiesburg and Meridian, serving as a sort of “house counsel” to the COFO workers.

Eventually close to 70 Guild lawyers went to Mississippi to participate for one week stints as volunteer lawyers with another 60 or so volunteering to help draft briefs and pleadings from their home offices. Goodman wrote that the lawyers who came to Mississippi, “went, learned, experienced the terror that existed there, the difficulties of obtaining the most elementary justice, and came back as converts.”<sup>127</sup> Or as Crockett put it, the lawyer who went South not only provided a service, but “almost invariably expressed profound changes in his own outlook and understanding.”<sup>128</sup> The letters from many of the lawyers who went South that summer, either with the Guild or another organization, illustrate that these lawyers went with the belief that they were representing individuals in a traditional way and returned home with the recognition that they were defenders of a movement.<sup>129</sup> The lawyers were not simply providing a service to their clients, they were learning from them and becoming transformed in the process.

While the Guild lawyers undoubtedly did valuable legal work, that probably was not their most important contribution. As Goodman noted, “their presence in key centers around the state has been a big morale booster for the COFO workers and the local people, as well as a deterrent for the authorities.”<sup>130</sup> Or as one student who worked with the Guild project said, “our mere presence is a real deterrent.”<sup>131</sup> Other observers also recognized that “regardless of organization, lawyers seemed to see their value not in terms of legal victories won or representation provided. Rather, lawyers saw their presence as the value . . . in deterring white Southerners, and particularly state actors, from meting out greater violence and lawlessness against the movement.”<sup>132</sup> These lawyers were essentially acting as witnesses to violence in order to deter it,<sup>133</sup> or as others have put it, accompanying the movement workers in their campaign.<sup>134</sup>

Moreover, a key aspect of the Guild’s work in the South was the recognition that lawyers should act as collaborators rather than directors of the movement.<sup>135</sup> As Crockett succinctly put it, “In the war against injustice in Mississippi, lawyers are not the front line troops.”<sup>136</sup> The Guild orientation thus broke with the lawyer driven, elitist views of the Legal Defense Fund and the President’s Committee which wanted the lawyers to be in charge and direct both the legal and political strategy. The Guild, in contrast, was operating in accordance with the radical democratic approach of SNCC to help ordinary people find their own individual and collective power to determine their lives and shape the direction of history.

The Guild's Southern project also played an important role in pressuring other organizations to send lawyers and provide representation to civil rights workers. The Guild consistently pressured the ABA and more established legal organizations to provide legal assistance to civil rights workers in numbers and funding that would eclipse what the Guild could provide. In November 1963, Goodman and other Guild attorneys met at the ACLU offices in New York to explore creating a new organization to provide lawyers for the civil rights movement. The ACLU lawyers seemed interested, but said they needed to consult with the Legal Defense Fund and the President's Committee regarding the advisability of the idea.<sup>137</sup>

That winter, however, Mel Wulf of the ACLU joined with Jack Greenberg of LDF and other organizations including CORE and to form the alternative organization, the Lawyers Constitutional Defense Committee (LCDC), with the aim of sending volunteer lawyers South. The Guild was excluded from that organization. Wulf acted in part from a sense of professional competition that the Guild's program in the South was making the ACLU appear less committed to the civil rights cause.<sup>138</sup> As an FBI document later turned over to the Guild as part of its lawsuit against the FBI noted, counsel for CORE, the American Jewish Congress and the ACLU had met with an FBI agent and said that they "were perturbed by plans of the National Lawyers Guild to supply attorneys for civil rights demonstrators this summer." CORE General Counsel Carl Rachlin "expressed considerable concern over the possibility that [the NLG] attorneys would try to encroach on the role of CORE lawyers in defending rights demonstrators."<sup>139</sup> Despite the origins of the LCDC, Guild lawyers generally worked well with and together with the LCDC lawyers on the ground in Mississippi.

Similarly, in early 1965 when the President's Committee decided to send a large number of volunteers to Mississippi and open an office in Jackson, the Guild's influence was again obvious. The Executive Director of the President's Committee publicly declared that if "responsible" Americans did not support the southern civil rights struggle, then "somebody else will, and their motives won't be as good." As the *New York Times* recognized, the endorsement of the President's Committee's initiative by the Mississippi Bar Association, "seemed to reflect an effort to undermine the legal monopoly that the left-wing Lawyers Guild has had so far in the Mississippi civil rights movement."<sup>140</sup>

The FBI, the Justice Department and their liberal allies attempted on numerous occasions to use red-baiting to dissuade SNCC from continuing to associate and rely on Guild lawyers. For example, John Lewis, chairman of SNCC, recalls how when they were first making plans for Mississippi summer and knew that they would need legal representation, they requested help from the LDF. When it turned SNCC down, saying that they did not approve of the campaign, SNCC asked the Guild. SNCC's association with the Guild upset

some of its Northern liberal supporters, including Allard Lowenstein who had helped SNCC formulate its plans. According to Lewis, “Lowenstein warned us that by allowing the Guild—with its “radical” lawyers like Arthur Kinoy, Bill Kunstler, Victor Rabinowitz and Ben Smith—to represent us, we were making ourselves suspect, putting our patriotism in question.”<sup>141</sup> Other important backers of SNCC and the Freedom Summer also expressed their disapproval of SNCC’s association with the Guild, although Martin Luther King refused to condemn it,<sup>142</sup> and SNCC never hesitated or deviated from its principled position that it would accept help from any source.

Indeed, SNCC was also tested by the Kennedy Administration over its association with the Guild. James Forman describes a meeting between SNCC and COFO activists and Justice Department and other Administration officials in which the ostensible topic was the responses to the violence in Mississippi. Forman recounts that at one point Arthur Schlesinger Jr., who clearly spoke with the consent of the government officials present said out of the blue, that

There are many of us who have spent years fighting the communists. We worked hard during the thirties and forties fighting forces such as the National Lawyers Guild. We find it unpardonable that you could work with them.

The civil rights activists repeated their position on freedom of association and engaged in a heated exchange about the “unwillingness of the Justice Department and the NAACP Legal Defense Fund to take aggressive legal action in Mississippi.”<sup>143</sup>

In September 1964, at a meeting called by the National Council of Churches and attended by representatives of the national organizations that had participated in the Mississippi summer project, the objective of eliminating the Guild from any role or influence in the Mississippi movement was placed on the agenda. Joe Rauh, the United Auto Workers Legal Counsel, said at the meeting that he “would like to drive out the Lawyers Guild,” because it was “immoral to take help from Communists.”<sup>144</sup>

The mere presence of the Guild in the Mississippi movement thus ironically pressured the government and legal organizations to move more aggressively to provide legal aid to the civil rights activists. In the ’50s the government and its allies tried to destroy the Guild. In the ’60s the government sought to isolate it from the civil rights movement. When that failed in Mississippi, the government developed a new strategy, send lawyers to make the Guild lawyers unnecessary. The Guild welcomed that latter effort. Thus, while Piven and Cloward point out that the organizations developed out of mass upsurge generally do not influence the elite to institute reforms,<sup>145</sup> in Mississippi, the very presence of a radical legal organization operating to aid the political movement put significant pressure on the elite to take the reform measure of providing lawyers.

The Guild continued its presence in Mississippi throughout much of the fall and winter of 1964 and in 1965 initiated another summer project in Mississippi, this time with the aim of taking affirmative steps to implement the mandates of the 1964 Civil Rights Act. A team of Guild attorneys was to visit each county, confer with the county chairman of the Mississippi Freedom Democratic Party (MFDP), and help negotiate voluntary desegregation or, if necessary, initiate litigation with the assistance of local counsel.<sup>146</sup>

Unfortunately, the results of this ambitious effort were disappointing. While the MFDP had formally requested the Guild assistance in launching omnibus desegregation suits across the state, its primary focus that summer was its continuing challenge to the Mississippi delegation in the U.S. House of Representatives. As Crockett reported, it appeared that the MFDP “is not interested in and lacks the local leadership essential to working up the factual basis and arousing local support for desegregation suits.”<sup>147</sup> Moreover, the costs of the litigation were often prohibitive. Eventually, only three suits were filed.

In any event, the influx of other legal groups, such as the President’s Committee and the LCDC setting up offices in Jackson with more lawyers and significantly more funding eclipsed the Guild program. Moreover, the movement in Mississippi was beginning to wane, as attention focused on other civil rights struggles such as that in Selma, Alabama. After the summer of 1965, with the organization’s debts mounting, the Guild closed up shop in Jackson, declaring, in the words of Ben Smith, that the whole effort “is a high professional achievement for our bar association.”

The Guild’s work in the South had clearly revitalized the organization. It had returned the Guild to its roots of providing critical legal services for political and economic movements and people who couldn’t obtain lawyers. Moreover, it had done so in a manner consistent with a democratic, grass roots vision of a lawyer who took direction from a political movement.

Guild membership, nonetheless, did not immediately dramatically grow. While national membership had grown steadily to 950, local chapters languished. Membership growth was steady but slow, and many law students and young lawyers stayed out of the Guild to avoid being labeled communists. For example, while San Francisco sent dozens of lawyers south, very few went under the Guild aegis.<sup>148</sup> As Victor Rabinowitz recalled, while the work the Guild had done was inspiring and had generated a good deal of publicity, the organization in the mid-60s, while no longer moribund, was still on shaky footing.<sup>149</sup> Nonetheless, the Guild had developed and put into practice an egalitarian, movement-oriented conception of legal services, which had inspired and involved numerous lawyers and law students, and was to serve as a basis of the Guild’s work in the future.

## V. The Guild and the student movements of the '60s

The escalating United States military intervention in Vietnam resulted in a new wave of Guild activism and a dramatic increase in new members. By 1967, the Guild was deeply immersed in draft counseling, training hundreds of draft counselors, counseling thousands of registrants and distributing 20,000 copies of Guild pamphlets on draft and military law. In the late 1960s the Guild opened offices in the Far East modeled after the Guild's experience in Jackson, Mississippi to provide civilian counsel to servicemen facing military discipline for antiwar activity. The Guild's Military Law Offices in the Philippines, Japan and Okinawa, offered free legal counsel to hundreds of anti-war G.I.'s. Moreover, as the anti-war movement grew more militant in the late 1960s, mass defense work became a primary aspect of the Guild's work. Guild mass defense offices advised and represented thousands of arrested demonstrators. In all of this work, the Guild was following the spirit and lessons of its work in the South.

This influx of activity and the hiring of a number of young, talented organizers such as Ken Cloke and Bernadine Dohrn by the Guild's National Office led to hundreds of new, young members joining the organization, and the creation of dozens of new chapters. Victor Rabinowitz later recalled Bernadine as a particularly "brilliant organizer with inexhaustible energy and dedication." To him, it seemed that in her travels around the country, "she spent half her time organizing antiwar demonstrations and the other half organizing Guild chapters to defend the demonstrators."<sup>150</sup>

The changing membership of the Guild was not only a sign of the organization's vitality, but it also led to a period of crisis in which the Guild almost dissolved. At the 1967 Convention, Victor Rabinowitz was elected President and the National Office was brought back to New York. During the next four years as Rabinowitz put it, the "Guild was completely transformed in its leadership, its organizational structure, its membership, and almost every other characteristic except its long-term radically oriented, antiestablishment ideology."<sup>151</sup>

The role of law students, women, legal workers and jailhouse lawyers in the Guild was hotly debated at national Guild meetings in the late 1960s and early '70s. In 1970, law students were admitted to full membership over the opposition of the incoming President Dobby Walker and many of the older generation of leftist lawyers in the Guild, who saw the admission of law students as a threat to the Guild's status as a bar association. For the first time, the Guild elected a woman President and the role of women in the Guild dominated the convention discussions. By the 1971 Boulder Convention, the turbulence in the Guild grew to earthquake proportions, as the younger members, now in full control, pushed for and won admittance into the Guild for legal workers and jailhouse lawyers. The admittance of both groups was bitterly opposed

by the old Guild leadership, and some thought of creating a new progressive bar association, believing that the Guild was no longer a bar association but a motley collection of radicals loosely connected with the practice of law. The admission of law students, legal workers and jailhouse lawyers to the Guild reflected the democratic and egalitarian impulses of the new left, and the Guild to its credit was able to adapt and grow with those radical perspectives.

Rabinowitz, as President of the Guild for much of these turbulent years, was critical, along with several other key leaders, to the survival of the organization. He was opposed to the inclusion of legal workers and “had difficulty getting any clear expression of the outer limits of that category,” and thought that the inclusion of “jail-house lawyers was ‘nonsense.’”<sup>152</sup> He had doubts whether the newer members knew or cared much about the law and they certainly didn’t act the way that he or the other older members expected lawyers to act. He believed that nothing could be accomplished without “some sort of hierarchical structure” and as the younger generation changed the Guild’s structure to become more and more decentralized, he could not understand it.

Yet throughout all those years of disputes and disagreements, Rabinowitz and a core of long-time members supported the younger generation of lawyers in their right to govern the Guild and determine its future, even where they disagreed with some of their politics.<sup>153</sup> Moreover, Rabinowitz realized that the future of the Guild rested with them, and that the rebellious spirit they brought to the organization was in the long run good for the Guild. For example, in the late ’60s many of the Old Left members wanted Rabinowitz to fire Bernadine Dohrn. They felt she was irresponsible and ultraleftist. But he didn’t agree and kept her on the payroll throughout the time he was President. For him, “she was recruiting lawyers and students into the Guild, and that was enough for me.”<sup>154</sup> Rabinowitz viewed the new younger Guild members as “undisciplined, unlawyerlike and disorderly, but that was very much better than the frustration, apathy and hopelessness of the 1950s.”<sup>155</sup>

Rabinowitz also had the humility and intellectual honesty to realize that he could be wrong about these new things that he could not understand or agree with. As he later concluded, the Guild did the right thing when it admitted jailhouse lawyers, even though at the time he thought it was nonsense.<sup>156</sup> He could in some broad sense identify with these “kids,” for they were for the “revolution,” and they saw him as friendly, even if not one of them. Moreover, Victor had an essential egalitarian spirit in which he treated everyone with respect and dignity, whether his legal secretary, a law student or another lawyer.<sup>157</sup>

Underneath a good deal of the dispute in the Guild lay different views of the relationship of the lawyer to the political movement he or she represented and worked with. At the 1968 Convention, the Guild adopted a resolution proclaiming its role as “the legal arm of the movement.” To Old Left lawyers

like Rabinowitz and Goodman, this whole notion was muddled and confusing. As Rabinowitz recalled, “some of us, reacting like lawyers, would have liked a definition of the ‘Movement,’ but it turned out to be one of those indefinable concepts (like obscenity or poetry) that we were all supposed to recognize when we met it.”<sup>158</sup> Or as Joan Andersson, a national organizer for the Guild later observed, the older members “distrusted the commitment of the raggedy young people who seemed more interested in being part of the movement than building the necessary legal skills to defend it.”<sup>159</sup> David Rein, a longtime Guild member and very successful litigator expressed the view at an important panel at the 1968 Convention, that he had for many years handled exclusively civil liberties cases but never thought of himself as a “movement” lawyer. For him, one reason his firm was able to win cases was because they “consistently confined (themselves) to being lawyers and handling legal questions.”<sup>160</sup>

The younger Guild lawyers saw the need to more directly identify and define themselves as a part of, and not separate from, the political movements that they grew up with. They viewed the role of a lawyer as not merely presenting good legal arguments in court, but of politically aiding the movements they were representing.<sup>161</sup> Victory did not simply mean winning in court, but often involved using the courtroom to promote the goals of the demonstrators. Perhaps Rabinowitz’s story about Bernadine Dohrn organizing both anti-war demonstrations and the demonstrators’ defense in court illustrates the more politicized role of the lawyer reflected in the term “movement lawyer.”

Some of the new Guild members did not believe in or engage in good legal research or honing their legal skills. As these new movement lawyers evolved in the ’70s and ’80s however, most recognized the need to develop top-notch legal expertise. But the notion of Guild lawyers as movement lawyers has, however murky the concept may be, remained with the Guild and has proven to be one source of its ability to connect to popular movements and adapt to new movements. Moreover, the concept of the “movement lawyer” in the Guild can be traced to the work of the Guild in the south, which initiated a radical break with the traditional notion of lawyering.

Despite all the sectarian, bitter and long-winded debates during the late 1960s and early ’70s, the Guild continued to grow. On several occasions it narrowly avoided what would have been disastrous splits, which were so common to the organizations that developed out of the ’60s. By the early ’70s, a newer and younger leadership took over the Guild, bringing with it a more collective style. With all the inefficiencies and lack of discipline of the organization, the new leadership proved competent and the organization continued to grow until it reached an estimated 10,000 members in 1987, the height of its membership.

Why did the Guild survive where so many other left organizations of the ’60s split, folded or faded away? Two reasons seem likely. First, the Guild was

tioned to political movements and had skills to bring to those movements and actively saw itself as an arm of those movements. The Guild thus had much ready-made political/legal work to do, and that activity, closely connected to political activists, kept the Guild growing. The Guild did not have to organize or lead new political movements, but Guild lawyers had skills with which to serve these movements and had developed a radical conception of service which made them both useful and politically aligned to the activists they were working with.

Second, and equally importantly, the Guild had developed through the '50s and '60s a core of leadership that was tolerant and open to differing ideas, even if they had strong opinions. Former Guild President Rabinowitz pointed out that the debates in the Guild during the '60s and '70s, as divisive and sometimes sectarian as they were, did not have the degree of personal acrimony and mean-spiritedness that characterized the breakup of so many other segments of the left. Doris (Dobby) Walker, the President of the Guild from 1970–71, a member of the Communist Party and one who resisted many of the changes in the Guild during that era may have put her finger on it when she wrote in 1987 that “the struggle over sexism [within the Guild] increased the sensitivity of all who were involved, most definitely including myself. From all of those struggles, New Left, Old Left, sexism, racism and more, there emerged in time a degree of synthesis of politics and of organizational practices—and the kind of mutual tolerance for principled differences that has kept the Guild strong and effective for 50 years, and will for many years to come.”<sup>162</sup>

## VI. Conclusion

Historian Jerold Auerbach's 1976 book, *Unequal Justice: Lawyers and Social Change in Modern America*, concluded that the “Guild never overcame its political vulnerability: the child of liberal euphoria, it was the victim of conservative reaction and liberal retreat.”<sup>163</sup> To Auerbach, the Guild was a failure, wracked by internal discord during 1939 and 1940 and “virtually destroyed as an effective organization,” by the repression of the '50s.<sup>164</sup> Auerbach ignored the resurgence of the Guild in the '60s and '70s, seeing the organization's main legacy as its innovative approach to legal services for the poor in its early history.

In one sense, Auerbach is right: the Guild never did fulfill the goals of its liberal founders to become a serious rival to the ABA and attain influence and prominence within government and bar circles. From that perspective it never overcame its political vulnerability within the halls of power. But had it done so, it would never have become the organization it is today, and would not be a home for those lawyers and law students who seek to organize for a different world. It is precisely the Guild's “political vulnerability” and weakness that has kept it a radical organization and independent of both the

government and the Democratic Party. Had the Guild turned toward political respectability in the '30s and '40s, it undoubtedly would have either followed the path of its cousins, the Newspaper Guild and Screen Actors Guild, and become a mainline bar organization only marginally different from the ABA, or it would have vanished from the scene. That it did neither illustrates that another alternative is possible.

Since the late 1930s the Guild has never striven for political power in the halls of government or made a priority of seeking government influence. While individual Guild lawyers have been elected to Congress and local offices, or have become Federal or State judges with Guild support, the Guild as an organization has never made obtaining such influence a priority. It takes positions on political issues, but rarely on political candidates. It does not moderate or tone down its political positions in order to achieve respectability or power.

Related to its independence is the Guild's turn to the grassroots, in a manner which changed the hierarchical attorney client relationship and made the attorney a learner from his or her client as well as a provider of needed technical expertise. This democratic, egalitarian spirit allowed the Guild at critical moments in its history to do what liberation theologians would later term "accompaniment." Throughout its history, whether in the creation of neighborhood law offices to serve working people in the '30s, to the Southern Civil rights support or the opening of military law offices, the Guild has developed innovative programs designed to bring needed legal services to people without any, and has done so in a manner that respects their dignity and both gives to and learns from the people it serves.

The Guild throughout its history has also been a very democratic organization, a factor that has allowed new groups and political tendencies to change the group's direction, as the Detroit chapter did in the early '60s and the new left did in the early '70s, bringing new blood and spirit into the organization. Yet its democratic tendencies are also the source of its inefficiencies and weaknesses. Guild conventions have often been plagued by sectarian and interminable debate, as in the '70s when various new left factions with colorful names often dominated. Even when sectarianism has not held sway, debate on convention resolutions tends to be a dreary, dull and longwinded affair or, if limited, leaves people unsatisfied.

The Guild has also been blessed with a bevy of talented, democratic leaders. From Robert Kenny, Thomas Emerson, Earl Dickerson in the 1940s and '50s to Ernie Goodman, Victor Rabinowitz and Dobby Walker in the '60s, to the younger generation of new left leaders of the '80s and '90s, what stands out is the Guild's eschewing of the dynamic, charismatic leader who stays in power for many years directing the organization, in favor of a wide group of leaders who tolerate differences, are generally respected by the various factions and

groups in the organization, and who are not striving for power or control of the organization. Most of the presidents of the Guild had to be convinced to take the job, it is an unpaid position which affords virtually no opportunity to build a power base within the organization and has not been utilized for that purpose.

That the Guild is a voluntary association of those who agree with its principles has been critical to its maintaining its radical perspective. Had the Guild turned to representing lawyers as a union, for example representing government lawyers, or becoming a legal aid or legal services union, its radical thrust would undoubtedly have been muted.

Over the past decades, the Guild has also spawned a number of other legal organizations or projects that work closely with it and have similar philosophies. The most prominent of these is the Center for Constitutional Rights, an organization that developed out of the Guild's organizing work in the South in the '60s, but which has itself now lasted almost fifty years and has played a leading role in a diverse array of issues, such as representing the Guantanamo detainees,<sup>165</sup> litigating the denial of abortion rights for poor women,<sup>166</sup> enjoining New York Police Department's stop and frisk policies,<sup>167</sup> and challenging prolonged solitary confinement.<sup>168</sup> The Center founded in 1966 by several prominent attorneys associated with the Guild to aid their civil rights work is an important outgrowth of the Guild's southern work.<sup>169</sup> It, too, maintains the same movement-oriented, egalitarian perspective of legal service developed from the Guild, and engages in much of the affirmative, activist litigation pioneered by Guild lawyers such as Arthur Kinoy in the South. So too, the Immigration Project of the Guild has now become a related, but semi-independent project, which provides an important organizational base for attorneys and law students engaged in more political, movement-oriented immigration work than that of the traditional bar.<sup>170</sup>

The Guild has, unfortunately been stagnating for the last few decades. Membership has declined since its height of about 10,000 in the late 1980s. The Guild's relevance is more often questioned now than in the '60s and '70s. Indeed, one study of Guild attorneys by a political scientist in Seattle in the mid-1990s questioned whether Seattle's left-legal activism represented by the Guild had the capacity to reproduce itself and survive for a new generation of lawyers.<sup>171</sup>

The causes of the Guild's stagnation or decline over the past decades lie fundamentally in the decline of leftist, radical movements in the United States and globally, and the increasing dominance of the right in the courts. Opportunities for a public interest practice representing poor or working people are far and few between and only the most dedicated law student or lawyer can pursue such a career. In addition to the difficult economic and political situation, the Guild's success in spawning other professional and legal organizations

has resulted in their attracting lawyers who otherwise might have been more active in the Guild.

Nonetheless, despite all these difficulties, the Guild remains an important organization and its survival is not in doubt. Hundreds of people still attend the annual Guild Convention, and it has a considerable amount of important, ongoing legal work and activity. When the Occupy Movement thrust social and economic inequality into the forefront of American politics for the first time in decades, and sought fundamental change, the Guild and Guild lawyers were there to provide aid, legal advice and in many places legal representation.<sup>172</sup> The Guild was viewed as an important contributor to the Occupy Movement. Occupy organizers implored “protestors to take down the toll-free number of the National Lawyers Guild,” because Guild lawyers would be there to defend them if they were arrested.<sup>173</sup> As one commentator noted in conjunction with the Guild’s work in support of the Occupy movement, “where the National Lawyers Guild differs from other legal organizations is in its close collaboration with protest movements to document arrests and defend arrestees.”<sup>174</sup> As in the 1930s, the Southern Civil Rights movement, and the antiwar movements in the ’60s and ’70s, the Guild as an organization provided a service to movement organizations, and did so in an egalitarian manner as an adjunct to the protests. That the organization has continued to exist and contribute almost eight decades after its founding provides support for the possibilities of developing a sustained movement for fundamental social and economic transformation.

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#### NOTES

1. FRANCES FOX PIVEN & RICHARD A. CLOWARD, *POOR PEOPLE’S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL* (1977).
2. *Id.* at xxi
3. On the concept of prefigurative politics, see Wini Breines, *Community and Organization: The New Left and Michels’ “Iron Law,”* 27 *SOC. PROBLEMS* 419 (1980); WINI BREINES, *COMMUNITY AND ORGANIZATION IN THE NEW LEFT, 1962-1968: THE GREAT REFUSAL* (1989).
4. See Austin Sarat & Stuart Scheingold, *What Cause Lawyers Do For, and To, Social Movements: An Introduction*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS I*, 1-12 (Austin Sarat & Stuart Scheingold eds., 2006); see also STUART A. SCHEINGOLD & AUSTIN SARAT, *SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING* 23-50 (2004).
5. This includes the Legal Defense Fund (LDF), American Civil Liberties Union (ACLU), Legal Momentum (formerly known as NOW Legal Defense and Education Fund), Mexican American Legal Defense and Educational Fund (MALDEF), Center for Constitutional Rights (CCR), Lambda Legal, and a number of organizations focused on disability rights including the Disability Rights Center, the National Center for Law and Economic Justice, and Americans Disabled for Accessible Public Transit (ADAPT). See Louise G. Trubek, *Public Interest Law: Facing the Problems of Maturity*, 33 *U. ARK. LITTLE ROCK L. REV.* 417, 417-20 (2011) (examining the history of public interest law in the 1970s to the present).
6. For example, the Guild’s Constitution states that it is “dedicated to the need for basic change in the structure of our political and economic system,” and seeks “to unite the lawyers, law students, legal workers, and jailhouse lawyers of America in an organization which shall function as an effective political and social force in the service of the people, to the end

that human rights shall be regarded as more sacred than property interests.” NAT’L LAW. GUILD CONST. pmbl., (amended 2012), *available at* <https://www.nlg.org/sites/default/files/NLG%20Constitution%20December%202012.pdf>.

7. See *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).
8. See *Roe v. Wade*, 410 U.S. 113 (1973).
9. See *United States v. Windsor*, 133 S. Ct. 2675 (2013); *Oberfegell v. Hodges*, 135 S. Ct. 1039 (2015) (granting certiorari to decide whether a state may refuse to allow homosexual couples to marry).
10. See GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 338 (1991); JOEL F. HANDLER, *SOCIAL MOVEMENTS AND THE LEGAL SYSTEM* 210 (1978); MICHAEL McCANN, *RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION* 10 (1994); STUART A. SCHEINGOLD, *THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE* 96 (1974); SUSAN GLUCK MEZEY, *PITIFUL PLAINTIFFS: CHILD WELFARE LITIGATION AND THE FEDERAL COURTS* 5-6 (2000).
11. See ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 280 (Henry Reeve trans., Oxford Univ. Press 1959) (1835-1840).
12. For example, there have been the development in recent years of physician groups dedicated to serving human needs and rights such as Doctors Without Borders and Physicians for Human Rights, but these organizations are not as numerous or well developed as United States legal organizations. DOCTORS WITHOUT BORDERS, <http://www.doctorswithoutborders.org> (last visited Feb. 18, 2015); PHYSICIANS FOR HUMAN RIGHTS, <http://www.physiciansforhumanrights.org> (last visited Feb. 18, 2015).
13. See BRUCE A. ACKERMAN, *WE THE PEOPLE: TRANSFORMATIONS* (1998); *see also* BRUCE A. ACKERMAN, *WE THE PEOPLE: THE CIVIL RIGHTS REVOLUTION* (2014).
14. BRUCE A. ACKERMAN, *WE THE PEOPLE: TRANSFORMATIONS* 12 (1998); Based on this perspective, Ackerman’s task is “to define the basic functions that should be discharged by higher lawmaking institutions in a credible dualist democracy.” *Id.* at 267.
15. See CLAYBORNE CARSON, *IN STRUGGLE: SNCC AND THE BLACK AWAKENING OF THE 1960S* 287 (1995); FRANCESCA POLLETTA, *IT WAS LIKE A FEVER: STORYTELLING IN PROTEST AND POLITICS* 57 (2006); JOHN McMILLIAN & PAUL BUHLE, *NEW LEFT REVISITED* 49-50 (2003).
16. Gary Bellow, *Lawyers for a Political Movement: California Rural Legal Assistance*, in *THE SOCIAL RESPONSIBILITIES OF LAWYERS* 22, 23-26 (1988).
17. Michael Goldfield, *Worker Insurgency, Radical Organization, and New Deal Labor Legislation*, 83 AM. POL. SCI. REV. 1257, 1272 (1989) (discussing the increase in union membership and labor strikes in 1934 and their effect on the passage of the NLRA).
18. Murray Seidler, *The Socialist Party and American Unionism*, 5 MIDWEST J. OF POL. SCI. 207 (1961).
19. President Franklin D. Roosevelt, State of the Union Message to Congress (Jan. 11, 1944), *available at* [http://www.fdrlibrary.marist.edu/archives/address\\_text.html](http://www.fdrlibrary.marist.edu/archives/address_text.html).
20. Karl E. Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 MINN. L. REV. 265 (1978).
21. THOMAS F. JACKSON, *POLITICS AND CULTURE IN MODERN AMERICA: FROM CIVIL RIGHTS TO HUMAN RIGHTS: MARTIN LUTHER KING, JR., AND THE STRUGGLE FOR ECONOMIC JUSTICE* 22-23 (2009); *see also* GORDON K. MANTLER, *POWER TO THE POOR: BLACK-BROWN COALITION AND THE FIGHT FOR ECONOMIC JUSTICE, 1960-1974* 116-17 (2013).
22. See Alexander Stille, *The Paradox of the New Elite*, N.Y. TIMES, Oct. 23, 2011, at SR1.
23. See *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937); *United States v. Darby*, 312 U.S. 100 (1941); *Wickard v. Filburn*, 317 U.S. 111 (1942).
24. See Klare, *supra* note 20, at 268-70.
25. See *Brown v. Bd. of Educ. (Brown I)*, 347 U.S. 483 (1954) (declaring separate but equal unconstitutional but provided no remedy); *See also Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294 (1955) (remanding the cases to local courts and authorities to implement principles

- set forth in *Brown I* “with all deliberate speed”); *Cooper v. Aaron* 358 U.S. 1 (1958) (ordering desegregation to proceed in Little Rock despite hostility); *Green v. Co. School Bd.*, 391 U.S. 430 (1968) (invalidating the “freedom of choice” plan as ineffective to achieve a unitary school system); *Swann v. Charlotte-Meckleburg Bd. of Ed.*, 402 U.S. 1 (1971) (holding that only purposeful manipulation of a school’s racial composition violated equal opportunity); *Keyes v. School Dist. No. 1*, 413 U.S. 189 (1973) (holding that showing of intentional state action to segregate schools in substantial portion of district imposed duty to desegregate entire school district); *Milliken v. Bradley*, 418 U.S. 717 (1974) (holding that courts cannot impose interdistrict desegregation absent a finding of intentional segregation); *Milliken v. Bradley*, 433 U.S. 267 (1977) (affirming the District Court ruling that remedial educational programs were appropriate remedy for students subjected to unconstitutional segregation).
26. Paul Finkelman, *Civil Rights in Historical Context: In Defense of Brown*, 118 HARV. L. REV. 973, 974 (2005).
  27. CHARLES J. OGLETREE, JR., ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF CENTURY OF *BROWN V. BOARD OF EDUCATION* xv (2004).
  28. DERRICK A. BELL JR., WHAT *BROWN V. BOARD OF EDUCATION* SHOULD HAVE SAID: THE NATION’S TOP LEGAL EXPERTS REWRITE AMERICA’S LANDMARK CIVIL RIGHTS DECISION 185, 199 (Jack M. Balkin ed., 2001).
  29. See DERRICK BELL, SILENT COVENANTS: *BROWN V. BOARD OF EDUCATION* AND THE UNFILLED HOPES FOR RACIAL REFORM 4 (2004); see also *id.* at 6 (“Brown brought about transformation without real change.”).
  30. See Frank I. Michelman, *Forward: On Protecting the Poor Though the Fourteenth Amendment*, 83 HARV. L. REV. 7 (1969); see also Frank I. Michelman, *Welfare Rights in a Constitutional Democracy*, 1979 WASH. U. L.Q. 659 (1979).
  31. See *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).
  32. See E.J. Hobsbawm, *Should the Poor Organize?*, N.Y. REVIEW OF BOOKS (Mar. 23, 1978), <http://www.nybooks.com/articles/archives/1978/mar/23/should-the-poor-organize/?page=2>.
  33. As Social Movement theorist Anthony Oberschall argues, “For sustained resistance or protest, an organizational base and continuity of leadership are . . . necessary.” ANTHONY OBERSCHALL, SOCIAL CONFLICT AND SOCIAL MOVEMENTS 119 (1973); see also William A. Gamson & Emilie Schmeidler, *Organizing the Poor*, 13 THEORY & SOCIETY 567 (1984).
  34. See Hobsbawm, *supra* note 32.
  35. See Rachel Donadio, *Leftist Party’s Rise Upends Greek Political Order*, N.Y. TIMES (May 11, 2012), <http://www.nytimes.com/2012/05/12/world/europe/in-greece-leftist-party-syriaza-upends-politics.html?pagewanted=all>.
  36. See Jules Lobel, *The Future of the Occupy Movement*, JURIST (Dec. 6, 2011), <http://jurist.org/forum/2011/12/jules-lobel-occupy-movement.php>.
  37. PIVEN & CLOWARD, *supra* note 1, at xxi-xxii.
  38. *Id.*
  39. *Id.*
  40. *Id.* at xxi. One difference for legal organizations is the potential of receiving an award of legal fees if the organization prevails in court.
  41. Jason DeParle, *What Welfare-to-Work Really Means*, N.Y. TIMES MAGAZINE, Dec. 20, 1998, at 50-59. See also Stanford F. Schram, *The Praxis of Poor People’s Movements: Strategy and Theory in Dissensus Politics*, 1 APSA J. 715 (2003).
  42. PIVEN & CLOWARD, *supra* note 1, at 37.
  43. One other difference between legal organizations and other civic organizations, is the possibility that legal groups have of sustaining themselves financially by winning attorneys’ fees awards in successful civil rights actions.
  44. See NAT’L LAW. GUILD CONST., *supra* note 6.
  45. Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, The Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407 (1995); Brenda Brat-

- ton Blom, *Conversations on Community Lawyering: The Newest (Oldest) Wave in Clinical Legal Education*, 28 J. L. & POL'Y 359 (2008); Anthony V. Alfieri, *Fidelity to Community: A Defense of Community Lawyering*, 90 TEX. L. REV. 635 (2012); Jules Lobel & Matthew Chapman, *Bridging the Gap Between Unmet Legal Needs and an Oversupply of Lawyers: Creating Neighborhood Law Offices—The Philadelphia Experiment*, 22 VA. J. SOC. POL'Y & L. 72, 85, 101 (2015); Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 75 (2000). See generally ALAN K. CHEN & SCOTT L. CUMMINGS, PUBLIC INTEREST LAWYERING: A CONTEMPORARY PERSPECTIVE (2013).
46. Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1987).
  47. See Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603, 1608 (1989); see also GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992).
  48. STAUGHTON LYNDE, ACCOMPANYING: PATHWAYS TO SOCIAL CHANGE (2012); Meena Jagannath et al., *A Right-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti*, 10 NW. J. INT'L HUM. RTS. 7, 16 (2011). See also Paul Farmer, "Accompaniment" as Policy, HARVARD MAGAZINE, <http://harvardmagazine.com/2001/05/paul-farmer-accompaniment-as-policy> (last visited Feb. 18, 2015).
  49. For example, approximately 350 New York Guild members were either on relief or working for the Federal Government's Works Projects Administration (WPA). Ann Fagan Ginger, *Organizing Lawyers to*, *Inter Alia, Pack the Supreme Court*, 18 GUILD PRAC. 83 (1981).
  50. See JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 198-99 (Oxford 1976).
  51. ANN FAGAN GINGER, CAROL WEISS KING: HUMAN RIGHTS LAWYER, 1895-1952 219 (1993); AUERBACH, *supra* note 50, at 198-99.
  52. DAVID F. PRINDLE, THE POLITICS OF GLAMOUR: IDEOLOGY AND DEMOCRACY IN THE SCREEN ACTORS GUILD 14 (1988); DANIEL J. LEAB, A UNION OF INDIVIDUALS, THE FORMATION OF THE AMERICAN NEWSPAPER GUILD, 1933-1936 (1970). For example, the Screen Actors Guild has focused heavily on more jobs and working conditions for all actors, a direction that the larger conservative faction in the organization has strongly supported. PRINDLE, *supra* note 52, at 197.
  53. Isidore Lazarus, *The Economic Crisis in the Legal Profession*, 1 NAT'L LAW. GUILD QUARTERLY 17, 19 (1937); THE NATIONAL LAWYERS GUILD: FROM ROOSEVELT THROUGH REAGAN 3 (Ann Fagan Ginger & Eugene M. Tobin eds., 1988). [hereinafter FROM ROOSEVELT THROUGH REAGAN].
  54. For example, in Missouri, nearly half the country lawyers did not make more than a subsistence living. See AUERBACH, *supra* note 50, at 158-59.
  55. John Gutknecht, *Liberalism and the National Lawyers Guild Today*, 2 NAT'L LAW. GUILD QUARTERLY 1, 3 (1939). See also NAT'L LAW. GUILD CONST., *supra* note 6 (listing as an object of the organization to "advance the economic well-being of the members of the legal profession. 1 NAT'L LAW. GUILD QUARTERLY 83.).
  56. 1 NAT'L LAW. GUILD QUARTERLY 86.
  57. FROM ROOSEVELT THROUGH REAGAN, *supra* note 53, at 11; VICTOR RABINOWITZ & TIM LEDWITH, A HISTORY OF THE NATIONAL LAWYERS GUILD: 1937-1987 10 (1987).
  58. DORON WEINBERG & MARTY FASSLER, A HISTORICAL SKETCH OF THE NATIONAL LAWYERS GUILD IN AMERICAN POLITICS, 1936-1968 (1968).
  59. Percival Roberts Bailey, *Progressive Lawyers: A History of the National Lawyers Guild, 1936-1958* (1979) (unpublished Ph.D. dissertation, Rutgers University) (on file with University Microfilms International).
  60. By comparison, both the Newspaper Guild and Screen Actors Guild barred communists from position of authority in those organizations.
  61. See Andrew Restuccia, *Labor Union Quits Alliance With Greens Over Keystone Pipeline*, THE HILL (Jan. 20, 2012), <http://thehill.com/policy/energy-environment/205441-labor>

- union-leaves-bluegreen-alliance-over-keystone-disagreement; *see also* Brian Mayer, *Cross Movement Coalition Formation: Bridging the Labor-Environment Divide*, 79 SOC. INQUIRY 219, 221 (2009) (discussing the tendency of labor unions to side with capital when faced with regulatory reform).
62. Jules Lobel & Matthew Chapman, *Bridging the Gap Between Unmet Legal Needs and an Oversupply of Lawyers: Creating Neighborhood Law Offices—The Philadelphia Experiment*, 22 VA. J. SOC. POL'Y & L. 72 (2015).
  63. Stanley Morris, *Legal Service*, 1 LAW. GUILD REV. 35 (1941).
  64. *Proposal for a Legal Service Bureau for the Metropolitan Area of Chicago*, 1 NAT'L LAW. GUILD QUARTERLY 149, 149 (1938).
  65. *Id.* at 152-53; *see* AUERBACH, *supra* note 50, at 207-08.
  66. *Proposal for a Legal Service Bureau for the Metropolitan Area of Chicago*, 1 NAT'L LAW. GUILD QUARTERLY 149, 154 (1938).
  67. *Plan for a Legal Service Bureau*, 2 NAT'L LAW. GUILD QUARTERLY 206, 216 (1939).
  68. Morris, *supra* note 63, at 35.
  69. AUERBACH, *supra* note 50, at 236; *Resolutions*, 10 LAW. GUILD REV. 38 (1950); Alex Elson, *Extending Legal Service to the Low and Moderate Income Groups*, 8 LAW. GUILD REV. 295 (1948).
  70. For example, in 1950 the Guild Committee on Professional Problems drafted a scholarly and detailed report, which was reprinted in the *Lawyers Guild Review* arguing that every American is entitled to legal assistance as a matter of right and as a "categorical constitutional imperative." *The Availability of Legal Services and Judicial Processes to the Low and Moderate Income Groups and Proposals to Remedy Present Deficiencies*, 10 LAW. GUILD REV. 8, 9 (1950).
  71. Gene R. Nichol, Jr., *Judicial Abdication and Equal Access to the Civil Justice System*, 60 CASE W. RES. L. REV. 325, 328-29 (2010). *See also* Hon. Earl Johnson, Jr., *Will Gideon's Trumpet Sound a New Melody? The Globalization of Constitutional Values and Its Implications for a Right to Equal Justice in Civil Cases*, 2 SEATTLE J. SOC. JUST. 201 (2003).
  72. Robert D. Abrahams, *The Neighborhood Law Office Plan*, 1949 WIS. L. REV. 634 (1949) [hereinafter Abrahams, *Wisconsin Law Review*]; Robert D. Abrahams, *The Neighborhood Law Office Experiment*, 9 U. CHI. L. REV. 406, 407-08 (1942) [hereinafter Abrahams, *Chicago Law Review*].
  73. Abrahams, *Chicago Law Review*, *supra* note 72, at 410.
  74. Robert D. Abrahams, *Neighborhood Law Offices*, 1 LAW. GUILD REV. 1, 3-4 (1940).
  75. *Id.* at 3.
  76. Robert D. Abrahams, *Neighborhood Law Offices*, 50 A.B.A. J. 727, 729 (1964).
  77. Abrahams, *Wisconsin Law Review*, *supra* note 72, at 638.
  78. Abrahams, *supra* note 76, at 729; Abrahams, *Chicago Law Review*, *supra* note 72, at 420.
  79. 65 REP. A.B.A. 255, 451 (1940); 15 CAL. STATE BAR J. no. 8 pt. 2, at 104-56 (1940); 46 ANN. REP. PA. BAR ASS'N 253, 257 (1940); Abrahams, *Chicago Law Review*, *supra* note 72, at 421.
  80. Abrahams, *Wisconsin Law Review*, *supra* note 72, at 646-47.
  81. *See, e.g.*, Abrahams, *Chicago Law Review*, *supra* note 72, at 425-26 (discussing Chicago and Los Angeles Bar Association plans set up in the 1940s). *See also* Morris, *supra* note 63, at 35 (due in large measure to the "writings and efforts of national and local committees of the Lawyers Guild . . . a surprisingly large number of bar committees [were] set up to investigate the problem of professional welfare and the extension of legal services to low-income groups, establishment of experimental agencies such as legal reference plans to meet the problem. . ."). *See also* AUERBACH, *supra* note 50, at 346-47 n.45 (on the Guild's influence on the organized bar).
  82. AUERBACH, *supra* note 50, at 209.
  83. *Id.* at 207.

84. See, e.g., Elson, *supra* note 69, at 298.
85. Lloyd K. Garrison, *The Legal Profession and the Public*, 1 NAT'L LAW. GUILD QUARTERLY 127, 131 (1938). Garrison was the great-grandson of the abolitionist, William Lloyd Garrison.
86. BRYAN GARTH, NEIGHBORHOOD LAW FIRMS FOR THE POOR: A COMPARATIVE STUDY 19 (1980).
87. Allen Rostron, *Inside the ACLU: Activism and Anti-Communism in the Late 1960s*, 33 NEW ENG. L. REV. 425, 429-34 (1998-1999); see also Manfred Berg, *Black Civil Rights and Liberal Anticommunism: The NAACP in the Early Cold War*, 94 J. AM. HIST. 75, 89 (2007); *The Strangest of Bedfellows*, NEWSWEEK (Sept. 13, 1998), <http://www.newsweek.com/strangest-bedfellows-169718> (suggesting collusion between Marshall and Hoover to manage communists in NAACP ranks). See also JACK GREENBERG, CRUSADERS IN THE COURTS: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION 102-06 (1994).
88. RABINOWITZ & LEDWITH, *supra* note 57 at 20.
89. *Id.* at 25.
90. H. COMM. ON UN-AMERICAN ACTIVITIES, THE NATIONAL LAWYERS GUILD: LEGAL BULWARK OF THE COMMUNIST PARTY, H.R. REP. NO. 81-3123 (1950) [hereinafter H. COMM. ON UN-AMERICAN ACTIVITIES].
91. RABINOWITZ & LEDWITH, *supra* note 57, at 28; See National Lawyers Guild v. Att'y Gen. of the United States, 1980 U.S. Dist. Lexis 13188, 1 (S.D.N.Y. Aug. 14, 1980). Documents that were obtained by the Guild due to this lawsuit demonstrated that the HUAC report was engineered by Hoover and the FBI in retaliation to the Guild's report on the FBI's practices.
92. H. COMM. ON UN-AMERICAN ACTIVITIES, *supra* note 90, at 1.
93. Thomas Emerson, *The National Lawyers Guild: Legal Bulwark of Democracy*, 10 LAW. GUILD REV. 93 (1950). For an excellent discussion of Emerson's role in challenging the HUAC report, see Nathan Goetting, *Thomas I. Emerson: Brave During the Scare*, 69 NAT'L LAW. GUILD REV. 146, 149-53 (2012).
94. Emerson, *supra* note 93 at 95. See Goetting, *supra* note 93, at 150 (discussing the point that Emerson and the Guild response did not simply defend the Guild but prosecuted HUAC).
95. 95 Emerson, *supra* note 93, at 96-97, 98, 105-06.
96. Thomas Emerson, *The National Lawyers Guild in 1950-1951, reprinted in FROM ROOSEVELT THROUGH REAGAN*, *supra* note 53, at 113.
97. FROM ROOSEVELT THROUGH REAGAN, *supra* note 53, at 30.
98. RABINOWITZ & LEDWITH, *supra* note 57, at 11.
99. Victor Rabinowitz, *The National Lawyers Guild: Thomas Emerson and the Struggle for Survival*, 38 CASE W. RES. L. REV. 608 (1987-88).
100. *Id.* at 614.
101. VICTOR RABINOWITZ, UNREPENTANT LEFTIST: A LAWYER'S MEMOIR 174 (1996).
102. RABINOWITZ & LEDWITH, *supra* note 57, at 35.
103. *Id.*; RABINOWITZ, *supra* note 101, at 174
104. Thomas Hilbink, *The Profession, the Grassroots and the Elite: Cause Lawyering for Civil Rights and Freedom in the Direct Action Era*, in CAUSE LAWYERING AND SOCIAL MOVEMENTS, *supra* note 4, at 60, 66.
105. RABINOWITZ & LEDWITH, *supra* note 57, at 36.
106. STEVE BABSON, DAVE RIDDLE & DAVID ELSILA, THE COLOR OF LAW, ERNIE GOODMAN, DETROIT, AND THE STRUGGLE FOR LABOR AND CIVIL RIGHTS (W2010). See also RABINOWITZ, *supra* note 101, at 175 (providing a description of Holt's dramatic speech).
107. FROM ROOSEVELT THROUGH REAGAN, *supra* note 53, at 187.
108. RABINOWITZ, *supra* note 101, at 175; BABSON, RIDDLE & ELSILA, *supra* note 106, at 292-93.
109. *Id.* at 176.

110. *Quoted in* BABSON, RIDDLE & ELSILA, *supra* note 106, at 297.
111. Ernie Goodman, a remarkable man who, as Rabinowitz observed, “never seemed to lose his vigor,” was appointed CASL co-chairman, along with his law partner and long-time Guild member, George Crockett. The appointment of two Southern lawyers as co-secretaries, an African American, Len Holt from Virginia, and a white lawyer, Ben Smith from New Orleans, underscored the critical importance of southern leadership to the effort. RABINOWITZ, *supra* note 101.
112. BABSON, RIDDLE & ELSILA, *supra* note 106, at 287.
113. *Id.* at 288 (emphasis added).
114. Guild attorneys, Dean Robb, Ann Ginger, Victor Rabinowitz, and George Crockett, among others, spoke on a variety of subjects ranging from personal injury suits, the innovative concept of “omnibus lawsuits,” to defenses to injunctions and enforcing federal civil rights laws.
115. RABINOWITZ & LEDWITH, *supra* note 57, at 38.
116. ARTHUR KINOY, RIGHTS ON TRIAL: THE ODYSSEY OF A PEOPLE’S LAWYER 190 (1983).
117. *Id.* at 207.
118. *Id.*
119. BABSON, RIDDLE & ELSILA, *supra* note 106, at 335.
120. *Id.* at 307.
121. Hilbink, *supra* note 104, at 66-68.
122. *Id.* at 72-74.
123. RABINOWITZ, *supra* note 101, at 177-78; FROM ROOSEVELT THROUGH REAGAN, *supra* note 53. BABSON, RIDDLE & ELSILA, *supra* note 106, at 328-30; RABINOWITZ & LEDWITH, *supra* note 57, at 38.
124. *See, An Account of the National Lawyers Guild Program of Legal Assistance to Civil Rights Workers in Mississippi, Summer, 1964*, 24 GUILD PRAC. 32, 34 (1965).
125. RABINOWITZ, *supra* note 101, at 179-80.
126. *An Account of the National Lawyers Guild Program*, *supra* note 124, at 35.
127. BABSON, RIDDLE & ELSILA, *supra* note 106, at 340.
128. Hilbink, *supra* note 104, at 76.
129. *Id.* at 76.
130. BABSON, RIDDLE & ELSILA, *supra* note 106, at 348.
131. 32 GUILD PRAC. 41.
132. Hilbink, *supra* note 104, at 77.
133. Other organizations, legal and non-legal have performed similar “witness” functions. *See* WITNESS FOR PEACE, <http://www.witnessforpeace.org> (last visited Feb. 18, 2015).
134. LYND, *supra* note 48.
135. LEN HOLT, THE SUMMER THAT DIDN’T END 89 (1992).
136. Hilbink, *supra* note 104, at 73.
137. BABSON, RIDDLE & ELSILA, *supra* note 106, at 327.
138. *Id.* at 72.
139. *Quoted in National Lawyers Guild v. FBI*, Plaintiff’s Principal Factual Papers in Opposition to the Motion of the United States of America for Partial Summary Judgment at 306-07 (thanks to Michael Krinsky for supplying the author with this document), also partially reprinted in FROM ROOSEVELT THROUGH REAGAN *supra* note 53 at 206.
140. BABSON, RIDDLE & ELSILA, *supra* note 106, at 357; *Leading Lawyers Join Rights Drive*, N.Y. TIMES, Feb. 8, 1965, at 1.
141. JOHN LEWIS WITH MICHAEL D’ORSO, WALKING WITH THE WIND: A MEMOIR OF THE MOVEMENT 278 (1998).

142. Taylor Branch claims that “every one of SNCC’s allies vehemently objected” to SNCC’s pronouncement that they would accept aid from the Lawyers Guild, including Andrew Young, speaking on King’s behalf, although Lewis claims that King was ultimately fine with the Guild. TAYLOR BRANCH, *PILLARS OF FIRE: AMERICA IN THE KING YEARS 1963-65* 273-74 (1998).
143. JAMES FORMAN, *THE MAKING OF BLACK REVOLUTIONARIES* 381-82 (Macmillan Company 1972).
144. KINOY, *supra* note 116, at 263.
145. PIVEN & CLOWARD, *supra* note 1.
146. *Letter to Guild Members from Ernie Goodman*, 24 GUILD PRAC. 28, 57 (1965).
147. BABSON, RIDDLE & ELSILA, *supra* note 106, at 361.
148. *See* WEINBURG & FASSLER, *supra* note 58, at 20.
149. RABINOWITZ, *supra* note 101, at 182.
150. *Id.* at 185.
151. *Id.* at 183.
152. *Id.* at 194.
153. Interview with Victor Rabinowitz, in New York, N.Y. (Sept. 2004)
154. RABINOWITZ, *supra* note 101, at 185.
155. *Id.* at 186.
156. *Id.* at 194.
157. Interview with Michael Krinsky, Rabinowitz’s law partner, in New York, N.Y. (July 2008). Also based upon personal experience working with Victor Rabinowitz.
158. RABINOWITZ, *supra* note 101, at 816.
159. David Rein, *The Movement and the Lawyer*, 28 GUILD PRAC. 1 (1969).
160. *Id.*
161. JULES LOBEL, *SUCCESS WITHOUT VICTORY: LOST LEGAL BATTLES AND THE LONG ROAD TO JUSTICE IN AMERICA* (2003); *see also* Jules Lobel, *Courts as Forums for Protest*, 52 UCLA L. REV. 477 (2004-2005).
162. Doris Brin Walker, *How I Happened to Become the Guild’s First Woman President*, 64 GUILD PRAC. 65, 66 (2007) (emphasis added).
163. AUERBACH, *supra* note 50, at 203.
164. *Id.* at 237.
165. *See* Rasul v. Bush, 542 U.S. 466 (2004).
166. *See* Harris v. McRae, 448 U.S. 297 (1980).
167. *See* Floyd v. City of New York, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).
168. *See* Ashker v. Brown, 2013 U.S. Dist. LEXIS 56738 (N.D. Cal. Apr. 18, 2013).
169. LOBEL, *supra* note 161 (discussing the legal philosophy of the Center for Constitutional Rights work).
170. Interview with Marc Van der Hout, past president of the National Lawyers Guild and a long-time member of the Immigration project, in San Francisco, CA. (Feb. 13, 2015).
171. Stuart Scheingold, *The Struggle to Politicize Legal Practice*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS* 118, 144. (Austin Sarat & Stuart Scheingold eds., 2006).
172. *See* Janos D. Marton, *Representing an Idea: How Occupy Wall Street’s Attorneys Overcame the Challenges of Representing Non-hierarchical Movements*, 39 FORDHAM URB. L.J. 1107 (2012); Christina Boyle, *Occupy Wall St. Protestors Rights in Good Hands as Legal Minds Step Up to Offer Their Support*, N.Y. DAILY NEWS (Oct. 20, 2011, 3:56 PM), <http://www.nydailynews.com/new-york/occupy-wall-st-protesters-rights-good-hands-legal-minds-step-offer-support-article-1.965060> (NLG lawyers from the New York City chapter of the Guild involved in defending Occupy Wall St. in court, and the Guild has dispatched lawyers to help

the movement in over 50 cities); Allison Kilkenny, *National Lawyers Guild Fights for the Rights to Occupy*, IN THESE TIMES (Mar. 21, 2012), [http://inthesetimes.com/article/12853/national\\_lawyers\\_guild\\_fights\\_for\\_the\\_right\\_to\\_occupy](http://inthesetimes.com/article/12853/national_lawyers_guild_fights_for_the_right_to_occupy) (Guild lawyers involved in defense of Occupy Movements in Oakland, Chicago, New York and other cities). For example in Maine, a National Lawyers Guild leader took on the defense of the Occupy Maine movement on behalf of the Guild. Interview with Lynne Williams, [title, institutional affiliation (if any), location of the interview] (Apr. 2012). In Oakland, California, the Guild filed and eventually settled for over 1 million dollars a lawsuit on behalf of protestors injured by the Oakland police during the 2011 Occupy protests. See Lee Romney, *Oakland Crafts a 1.1 Million Settlement for Injured Occupy Protestors*, L.A. TIMES (July 3, 2013), <http://articles.latimes.com/2013/jul/03/local/la-me-in-occupy-oakland-settlement-20130703>.

173. Johnathon Mahler, *Oakland, The Last Refuge of Radical America*, N.Y. TIMES MAGAZINE, Aug. 1, 2012, available at [http://www.nytimes.com/2012/08/05/magazine/oakland-occupy-movement.html?\\_r=0](http://www.nytimes.com/2012/08/05/magazine/oakland-occupy-movement.html?_r=0).
174. Kilkenny, *supra* note 172.



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**Deborah Willis**

**SPEAKING OF THE REVIEW:  
SPEECH AT THE OAKLAND  
NLG CONVENTION,  
OCTOBER 24, 2015**

I want to thank the Guild for the Arthur Kinoy Award. I was surprised—in fact I was floored—but I’m very pleased and proud to receive it. Arthur Kinoy is someone I’ve admired for years and it’s an honor to receive an award with his name on it.

I’m not a lawyer. I’m more like a Lawyers Guild groupie. I believe in the Guild and the Guild’s work. I believe that the work that all of you do is important. What I wanted was to be a cog in your machine, and I’m happy there was something I could do that the Guild needed to be done.

I’m a graphic designer, a layout person, and sometimes an editor. I’ve been working with the *National Lawyers Guild Review*—or under its old name, the *Guild Practitioner*—for 20 years, because I know the nuts and bolts of how to put out a publication and get it to the printer. It’s behind-the-scenes work and some of it is pure drudgery, but I get a lot of satisfaction from it. The reward has been that I’ve gotten to work with some amazing people.

Putting out the *Review* is and always has been a group effort, so I share this award with all the members of the editorial board over the years, under our editors-in-chief Marjorie Cohn, then David Gespass, and now Nathan Goetting. Right now we have a strong editorial team and it’s a pleasure working with them. I’m glad to say that the *Review* is going strong.

I want to talk a few minutes about why I think the *Review* is important to the Guild. I don’t know how many of you read the *Review*. I don’t think it’s ever perfect—in fact I *know* it’s never perfect—but it’s as good as we can make it. Meeting deadlines with all volunteers isn’t easy, but we do our best.

The *Review* is important because it’s one of the Guild’s voices. In the world of law reviews it’s almost unique. It’s a voice that needs to be heard.

What’s more, it’s a voice that will last, because it’s indexed on Westlaw and other places. Law students can look up our articles, and find out, if they didn’t know, that there’s dissent, a different way of looking at things from what most of them are hearing in law school. The *Review* is a permanent record of what we’ve thought and what we’ve argued and what we’ve stood for.

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Deborah Willis is a graphic designer in Los Angeles, California. She began typesetting and laying out the *National Lawyers Guild Review* in 1996.

By and large that record shows how clear the Guild's vision has been, from 1940 when the *Review* started publishing, when the issues were the National Labor Relations Board, the New Deal, and "race relations" to today when we're talking about the Fight for 15, Obamacare, and #BlackLivesMatter.

We have some good articles coming out and I want to point out one of them, written by Jules Lobel, because it's largely about the Lawyers Guild. It talks about how the Guild managed to survive for nearly 80 years, and still preserved its commitment to social justice and social change. Not only preserved it, but expanded it. And the way this was done is important for us to know about if we care about the future of the Guild. So I hope you'll read it.

Here's my shameless plug: I know you're all busy with your work and that's the way it should be. But I'm asking you to read the *Review*. Take some time to skim through it, read something that catches your attention. Then talk back to us. If nothing catches your attention, tell us so. If you find something wrong, or if you disagree with something, write us about it. Help us make it better. We need more writers and editors, and we can always use more articles.

Especially if you're doing work that others in the Guild could benefit from knowing about, WRITE about it for us. It may be a lot to ask from working lawyers, but it's important.

To me, the *Review* should not only be an academic publication, but it should also be a place for Guild members to share their experience of what's working or not working in their legal work. The *Review* is a place where we can have a conversation, where we can argue over issues, where we can articulate our positions and have them challenged, where we can refine our thought. Because the way issues are framed is fundamental to the way they are won.

A few last words. Working on the *Review*, I've learned to love good writing—strong, persuasive writing. I've developed a few opinions about it.

Lawyers often use a ponderous style of writing that is deadly to read. It's repetitive, it's cautious, and it's pompous. It's meant to impress. It makes a point and then makes it again. Maybe it's meant to sound inevitable, as it rolls over you and bores you to death. I find writers using the passive voice a lot—where no one does anything, but actions are taken. This leaves me thinking that the writers aren't quite willing to commit to what they're saying, and that they want to leave themselves a loophole. A quick example is President Ronald Reagan's comment on the Iran Contra scandal: "Mistakes were made." He meant, bad things happened on my watch, but I wasn't responsible. The passive voice leaves space for weaseling out, and it should be used sparingly.

If you read something and it's confusing, you know that the writer isn't sure of what they are saying, and they're probably just as confused as you are. Maybe they haven't thought it through well enough. I've learned that good

writing mostly comes from editing—a process of going back to to simplify or amplify, to rephrase or rethink, until you’ve clarified your thinking and your language.

Or it could be the writer *does* know what they’re saying, but they aim to confuse you, the reader, into thinking they’re saying something else. That’s almost a definition of political writing. I prefer to leave that brand of persuasive writing to those on the other side of the argument who need it, reactionaries, conservatives, most Republicans, and some Democrats, who write to make us believe they have our interests at heart when they don’t, and who play on our fears for their own ends. A choice of language can twist the meaning and it can mislead. You can see this working in loaded words like “abortion factory,” or in words people can hide behind like “collateral damage” and “enhanced interrogation”—on occasions when “mistakes were made.”

On our side we need to work at writing to make things clear. We need to write to expose the machinery of power, of racism, and of greed, to argue and to reason out how we propose to change it. We need to write what we mean. One thing that sets Bernie Sanders apart from every other presidential candidate is his ability to state the issues in plain language and cut to the heart of what they’re about. You can understand him and you can’t miss his point.

I think most of us in the Guild can do this. But things may be changing— instant communication by text and twitter, instagram and email is beginning to remap our relationship with language. Students come out of college without having written enough to be good at it. I was just talking with a friend who thinks writing is about to become a lost art. I hope it’s not, but what I know is, you need to be able to write well to be persuasive. You need to know how to structure an argumant, to lead your readers through it, to connect the dots, and tell them what they need to know, so that in the end, their conclusion may come to be the same as your conclusion.

We need to be good writers. Because the clear expression of the political arguments we make is essential to the Guild as an organization that works for social change.



**Jennifer M. Smith**

**THE COLOR OF PAIN: BLACKS AND  
THE U.S. HEALTH CARE SYSTEM—  
CAN THE AFFORDABLE CARE ACT  
HELP TO HEAL A HISTORY OF  
INJUSTICE? PART I**

*Of all the forms of inequality, injustice in health care  
is the most shocking and inhumane.*

—The Rev. Martin Luther King, Jr.<sup>1</sup>

**Preface**

In 1940, when Moses A. Robinson was only 13 years old, he wanted to go to a movie in his hometown of Franklin, Louisiana. Because of the segregation and overt racism of the time, his mother preferred that he not go alone,<sup>2</sup> but she relented. The movie ended at dusk. He thought he saw a friend from school. She had a scarf on her head and was turned away from him. He approached her, touched her arm and said, “What’s the matter? Don’t you want me to walk you home?” She turned toward him, and he realized that he had made a mistake. It was a white girl. He apologized, explained that he thought she was someone else, and went home.

Soon after Moses arrived home, there was a loud knock on the family home’s door. His mother opened the door and there stood two white sheriffs. They had come to arrest Moses for the crime of touching and talking to the white girl at the movie theater. The sheriffs took him to jail, and after a “trial,” the 13-year-old was sent away to prison.

Moses had always talked about being a physician. However, he was born into a poor, uneducated black family and lived in a small town with no educational opportunities, so no one took him seriously.

In prison, perhaps due to his age and small stature, he was sent to work in the prison hospital. This experience served to strengthen his determination to be a doctor.

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When he was released from prison, Moses completed his high school education at a different school than the one he attended when he was arrested in his hometown. Even though his arrest and conviction were unjust, they were a blemish on his character and resulted in his being shunned at his former school.

After graduation Moses's family sent him to California to live with relatives. There, he worked various menial jobs and attended college. In 1951, he received a bachelor's degree in education from California State College at Los Angeles.<sup>3</sup> Still with an abiding desire to attend medical school, he settled on employment with the United States Postal Service until an opportunity arose.<sup>4</sup> He completed graduate courses while he worked<sup>5</sup> and then entered military service.<sup>6</sup> Upon his discharge, he was even more determined to attend medical school,<sup>7</sup> and at times worked two full-time jobs while taking pre-med courses at California State College.<sup>8</sup> His hard work paid off.

Moses was accepted at the California College of Medicine (which became University of California Irvine School of Medicine).<sup>9</sup> There were no other blacks there. Although he was accepted to the medical school, there were no available seats in his incoming class.

On campus one day, Moses met a stranger, who had also been accepted but for whom there was a class opening. The stranger told Moses that he was not going to medical school, and Moses could have his spot. Moses was overwhelmed with gratitude, but then he became anxious about all he would have to do to accept the offer. He had no place to live near campus, nor did he have money for books. But Moses' good luck continued to hold, as the stranger who gave up his medical school seat also offered him his apartment, and a professor supplied him with books.

Moses graduated from the California College of Medicine in 1962, becoming a medical doctor eleven years after he received his undergraduate degree. He was the first black person to graduate from the school, and he graduated at the top of his class. He completed his internship and residency at Los Angeles County General Hospital. He never saw the stranger again.

Dr. Robinson began his private practice in 1964. He was a member of the National Medical Association, a non-segregated association founded in 1895 to represent African American physicians and health professionals in the United States. He was also a member of the American Medical Association, which was founded in 1847 but for many years restricted the membership to whites only.<sup>10</sup> Notably, Dr. Robinson was among the founding members of the West Adams Community Hospital, which opened in 1971.<sup>11</sup>

Dr. Robinson practiced as a pediatrician in California for decades. It always bothered him, however, that he could never practice in Louisiana due to his criminal record. He asked his sister to petition for a pardon. Twice it was refused. The blot on Dr. Robinson's otherwise sterling record troubled him

tremendously over the years. Dr. Robinson pleaded with his sister to try once more. This time, he also asked that she inform the judge of all of his accomplishments. Years had passed. Dr. Robinson's pardon plea was finally granted. But within six months of the pardon, Dr. Robinson died, on April 30, 2007.<sup>12</sup>

## I. Introduction

Discrimination in its various forms has contributed to the exclusion of blacks and other people of color from the field of medicine both as health care providers and as patients in the United States. Dr. Robinson's story is but one example. Racism has significantly harmed the health care of black people in the U.S. Generally speaking, those with the poorest health and the greatest need have had the poorest access to medical care, as well as lower quality health care than their white counterparts.

To understand this, we must consider the historical context of blacks in America and in America's health care system. Whether as enslaved persons or free, blacks have had little to no access to medical care in the United States. The call for universal healthcare sounded over a century ago, but as political forces united against it, including powerful medical societies, the push to provide health care access to America's citizens failed. Blacks rallied to open their own hospitals and medical schools, often with the help of white individuals and churches, to obtain the education and opportunities to provide health care to blacks and others with limited access. Civil rights advocates utilized the enforcement provisions of the civil rights laws to open the doors to America's selective health care system. While ambitious, those activists could not often bring about the results sought. With the inclusion of more women and minorities in the health care system, the political machinery of America's most powerful medical society finally swung around to supporting universal health care. Health reform was passed in Congress under the first black president of the United States of America, Barack Hussein Obama II—without a single Republican vote.

In 2010, President Obama signed into law the Patient Protection and Affordable Care Act, along with the Health Care and Education Affordability Reconciliation Act. These two pieces of groundbreaking legislation comprise America's new health care system. Because of the sordid history of anti-black racism and the lack of adequate health care in the United States, this legislation has particular significance for blacks.

America's new health care system has received a largely positive reception from blacks and others. The benefits of the new health reform cannot be overstated, especially for people who have been so heavily excluded from the health care system. Even though the ACA creates unprecedented health-care access for many citizens, and strives to correct many historical wrongs, it is not a perfect plan. Rather, it is an evolving plan that seeks to encourage suggestions and solutions toward a healthier America for all citizens.

## II. Health disparities and history

Historically, blacks have largely been excluded from America's health care system, first as patients, then as professionals. To some extent, enslaved persons received a modicum of health care in the United States. Plantation owners tended to the health of their enslaved persons as they did their livestock.<sup>13</sup> Indeed, "[t]he health of the Negro slave was as good as that of his white neighbors, and in some areas the Negro mortality rate was even lower."<sup>14</sup> Yet, slave owners met their responsibility for the health of their enslaved persons with varying enthusiasm and enslaved blacks had no ability to seek their own medical help.<sup>15</sup> Nevertheless, the conditions under which enslaved persons had to work caused them to need constant medical care, and the institution of slavery produced a significant health gap between blacks and whites that continued after emancipation.<sup>16</sup>

As property, slaves were also often used without permission as guinea pigs in medical experiments. Mr. Fortune, a slave who died in 1798, was buried in 2013.<sup>17</sup> He was owned by a bone surgeon, Dr. Preserved Porter, who preserved Mr. Fortune's skeleton by boiling the bones to study anatomy at a time when cadavers were taken overwhelmingly from slaves, servants and prisoners.<sup>18</sup> Dr. Aubré Maynard, director of surgery at Harlem Hospital and a preeminent authority on surgery to treat chest and abdominal wounds, and who is credited with saving the life of the Rev. Dr. Martin Luther King Jr. after he was stabbed in 1958, commented strongly on the unauthorized use of blacks in teaching and research:<sup>19</sup>

As the helpless slave, as the impoverished freedman following emancipation, as the indigent ghetto resident of today, the share-cropper or dirt farmer of the South, the Negro has always been appropriated as choice "clinical material" by the medical profession. In the mind of the unregenerate racist, who, unfortunately has always been represented in the profession, the Negro was always next in line beyond the experimental animal. Without option in the peculiar situation, he has contributed to the training of generations of surgeons, his fate subject to the quality of their skill, and the integrity of their character. He has sometimes benefitted from their efforts, but he has also occupied the role of victim and expendable guinea pig.

Dr. Maynard died in 1999 at the age of 97.<sup>20</sup> Dr. W. Montague Cobb, a Howard University professor and editor of the *Journal of the National Medical Association* was amazed at the irony of white southern medical schools in the 1930s teaching their students the fundamentals of human anatomy on African American cadavers, because it acknowledged that physical equality of blacks and whites was applicable only to corpses.<sup>21</sup>

One of the earliest known black physicians was Dr. James Derham (or Durham).<sup>22</sup> He was born in 1762 in Philadelphia to parents who were slaves.<sup>23</sup> Dr. Derham was owned by Dr. James Kearsey, Jr., a specialist in throat diseases.<sup>24</sup>

Dr. Derham trained under Dr. Kearsey in a medical internship comparable to the training of other physicians of the time.<sup>25</sup> After Dr. Kearsey died, Dr. Derham was owned by a few other physicians before he bought his freedom in 1783.<sup>26</sup> Dr. Derham practiced in New Orleans and served the bi-racial and black populations, as well as some prominent whites.<sup>27</sup> Dr. Derham was well respected for his medical skills, even by the great colonial American physician Dr. Benjamin Rush, who met Dr. Derham in 1788. Dr. Rush said of Dr. Derham,

I have conversed with him upon most of the acute and epidemic diseases of the country where he lives and was pleased to find him perfectly acquainted with the modern simple mode of practice in those diseases. I expected to have suggested some new medicines to him, but he suggested many more to me.<sup>28</sup>

In 1802, Dr. Derham moved back to Philadelphia from New Orleans because of the restrictions placed on persons practicing without medical degrees and continued to operate a successful medical practice.<sup>29</sup>

Other states also enacted restrictions on slaves practicing medicine because of the talent and skill of the slave medical practitioners. In *Macon v. State*, the Tennessee court found that Macon allowed his slave, Jack, to go around the country practicing medicine.<sup>30</sup> Jack was indicted under Act of 1831, ch. 103, sect.3.<sup>31</sup> Evidence showed that

the defendant [Jack] was an obedient, exemplary slave, and a most successful practitioner of medicine; that he had performed many cures of a most extraordinary character, and that his character was so well established for skill in ... healing the sick, that all his time was occupied in attending the calls of ... diseased persons.<sup>32</sup>

The court instructed the jury that slaves did not have a right to practice medicine. Jack was found guilty and fined one dollar.<sup>33</sup> He appealed,<sup>34</sup> and the Tennessee Supreme Court affirmed, holding:

the legislature was guarding against . . . insurrectionary movements on the part of the slaves . . . . A slave under pretence of practicing medicine, might convey intelligence from one plantation to another, of a contemplated insurrectionary movement; and thus enable the slaves to act in concert to a considerable extent, and perpetrate the most shocking massacres [sic] ... it was thought most safe to prohibit slaves from practicing medicine altogether.<sup>35</sup>

Blacks continued to practice medicine in various ways even after the *Macon* ruling. For example, over 180,000 blacks (some born free and some escaped slaves) served in the Civil War and thirteen blacks acted as surgeons.<sup>36</sup> Opportunities to serve remained limited until 1863 when dwindling Union resources caused the government to recruit black soldiers.<sup>37</sup> In May 1863, Dr. William P. Powell, Jr. became one of the first black physicians to contract with the Union army as a surgeon.<sup>38</sup> He was assigned to the Contraband Hospital, which tended to fugitive slaves and black soldiers in Washington, D.C.<sup>39</sup> Dr. Powell served until November 1864, but when he sought a pension from the

government upon his retirement from medical practice, he spent the next 24 years trying to obtain it and never did.<sup>40</sup> He was denied because he failed to show adequate proof of disability and because he was only a contract surgeon and not a commissioned military officer.<sup>41</sup> It was quickly forgotten afterward, but records in the National Archives reveal the significance of blacks in the Civil War.<sup>42</sup>

The Thirteenth Amendment freed all enslaved persons in 1865.<sup>43</sup> However, these freedmen wandered about hungry, homeless, and jobless, hoping for the miracle of “forty acres and a mule,”<sup>44</sup> promised by President Lincoln before his assassination. The miracle never came. They were left without the shelter and the modicum of basic health care that slavery once provided for them.<sup>45</sup> Thus, these post-Civil War years were dire for blacks.<sup>46</sup> Statistics from Charleston, South Carolina reveal a helpful snapshot (national death statistics were unknown).<sup>47</sup> There, blacks died at double the rate of whites, and black children died at three times the rate.<sup>48</sup>

After emancipation, health conditions for former enslaved persons continued to decline, in large part because they were no longer cared for by white owners, and were denied access to health care facilities.<sup>49</sup> Not only were hospitals closed to blacks, but opportunities for blacks to become physicians remained closed.<sup>50</sup> Had whites and blacks received the same medical care, the morbidity and mortality rates of blacks would have significantly decreased.<sup>51</sup> “[P]overty, lack of Negro doctors and of doctors for Negroes and the exclusion of Negroes from first-class ‘white’ hospitals” were believed to be responsible for the sharp difference in mortality and morbidity rates between whites and blacks.<sup>52</sup>

The trend of declining health for blacks continues to this day.<sup>53</sup> Race is a major factor that contributes to the adverse health status of blacks.<sup>54</sup> Poverty is also a chief cause.<sup>55</sup> However, poor whites, unlike blacks of any class, have traditionally had access to medical care. Yet, the medical and health establishments continue to ignore the effect of race on health outcomes.<sup>56</sup> One medical professional stated, “The poor health of African-Americans is not a biological act of nature nor an accident, but can be directly attributed to the institutions of slavery and racism—circumstances under which African-Americans have continuously suffered from for nearly four centuries.”<sup>57</sup>

In 1952, Federal Security Administrator Oscar R. Ewing made stark conclusions concerning the problem of the health of the Negro:

We all know this problem stems from the inequality of life for the American Negro. It stems from the fact that he is too often compelled to accept the most unpleasant, the most hazardous, the least rewarding jobs. It stems from the fact that his income is lower than that of the rest of the population. It stems from the fact that he is too often forced to live in the crowded, unsanitary, depressing slums of America—the slums of parts of Harlem or the slums of the rural South. . . . It stems from the fact that he may too often find himself

unable to get satisfactory hospital care—or, in some cases any hospital care at all. It stems from the fact that we do not have enough doctors to go around and that where this is the case for the Negro patient too often is the one who gets no doctor's care at all. It stems from the fact that the Negro patient is too often unable to pay for the high costs of adequate medical and hospital care.<sup>58</sup>

While the roots of unequal and inequitable health care for African Americans date back to the days of slavery, the modern mechanisms of discrimination in health care has shifted from legally sanctioned segregation to inferior or non-existent medical facilities due to market forces, which place a premium on those able to afford health care.<sup>59</sup>

African Americans, largely poor, remained excluded from basic medical access despite winning the battle for hospital integration in the mid-1960s.

Hospital limitations on care for the poor, and the refusal of many hospitals and physicians to accept Medicaid, demonstrated the link between economic and racial barriers to access. . . . Black communities were ravaged by epidemics of hypertension, diabetes, and infant mortality, national civil rights organizations helped local activists set up neighborhood health clinics and demonstration projects. Like union clinics earlier in the century, the local health care projects of the 1960s and 1970s worked not only to address immediate needs but also to spread the idea of universal access.<sup>60</sup>

From 1965 to 1975, there was a modest period of improvement in health care for blacks.<sup>61</sup> This was a result of increased access to health care and an infusion of federal funding for health services, which emanated from the enactment of the Civil Rights Act of 1964 and Voting Rights Act of 1965, Medicare and Medicaid laws, and federal hospital desegregation rulings, as well as efforts by the community health center movement.<sup>62</sup> However, “deterioration of these limited health care systems for the poor resumed in the new ‘competitive’ and privatized health system environment.”<sup>63</sup>

After 1975, the political and financial commitments to black health care diminished. Blacks' health care, as compared to whites, deteriorated significantly after 1980. In the mid-1980s, blacks were losing longevity for the first time in the twentieth century.<sup>64</sup> Health disparities have decreased since the 1980s, but significant disparities due to race, ethnicity, and economics remain.<sup>65</sup>

A significant factor in the health disparities across racial, ethnic, and economic lines is a direct result of America's lengthy and atrocious history of segregation, especially against blacks. Health care, in fact, has been an especially segregated area of American life. While *de jure* segregation—segregation sanctioned or enforced by law—ended in the 1960s as a result of the civil rights movement, *de facto* segregation—without the sanction of law<sup>66</sup>—has never ended in the United States, including in health care.

Both types of segregation have been detrimental to the health of blacks, and have crippled the professional development of black physicians, nurses, and

other medical professionals.<sup>67</sup> Studies continue to reveal racial disparities in the treatment of patients who have comparable health insurance and the same diseases.<sup>68</sup> Yet, medical professionals and the public deny that racial disparities in medical treatment exist.<sup>69</sup> Even voluntary medical societies, which should have understood the significance of universal access to healthcare and which could have included blacks in their organizations, adamantly maintained their segregated policies with few exceptions.

### III. Organized medicine

#### A. American Medical Association

The American Medical Association (AMA) was founded in 1847 and played a key role in the development of medicine in the United States. Indeed, “[a]t the founding meeting the delegates adopted the first code of medical ethics, and established the first nationwide standards for preliminary medical education and the degree of MD.”<sup>70</sup> The AMA’s “position of undeniable authority and influence . . .” is undisputed.<sup>71</sup> At one time, it was deemed to be “the most powerful legislative lobby in Washington.”<sup>72</sup> The strength of the AMA was in its influence over the medical profession, which attached to it the prestige and public confidence of doctors generally, and its strong financial position.<sup>74</sup> Membership in the AMA carried numerous benefits.<sup>73</sup> For decades, the AMA denied membership to blacks.

In 1888, the AMA approved all members of state medical societies as “*de facto* permanent members” of the AMA, thereby technically allowing its first African American members.<sup>75</sup> However, there was still no access to the AMA annual meetings or other opportunities to participate in the policy and development of medicine at any significant level. Thus, the opportunities for people of color, and at that time particularly for blacks, to contribute toward the development of medicine were rare and often simply non-existent.<sup>76</sup>

The very same year that the AMA was founded, an American medical school—Rush Medical School of Chicago, Illinois—awarded America’s first medical degree to a black American, David Jones Peck.<sup>77</sup> Three years later, Harvard admitted three blacks to its medical school. However, Oliver Wendell Holmes, Sr., a 1836 graduate of Harvard’s Medical School and its then-dean, expelled the three black students under pressure from some of the white students.<sup>78</sup> In 1854, John Van Surly DeGrasse was admitted to the Massachusetts Medical Society and became the first black doctor to gain admission to a United States medical society.<sup>79</sup> Although the AMA had not yet opened its doors to black doctors, various state medical societies began allowing blacks to join their organizations.<sup>80</sup>

The AMA’s influence in the movement for universal health insurance cannot be overstated. When President Theodore Roosevelt sought to regain the presidency in 1912, his personal physician was Dr. Alexander Lambert, an

AMA leader. Dr. Lambert was influential enough to get national health insurance on the Progressive Party platform, but the endeavor to establish national health insurance ended with the defeat of Roosevelt for a second full term.<sup>81</sup> The AMA supported national health insurance from 1915 to 1920.<sup>82</sup>

The AMA opposed universal health insurance for years. In 1934, the AMA formally adopted a position against mandatory health insurance when President Franklin D. Roosevelt announced his intention to begin a federal social security program. In 1935, President Franklin D. Roosevelt signed the Social Security Act (“SSA”) into law. The SSA achieved a great deal for poor and working Americans—unemployment insurance, old-age assistance, aid to dependent children and grants to the states to provide various forms of medical care—but it was not the “comprehensive package of protection” against the “hazards and vicissitudes of life” that many of its supporters had hoped.<sup>83</sup> Notably, the SSA did not include national medical benefits.

The AMA boasted that, despite passage of the SSA, “It does not include compulsory health insurance due to AMA influence.”<sup>84</sup> The AMA denounced group medicine, in favor of conserving individual entrepreneurial practice, and voluntary insurance as “socialized medicine.”<sup>85</sup> Ultimately, President Roosevelt succumbed to the AMA’s powerful lobbying.<sup>86</sup> As the white establishment continued its opposition to universal health care and access to any health care to blacks, the question became whose obligation was it to provide health care to blacks, who had been excluded from every aspect of the American health care system?<sup>87</sup>

## **B. Black medical professionals, hospitals, and medical associations**

With the end of slavery, the federal government stepped in to help. The federal government created the Freedmen’s Bureau in 1865 to assist freed slaves during Reconstruction.<sup>88</sup> The Bureau’s medical department organized nearly a hundred hospitals and dispensaries throughout the South. By the early 1900s, seven black medical schools existed. In 1910, education reformer Abraham Flexner, who thought little of blacks, recommended in his highly influential Flexner Report that only two of the seven remain open.<sup>89</sup> Howard University Medical School, founded in 1868 as the first medical school open to all races and genders,<sup>90</sup> and Meharry Medical College, founded in 1876 as the medical department of Central Tennessee College, and open for the education of black physicians, were the two that survived.<sup>91</sup> Both are leading institutions today serving minority and lower income populations, as well as training numerous African American physicians.

Notwithstanding the emergence of Howard University Medical School, three black physicians were denied membership to the Medical Society of the District of Columbia in 1869–70.<sup>92</sup> Thus, black and white doctors formed the National Medical Society of the District of Columbia in 1870.<sup>93</sup> That same year, however,

the members were excluded from the AMA's annual meeting, and in 1872, the AMA reaffirmed its refusal to admit Howard University, Freedman's Hospital, and the National Medical Society of the District of Columbia as members.<sup>94</sup>

During the post-Reconstruction period, America's southern states soon replaced slavery with "Jim Crow" legislation, which segregated blacks and whites in virtually every aspect of life—trains, wharves, restaurants, barber shops, theaters, drinking fountains, and schools.<sup>95</sup> Thus life for blacks was made no easier with the end of slavery. They now had to struggle to survive with little opportunity for housing, shelter and other basic necessities. The threat of physical violence was almost as pervasive as in the slave era. The first two years of the twentieth century were marked by 214 lynchings of blacks in the South.<sup>96</sup> Survival for blacks was challenging, and with the constant violence, a basic difficulty "was always the lack of black professionals in the health professions."<sup>97</sup>

During the 1890s and as a result of continued exclusion and rejection by the white medical establishment, African American doctors ignited a black hospital movement, led by black doctors such as Daniel Hale Williams, Nathan Francis Mossell, and Robert F. Boyd.<sup>98</sup> Black hospitals allowed blacks to take advantage of the latest in medicine and surgery advances.<sup>99</sup> In 1893, Dr. Daniel Hale Williams, an 1883 graduate of Chicago Medical School and America's first African American cardiologist, performed America's first successful open heart surgery.<sup>100</sup> Keenly aware of the limited opportunities for blacks in the medical profession and that many black physicians lacked hospital privileges, Dr. Williams founded Provident Hospital in Chicago, Illinois in 1891. It was created to serve all races and ethnicities and had financial support from both the black and white communities.<sup>101</sup>

Dr. Williams helped to establish the National Medical Association ("NMA") in 1895, the only national organization that allowed black doctors to become members.<sup>102</sup> Since its founding, the NMA has fought to eliminate discrimination and segregation against health care professionals and in health care facilities.<sup>103</sup> In particular, the NMA advocated against segregated hospitals during World War II. The NMA opposed the "separate but equal" exception in the Hill-Burton Act of 1946, which provided federal dollars for the construction of hospitals. During the civil rights crusade, the NMA demanded that black doctors be allowed privileges in all hospitals.<sup>104</sup> Some white doctors, too, joined black doctors in the struggle for a better and healthier America by becoming members of the NMA to end racial discrimination in medicine.<sup>105</sup> The NMA grew to become an effective voice for black physicians, but their organizing was unable to secure staff privileges for the black physicians.<sup>106</sup>

Dr. Williams was the first to call for the establishment of black hospitals. In his 1900 speech to the Phyllis Wheatley Club of Nashville, Tennessee,

prompted by the continual racial discrimination against black physicians, other medical professionals, and patients, Dr. Williams called on blacks to build their own hospitals. In 1923, the NMA founded the National Hospital Association, (“NHA”), launching the black hospital movement.<sup>107</sup> The NHA was organized “to ensure proper standards of education and efficiency in black hospitals.”<sup>108</sup> The NHA was also organized “to encourage better facilities for the training of those men and women who were eager to serve in the amelioration of [inadequate hospitalization] and the proper care of Negro patients.”<sup>109</sup>

Segregation forced a two-hospital system—one for white America and the other for black America. Ultimately, integration and assimilation led to the decline of the two-hospital system and thus, the demise of the black hospital.<sup>110</sup> Some of these black hospitals were opened by members of the white community.<sup>111</sup> The black hospital movement which had begun nearly 25 years earlier ended in 1945.<sup>112</sup> Notwithstanding the magnanimous efforts of the black physicians, black nurses were the first to break the color barrier. In the 1940s, white hospitals had shortages in nursing staff, and began hiring black nurses to fill in the gaps.<sup>113</sup>

The mid-1950s saw the emergence of the civil rights movement, which had two major agenda items for African Americans: desegregation and voting rights. Sit-ins, boycotts, marches, and freedom rides breathed life into the movement. The fight against segregation was deeply intertwined with the national health care debate,<sup>114</sup> and black physicians, as well as other health professionals, were central to the civil rights movement.<sup>115</sup> Yet, it was clear that desegregation would not guarantee racial equality in health care. In 1964, physicians in the civil rights movement formed the Medical Committee on Human Rights, an organization of black and white physicians and healthcare workers, to provide medical aid to civil rights workers in the South; these activist physicians soon had to fight “inadequacies in health care” in the North as well.<sup>116</sup> At the time, the AMA and the NMA were still on opposite sides of the universal health care debate.

### **C. Organized medicine and universal health care**

In 1938, the NMA members were recognized by the AMA to address issues of racial discrimination in health care.<sup>117</sup> Contrary to the AMA’s failure to support compulsory national health insurance,<sup>118</sup> the NMA endorsed national health insurance advanced by Senator Robert Wagner in 1939.<sup>119</sup> Senator James Murray and Congressman John Dingell joined Senator Wagner to introduce the seminal proposal for federal compulsory health insurance financed through social security payroll taxes in 1943, then again in 1945, 1947 and 1949.<sup>120</sup> President Truman, in 1946, pushed for national health insurance through social security legislation.<sup>121</sup> Unlike the NMA, which supported the bill, the AMA spent over \$1 million dollars after President Truman’s presidential victory in

1948 to defeat the Wagner–Murray–Dingell bill.<sup>122</sup> The viability of the health insurance bill disappeared when the majority of its supporters lost their congressional seats due to the AMA’s anti-health reform campaign.<sup>123</sup> Although the AMA maintained an exclusively white organization, it “deemed it politic to court colored non-member doctors for support in its opposition to compulsory health insurance.”<sup>124</sup>

Health care for the aged and impoverished was sparse before Congress passed the Social Security Act Amendments of 1965, simultaneously creating Medicare for the elderly and Medicaid for the poor.<sup>125</sup> There were small federal and state government programs, helped by local governments, charities, and community hospitals, but this healthcare patchwork was not meeting the needs of seniors and low income citizens.<sup>126</sup> The AMA continued its stand against health reform. However, it faced formidable opponents: retirees. Nearly 15,000 senior citizens marched at the 1964 Democratic Convention in Atlantic City.<sup>127</sup> Senior citizens as a group grabbed the heart of Americans, which made it difficult for the AMA to continue its attack on health care reform.<sup>128</sup>

In 1968, the Massachusetts Medical Society, which in 1854 was the first U.S. medical society to admit an African American member, proposed that the AMA amend its *Constitution and Bylaws* to give its Judicial Council the authority to expel constituent societies for racially discriminatory membership policies.<sup>129</sup> The AMA House of Delegates adopted the proposal<sup>130</sup>—finally accepting that the organization had enforcement authority over its affiliated state and county medical associations. In the same year, the Association of Medical Colleges recommended that medical schools increase their enrollment of students who were inadequately represented in the classrooms—that is, African Americans, in particular, and other minorities.<sup>131</sup> In the mid-1990s, the AMA officially recognized the systemic race-based disparities in health care,<sup>132</sup> and it publicly and formally apologized in the late-2000s for its decades of overt discrimination.<sup>133</sup> Yet, the effects of limiting African Americans’ participation in the development of medicine in the United States as physicians, other medical professionals, and patients are evident even today. “For much of the 20th century, racial discrimination deprived African Americans of basic health care and forced them to concentrate on building their own institutions, like fraternal societies, life insurance companies, and community public health movements.”<sup>134</sup>

While healthcare professionals of color fought national associations for membership, other civil rights movement organizers, including the NMA, were fighting on other fronts for health care access. Often, organizers were also at odds with the “elite-led” campaigns lobbying for health reform because they ignored the black workforce and excluded blacks from studies about health reform and its costs.<sup>135</sup> In 1991, the AMA proposed Health Access America, which was a reform to the U.S. health care system that included expansion

of health insurance coverage.<sup>136</sup> Ironically, the AMA opposed President Bill Clinton's health reform plan a few years later.<sup>137</sup>

In its most recent years, the AMA began advocating for increased health care access and broadening its efforts to promote awareness of health care disparities. In 2002, the AMA's Minority Affairs Consortium, an AMA minority special interest group, launched a program to promote the need for more minority physicians and to encourage people of color to select medicine as a career.<sup>138</sup> This minority special interest group finally obtained a voting role in the AMA in 2004—several years after the specialty group came into existence.<sup>139</sup> In 2005, the AMA, along with the NMA and the National Hispanic Medical Association (“NHMA”), created the Commission to End Health Care Disparities to educate health care professionals and physicians about inequality in health care.<sup>140</sup> In 2007, the AMA produced its own literature to establish its position as an advocate for health insurance for all Americans.<sup>141</sup>

American physicians have evolved from largely supporting Republicans to leaning Democratic, due to “increasing percentage of female physicians and the decreasing percentage of physicians in solo and small practices.”<sup>142</sup> Surely the increasing number of minority physicians, many of whom are Democrats, played a large role as well. In 2009, the AMA supported the health reform bills advanced by both the Democratic House and the Senate.<sup>143</sup> Finally in 2010 the historic Patient Protection and Affordable Care Act was passed, along with the Health Care and Education Affordability Reconciliation Act, an addendum which finalized the Patient Protection and Affordable Care Act and included student loan reform as well. President Obama skillfully assessed and conquered the hurdles President Clinton failed to overcome in his effort for universal healthcare, and successfully negotiated with the AMA and other stakeholders in healthcare.<sup>144</sup> Nearly a century after Theodore Roosevelt broached the idea of “universal health care,” it finally came into being.<sup>145</sup>

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#### NOTES

1. Second Nat'l Convention of the Med. Comm. for Human Rights, Mar. 25, 1966.
2. The author uses the terms “black” and “African American” interchangeably to refer to Black Americans in the United States and maintains the terms “Colored” and “Negro” in their historical contexts.
3. JAMES A. GOODSON, *THE CURRENT BLACK MAN: DECADE '70* 122 (1st ed. 1971).
4. *Id.*; see also *History: The Founders Early Years Later Years Recent and Current Programs*, NAT'L MED. ASS'N, [http://www.nmanet.org/index.php?option=com\\_content&view=article&id=3&Itemid=4](http://www.nmanet.org/index.php?option=com_content&view=article&id=3&Itemid=4) (last visited Jan. 11, 2016) [hereinafter *The Founders*] (“In 1951, several white medical colleges in the South and in border states gradually began admitting black students, and within ten years enrollment nearly doubled. The number of black students enrolled in medical school increased from 15.8 percent in 1947–48 to 31.0 percent in 1955–56. By the early 1960s, over half of all southern medical schools (14 out of 26) were admitting black students.”).
5. GOODSON, *supra* note 3.
6. *Id.*

7. *Id.*
8. *Id.*
9. UC Irvine Health School of Medicine Historical Timeline, U.C. IRVINE SCH. OF MED., <http://www.som.uci.edu/historicalTimeline.asp> (last visited Jan. 11, 2016).
10. *The Founders*, *supra* note 4; *see generally The American Medical Association: Power, Purpose, and Politics in Organized Medicine*, 63 YALE L. J. 937 (1954) [hereinafter *Power, Purpose*].
11. NATHANIEL WESLEY, JR., BLACK HOSPITALS IN AMERICA: HISTORY, CONTRIBUTIONS AND DEMISE: A COMPREHENSIVE REVIEW OF THE HISTORY, CONTRIBUTIONS AND DEMISE OF THE MORE THAN 500 BLACK HOSPITALS OF THE 20TH CENTURY 56 (NRW Assocs. Pub. 2010) (noting that West Adams Community Hospital “converted to proprietary status in 1978” and “[o]pened under a new corporation in 1980”); JET MAGAZINE, No. 11, 27 (Dec. 18, 1969) (noting that ten black physicians, Drs. Moses Robinson, George F. Jackson, Herbert Williams, Gerald Nickerson, Basil Arthur, Samuel Cotton, Ralph Bledsoe, Andrew Jackson, William A. Beck, and Ludlow B. Creary, formed a general partnership to build the West Adams Community Hospital with private black capital, citing a critical need for hospital care in the black community in Los Angeles.). *See also* GOODSON, *supra* note 3, at 11, 122.
12. History of Dr. Moses Robinson as recorded by his family on file with author; GOODSON, *supra* note 3, at 122.
13. Max Seham, M.D., *Discrimination Against Negroes in Hospitals*, NEW ENG. J. MED. 940 (1964); VERN L. BULLOUGH & BONNIE BULLOUGH, HEALTH CARE FOR THE OTHER AMERICANS 39 (1982); DAVID BARTON SMITH, HEALTH CARE DIVIDED (1999).
14. Seham, *supra* note 13.
15. TODD SAVITT, MEDICINE AND SLAVERY 148 (1978).
16. HERBERT M. MORAIS, THE HISTORY OF THE NEGRO IN MEDICINE 20 (N.Y. Publishers Co., 1st ed. 1967); *see also* SMITH, *supra* note 13, at 12 (“The plantation system of medical care ended with emancipation.”).
17. Conn. Slave who died in 1798 called “child of God,” *available at* <http://bigstory.ap.org/article/funeral-planned-conn-slave-who-died-1798>.
18. *Id.*
19. *Maynard, Aubre De Lambert (1901-1999)*, MARTIN LUTHER KING, JR. AND THE GLOBAL FREEDOM STRUGGLE, [http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc\\_maynard\\_aubre\\_de\\_lambert\\_1901\\_1999/](http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc_maynard_aubre_de_lambert_1901_1999/) (last visited Jan. 11, 2016); Wolfgang Saxon, *Dr. Aubre de Lambert Maynard, 97, a Surgeon*, N.Y. TIMES (Mar. 23, 1999), <http://www.nytimes.com/1999/03/23/nyregion/dr-aubre-de-lambert-maynard-97-a-surgeon.html>; *Our History*, HARLEM HOSPITAL CENTER, <http://cumc.columbia.edu/harlem-hospital/about/history> (last visited Jan. 11, 2016); SMITH, *supra* note 13, at 24.
20. Saxon, *supra* note 19.
21. SMITH, *supra* note 13, at 25.
22. *James Durham, (1762-?) Physician, Gains Professional Recognition, Chronology*, ONLINE ENCYCLOPEDIA, <http://encyclopedia.jrank.org/articles/pages/4218/Durham-James-1762.html> (last visited at Jan. 11, 2016).
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. MORAIS, *supra* note 16, at 9.
29. *Durham*, *supra* note 22.
30. II JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO 520 (Helen Tunnicliff Catterall ed., 1929) (citing *Macon v. State*, 23 Tenn. 421 (1844)).

31. *Id.*
32. *Id.* at 520-21.
33. *Id.* at 521.
34. *Id.*
35. *Id.*
36. Jill L. Newmark, *Face to Face with History*, NATIONAL ARCHIVES, <http://www.archives.gov/publications/prologue/2009/fall/face.html> (last visited Jan. 11, 2016).
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.*
43. MORAIS, *supra* note 16, at 48-49.
44. *Id.* at 49; *see also* H.C. BRUCE, THE NEW MAN, TWENTY-NINE YEARS A SLAVE, TWENTY-NINE YEARS A FREE MAN 117 (1895) (“It does seem to me, that a Christian Nation, which had received such wealth from the labor of a subjugated people, upon setting them free would, at least, have given them a square meal. Justice seems to demand one year’s support, forty acres of land and a mule each. Did they get that or any portion of it? Not a cent. Four million people turned loose without a dollar and told to ‘Root hog or die!’”).
45. MORAIS, *supra* note 16, at 49; *see also* BRUCE, *supra* note 44, at 116 (“This was the condition of the Colored people at the close of the war. They were set free without a dollar, without a foot of land, and without the wherewithal to get the next meal even, and this too by a great Christian Nation, whose domain is dotted over with religious institutions and whose missionaries in heathen lands, are seeking to convert the heathen to belief in their Christian religion and their Christian morality.”).
46. MORAIS, *supra* note 16, at 49.
47. *Id.* at 50.
48. *Id.*
49. Seham, *supra* note 13; BULLOUGH & BULLOUGH, *supra* note 13, at 181-89.
50. MORAIS, *supra* note 16, at 2 (“Like Negro patients, Negro physicians have been victimized by a racist ideology that has plagued the American scene from colonial time to the present. With few exceptions, they have been excluded from the mainstream of American medicine.”); BULLOUGH & BULLOUGH, *supra* note 13, at 43.
51. Seham, *supra* note 13.
52. *Id.* *See also* BULLOUGH & BULLOUGH, *supra* note 13, at 50 (“Perhaps as important as poverty in contributing to the inequalities of health care, as far as the blacks are concerned, are past and present practices of discrimination.”).
53. *See generally* *Life Expectancy*, CDC, <http://www.cdc.gov/nchs/fastats/life-expectancy.htm> (last updated Apr. 29, 2015).
54. W. MICHAEL BYRD & LINDA A. CLAYTON, AN AMERICAN HEALTH DILEMMA: A MEDICAL HISTORY OF AFRICAN AMERICANS AND THE PROBLEM OF RACE, BEGINNINGS TO 1900, at 27 (2000).
55. Seham, *supra* note 13.
56. BYRD & CLAYTON, *supra* note 54.
57. *Racism in Medicine and Health Parity for African Americans: “The Slave Health Deficit,”* NAT’L MED. ASS’N, [http://www.ibrarian.net/navon/paper/\\_The\\_Slave\\_Health\\_Deficit\\_.pdf?paperid=4770286](http://www.ibrarian.net/navon/paper/_The_Slave_Health_Deficit_.pdf?paperid=4770286) (last visited on Jan. 11, 2016) (Dr. Rodney Hood former president of the National Medical Association, 2005, on the “Slave Health Deficit”); *see also* BYRD & CLAYTON, *supra* note 54, at 43 (“The roots of inequitable and unequal health care and health systems for Blacks stretch back to slavery”); SUSAN L. SMITH, SICK AND TIRED OF

BEING SICK AND TIRED: BLACK WOMEN'S HEALTH ACTIVISM IN AMERICA, 1890-1950 17 (1995) [hereinafter SMITH, SICK AND TIRED].

58. MORAIS, *supra* note 16, at 4.
59. "Since World War II, health services for Blacks (three-fourths of whom are either uninsured or underinsured, or totally dependent on diminishing government and public aid health insurance programs) and the poor have been shaped and dictated by several factors. Most important are the lack of fully trained, culturally competent physicians of quality willing to serve African Americans; the lack of adequate numbers or distribution of quality private or public outpatient health care facilities to serve the Black community; a U.S. tradition of underfunding and restricting the activities and delivery functions of health departments and other publicly funded health facilities; personal and/or institutional racial discrimination within the health care system; African American dependency for inpatient and primary health care on a loose and inconstant (many urban U.S. communities do not have public hospitals) network of underfunded, overcrowded, deteriorating public and voluntary hospitals; the inadequacies of episodic, sometimes absent, charity health services to plug gaps in the public health care sector to meet vital Black community needs; and non-existent or meager funding at local, state, or federal levels for health care rendered to indigent, disadvantaged, or working poor patients." BYRD & CLAYTON, *supra* note 54, at 43–44.
60. Beatrix Hoffman, *Health Care Reform and Social Movements in the United States*, 93 AM J PUBLIC HEALTH 75 (2003), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447696/#r5>.
61. BYRD & CLAYTON, *supra* note 54, at 44.
62. *Id.* at 17.
63. *Id.* at 44.
64. *Id.* at 17; Stan Dorn, Michael A. Dowell & Jane Perkins, *Anti-Discrimination Provisions and Health Care Access: New Slants on Old Approaches*, 20 CLEARINGHOUSE REV. 439, 439 (1986) ("One of the cruel ironies of today's health care system is that the very groups most in need of care are those least able to get it.").
65. *CDC Health Disparities and Inequalities Report: United States 2011*, CDC, at 1, available at <http://www.cdc.gov/mmwr/pdf/other/su6001.pdf> [hereinafter *Health Disparities*].
66. THE GREENWOOD ENCYCLOPEDIA OF AFRICAN AMERICAN CIVIL RIGHTS 139 (Charles D. Lowery & John F. Marszalek eds., 2003).
67. MORAIS, *supra* note 16, at 4; see also BULLOUGH & BULLOUGH, *supra* note 13, at 46 ("One of the areas in which the past history of discrimination, repression, and suspicion has most effectively left its mark upon the black of today is in the area of health care.").
68. Marsha Lillie-Blanton & Caya B. Lewis, *Policy Challenges and Opportunities in Closing the Racial/Ethnic Divide in Health Care*, THE HENRY J. KAISER FAMILY FOUNDATION (2005), <https://kaiserfamilyfoundation.files.wordpress.com/2013/01/policy-challenges-and-opportunities-in-closing-the-racial-ethnic-divide-in-health-care-issue-brief.pdf>.
69. *Id.*
70. *The Founding of the AMA*, AMA, <http://www.ama-assn.org/ama/pub/about-ama/our-history/the-founding-of-ama.page> (last visited Jan. 11, 2016).
71. *Power, Purpose*, *supra* note 10, at 938; see also BYRD & CLAYTON, *supra* note 54, at 416.
72. *Id.* at 955 (citing Huston, *AMA is Potent Force Among the Lawmakers*, N.Y. TIMES, June 15, 1952, at § 4 (Magazine), at 7 (stating "[s]ome rather expert observers of the art of lobbying as practiced in Washington assert that the AMA is the only organization in the in the country that could marshal 140 votes in Congress between sundown Friday night and noon on Monday. Performances of this sort have led some to describe the AMA lobby as the most powerful in the country"); see also BYRD & CLAYTON, *supra* note 54, at 59 ("By the end of this era, in 1929, White organized medicine was a major political and social force. Not only had the medical profession regulated itself, but it also had gained control of all aspects of the health care system necessary to provide scientifically sound medical services to the population it chose to serve.").

73. *Power, Purpose, supra* note 10, at 947-48.
74. *Id.* at 939-40.
75. R.B. Baker, *African American Physicians and Organized Medicine, 1846-1968: Origins of a Racial Divide*, AMA (July 16, 2008).
76. BYRD & CLAYTON, *supra* note 54, at 59 (“Barred from admission to local medical societies, African American physicians were forced to sit on the sidelines observing the phenomenal growth of both the profession and the health care industry.”).
77. Baker, *supra* note 75.
78. *Id.*
79. *Id.*
80. *See Power, Purpose, supra* note 10, at 941 n.22 (noting that most southern societies of the AMA excluded blacks from membership, but “the AMA as a national organization has failed to take steps toward a fundamental change in membership policy,” asserting its “inability to act, pointing out that each county society has absolute control over its own membership qualifications.”).
81. BULLOUGH & BULLOUGH, *supra* note 13, at 211.
82. *Id.*
83. *Pre-Social Security Period: Traditional Sources of Economic Security*, SOC. SEC. ADMINISTRATION, <http://www.ssa.gov/history/briefhistory3.html> (last visited Jan. 11, 2016).
84. *AMA History Timeline*, AMA, <http://www.ama-assn.org/ama/pub/about-ama/our-history/timelines-ama-history/1921-1940.page?> (last visited Jan. 11, 2016).
85. Hoffman, *supra* note 60.
86. *Id.*
87. SMITH, *supra* note 13, at 12.
88. MORAIS, *supra* note 16, at 50.
89. Louis W. Sullivan & Ilana Suez Mittman, *The State of Diversity in the Health Professions a Century After Flexner*, ACADEMIC MED., 85 (2010), available at <http://www.ncbi.nlm.nih.gov/pubmed/20107349>; LENWORTH N. JOHNSON & O.C. BOBBY DANIELS, BREAKING THE COLOR LINE IN MEDICINE, AFRICAN AMERICANS IN OPHTHALMOLOGY 24 (2002) (quoting Flexner as stating: “The practice of the Negro doctor will be limited to his own race, which in its turn will be cared for better by good Negro physicians than by poor white ones. But the physical well-being of the Negro is not only of moment to the Negro himself. Ten million of them live in close contact with sixty million whites. Not only does the Negro himself suffer from hookworm and tuberculosis; he communicates them to his white neighbors, precisely as the ignorant and unfortunate white contaminates him. Self-protection not less than humanity offers weighty counsel in this matter; self-interest seconds philanthropy. The Negro must be educated not only for his sake, but for ours. He is, as far as the human eye can see, a permanent factor in the nation.”), available at <http://medicine.missouri.edu/ophthalmology/uploads/ch06.pdf>.
90. Baker, *supra* note 75; MORAIS, *supra* note 16, at 40.
91. MORAIS, *supra* note 16, at 44.
92. *Id.* at 52-53. *See also* Baker, *supra* note 76.
93. *Id.*
94. Baker, *supra* note 75; *see also Power, Purpose, supra* note 10, at 941 n. 22.
95. BULLOUGH AND BULLOUGH, *supra* note 13, at 42; SMITH, *supra* 13, at 33.
96. BULLOUGH AND BULLOUGH, *supra* note 13, at 43.
97. *Id.*
98. BYRD & CLAYTON, *supra* note 54, at 413.
99. *Id.*

100. SMITH, SICK AND TIRED, *supra* note 57, at 21; VANESSA NORTHINGTON GAMBLE, MAKING A PLACE FOR OURSELVES, THE BLACK HOSPITAL MOVEMENT, 1920-1945 17 (1995).
101. GAMBLE, *supra* note 100, at 15-17, 132, 179.
102. *Id.* at 17, 37; BYRD & CLAYTON, *supra* note 54, at 6 (“By the turn of the century, Blacks, in response to segregation and discriminatory caste status in the health system ... established the National Medical Association (NMA) in 1895, which because of legal and forced segregation was an almost exclusively Black health professions organization composed of physicians, dentists, and pharmacists.”).
103. GREENWOOD ENCYCLOPEDIA, *supra* note 66, at 369.
104. *Id.*
105. MORAIS, *supra* note 16, at 5, 39-40.
106. BULLOUGH & BULLOUGH, *supra* note 13, at 191.
107. GAMBLE, *supra* note 100, at 35.
108. *Id.*
109. WESLEY, JR., *supra* note 11, at 95.
110. *Id.* at 159, 233 (quoting Hiram Sibley, Exec. Dir., Hospital Planning Council, “The Negro hospital is dead. The Civil Rights Act killed it.”).
111. GAMBLE, *supra* note 100, at 3.
112. Baker, *supra* note 75.
113. SMITH, *supra* note 13, at 41-42.
114. SMITH, SICK AND TIRED, *supra* note 57, at 169.
115. SMITH, *supra* note 13, at 32.
116. Hoffman, *supra* note 60; BYRD & CLAYTON, *supra* note 54, at 203.
117. Baker, *supra* note 75.
118. *Power, Purpose, supra* note 10, at 1007-12.
119. Baker, *supra* note 75; BULLOUGH & BULLOUGH, *supra* note 13, at 215 (noting the Wagner Bill failed to get out of committee, but Senator Wagner continued to introduce it in subsequent sessions).
120. Carleton B. Chapman & John M. Talmadge, *Historical and Political Background of Federal Health Care Legislation*, 35 LAW AND CONTEMP. PROBS. 334, 343 (1970); Hoffman, *supra* note 60.
121. SMITH, *supra* note 13, at 46.
122. Hoffman, *supra* note 60.
123. *Id.*
124. *Power, Purpose, supra* note 10, at 942 n. 22; *see also*, BYRD & CLAYTON, *supra* note 54, at 278-79, xxv (“The National Medical Association (NMA) and the American Medical Association (AMA) for example, are often diametrically opposed in philosophy and ideology regarding health needs, health care/services, and health rights of disadvantaged populations. Of numerous health professions that often divide along lines of “Black caucuses” or separate organizations, these are the most prominent examples.”).
125. R. A. Rettig, *Socioeconomic Impact of the End Stage Renal Disease Program in the USA. Payment and Quality of Care*, 14 NEFROLOGIA 14 (1994) (noting Medicare and Medicaid were both adopted in 1965); *see also* Marlyn J. Fields et al., *Extending Medicare Coverage for Preventive and Other Services: Comm. on Medicare Coverage Extensions, Div. of Health Care Servs.*, INST. OF MED. 15 (2000) (finding that Medicare was created to serve the needs of older Americans who could not pay for health care or obtain private insurance, and Medicaid was created to provide health insurance for low income individuals, mainly poor mothers with children and low-income disabled).
126. *Social Security History*, SOC. SEC., <http://www.ssa.gov/history/ssa/lbjmedicare1.html> (last visited Jan. 11, 2016).
127. Hoffman, *supra* note 60.

128. *Id.*
129. Baker, *supra* note 75.
130. BYRD & CLAYTON, *supra* note 54, at 402.
131. Baker, *supra* note 76; *see also Race and the AMA: A Chronology*, AMA, <http://www.ama-assn.org/ama/pub/about-ama/our-history/timelines-ama-history/race-ama-a-chronology.page?> (last visited Jan. 11, 2016).
132. Marianne Engelman Lado, *Unfinished Agenda: The Need for Civil Rights Litigation to Address Race Discrimination and Inequalities in Health Care Delivery*, 6 TEX. F. ON C.L. & C.R. 1, 1, 6-7 (2001).
133. Jacob Goldstein, *AMA Apologizes for Discrimination Against Black Doctors*, WALL ST. J. (July 11, 2008, 7:34 AM), <http://blogs.wsj.com/health/2008/07/11/ama-apologizes-for-discrimination-against-black-doctors/>; *American Medical Association Apologizes For Past Inequality Against Black Doctors*, AMEDNEWS.COM (July 28, 2008), <http://www.amednews.com/article/20080728/profession/307289974/6/> (“For more than 100 years, many state and local medical societies openly discriminated against black physicians, barring them from membership and from professional support and advancement. The American Medical Association was early and persistent in countenancing this racial segregation.”).
134. Hoffman, *supra* note 60 (citing David Beito, *From Mutual Aid to the Welfare State: Fraternal Societies and Social Services, 1890–1967* (Chapel Hill: University of North Carolina Press 2000) and M. S. Stuart, *An Economic Detour: A History of Insurance in the Lives of American Negroes* (College Park: University of Maryland Press 1969); GAMBLE, *supra* note 100; SMITH, SICK AND TIRED, *supra* note 57).
135. Hoffman, *supra* note 60.
136. *AMA History Timeline*, *supra* note 84.
137. Kent Garber, *AMA Healthcare Reform Bill A ‘Starting Point,’* U.S. NEWS & WORLD REPORT (July 29, 2009, 3:58 PM), <http://www.usnews.com/news/national/articles/2009/07/29/ama-healthcare-reform-bill-a-starting-point>.
138. *Id.*
139. *Id.*
140. *Id.*
141. *Expanding Health Insurance Coverage and Choice: The AMA Proposal for Reform*, AMA (2008), <http://academic.udayton.edu/LawrenceUlrich/315Articles/AMA2008brochure.pdf>.
142. Adam Bonica et al., *The Political Polarization of Physicians in the United States: An Analysis of Campaign Contributions to Federal Elections, 1991 Through 2012*, 174 JAMA INTERNAL MEDICINE 1308 (2014) (“Between 1991 and 2012, the political alignment of US physicians shifted from predominantly Republican toward the Democrats.”).
143. Jeffrey Young, *AMA Conditionally Backs House Health Bill*, THE HILL (Nov. 5, 2009), <http://thehill.com/homenews/house/66569-ama-conditionally-backs-house-healthcare-bill>; Jeffrey Young, *AMA Endorses Senate Healthcare Reform Bill*, THE HILL (Dec. 21, 2009), <http://thehill.com/homenews/senate/73249-ama-endorses-senate-health-bill>; *but see* Salomeh Keyhani, M.D., M.P.H. & Alex Federman, M.D., M.P.H., *Health Care Reform and the AMA*, 362 N. ENGL. J. MED. 2230 (2010), available at <http://www.nejm.org/doi/full/10.1056/NEJMc1001513> (concluding from survey results that “[a]lthough the AMA is the most visible organization representing physicians, it did not represent the majority of physicians’ views on coverage expansions in recent reform efforts.”).
144. Jonathan Oberlander, *Long Time Coming: Why Health Reform Finally Passed*, 29 HEALTH AFFAIRS 1112 (2010), available at <http://content.healthaffairs.org/content/29/6/1112> (“The administration negotiated deals with health industry groups to support reform in exchange for the promise of having millions of newly insured patients to treat.”).
145. Dayna Bowen Matthew, *Defeating Health Disparities*, 113 W. VA. L. REV. 31, 31-32 (2010).



of itself as an elite political force or intellectual vanguard among political radicals. Instead the Guild has always functioned as a supporter and defender of social movements led by the people themselves. It has consistently stood shoulder-to-shoulder with protesters and reformers—from labor activists in the '30's to the Freedom Riders in the '60s to the 2011 Occupy protesters to #BlackLivesMatter today—but never in front of them. It is on-hand when movements arise but never allows itself to be wholly defined by just one movement. For this reason, when the impetus behind a particular movement begins to wane (as the Anti-war movement after the troops came home from Vietnam, for instance) the Guild, always fighting injustice on many fronts, carries on. Lobel combines history and analysis in a way that shines new light on how the Guild has functioned over time, describing the reasons for both its shortcomings and successes. More than anything else, he explains the secret to the Guild's longevity—something which, at numerous points in its history, very few could have reasonably predicted.

NLGR is proud that one of our editorial board members, Deborah Willis, was awarded the Arthur Kinoy Award for her twenty years of service to this law review at the Guild's 2015 convention. During her acceptance speech, Debbie inspired the audience with her thoughts about the Guild, *NLGR*, and what constitutes good legal writing. A revised version of her remarks are printed here in full.

“The Color of Pain: Blacks and the U.S. Health Care System—Can the Affordable Care Act Help to Heal a History of Injustice?” by Jennifer M. Smith focuses on a particularly virulent dimension of racism in the U.S. that has never gotten enough public attention: anti-black discrimination in the health care system. Part I of Smith's article, featured in this issue, explores the history, dating back to slavery, of how black people have been excluded from access to health care and denied entry to health care professions. Part II, which will appear in our next issue, examines whether and to what extent the Patient Protection and Affordable Care Act (“Obamacare”) will improve upon this tragic legacy .

—Nathan Goetting, *editor in chief*

# NATIONAL LAWYERS GUILD REVIEW

## **Submission Guidelines**

*National Lawyers Guild Review* is published quarterly by the NLG. Our readership includes lawyers, scholars, legal workers, jailhouse lawyers and activists, and with that audience in mind, we seek to publish lively, insightful articles that address and respond to the interests and needs of the progressive and activist communities. We encourage authors to write articles in language accessible to both legal professionals and intelligent non-experts. Submissions that minimize legal jargon are especially encouraged.

We use *The Chicago Manual of Style*. Citations should appear as endnotes and follow Bluebook style. Citations should identify sources completely and accurately. Lengthy textual commentary and string cites are discouraged.

Though we are open to manuscripts of any length, articles typically run about 7,000 words. Pages in issues of NLGR generally contain about 400 words.

Submit your manuscript in Microsoft Word format electronically as an attachment to an email. Include a short sentence or two describing your professional affiliation, background and area(s) of legal specialization. This description will appear with the article if it is accepted for publication. Please also include a phone number and ground mail address.

Manuscripts should be sent to the Articles Editor at [nlgreview.articles@nlg.org](mailto:nlgreview.articles@nlg.org), whereupon they will be forwarded to the Editor-in-Chief for review by members of the NLGR's editorial board. If accepted, manuscripts will be edited, and the edited manuscripts will be returned to the author for review; however, because of production schedules, late changes are prohibited and authors generally do not see typeset proofs. We make every effort to clear any changes with the author.

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