Guild Notes, *the national newspaper of the National Lawyers Guild.)*

There is a saying in the New China that "to be attacked by the enemy is a good thing, not a bad thing." If the U.S. military command and the National Lawyers Guild (NLG) Southeast Asia Project are enemies–and this is certainly the way the military has chosen to define our relationship–then things couldn't be better for us in Asia.

In the Philippines, the American commander of the Subic Bay Naval Base suggested that the Philippine police detain our project staff for alleged violations of martial law, and allowed them to enter the base to make their arrest. In Okinawa our people report an active, verbal, red-baiting campaign aimed at discrediting the Project, based on the House Un-American Activities Committee (HUAC) allegations of the early '50s that the Guild is a Communist Party front. In Iwakuni, Japan, the chaplain's page of the **Torii Teller** (the official publication of the Marine Air Wing stationed there) featured a new column entitled "Reasoning based on facts" in which the following "facts" were revealed to the readership:

> "Did you know....
> 1. That the House Committee on Un-American Activities has identified the National Lawyers' Guild as the foremost legal bulwark of the Communist Party of the United States?
> 2. That the Build has representatives at a number of U.S. bases in the Far East, including Iwakuni, allegedly to provide free civilian legal counsel to U.S. servicemen? Consider this if you have to choose legal counsel. Mr. Tim Coulter, while coordinator of the National Lawyers' Guild military law project in New York, discussed the work of the Guild lawyers in the G.I. movement. He stated their job is mainly concerned with political issues, rather than legal or constitutional issues. In his opinion, the critical issues are political questions of power and policy, only remotely concerned with questions of the individual's legal status or rights.
> Compare Mr. Coulter's statement with opinions of Marines here at Iwakuni who have been represented by Guild lawyers. Some of these Marines have made sworn statements to the effect that they felt they had been used by their lawyers–politically exploited for

Consider Lee King, a Black GI currently in the brig in Okinawa awaiting trial. Lee was subjected to Army racism for five years before he finally began to fight back. He initiated the removal of two racist warrant allegations, and equal space for a rebuttal. We still await an answer.

Reber Boult, a NLG lawyer at Iwakuni, has written to the Commander of the base demanding a retraction or proof of all officers from their commands. One regularly called him "colored boy" and chattered about the slaves his granddaddy used to own. The other assigned Lee and other Black men to work in the sun and white men on the same detail to work under an awning, claiming that Blacks didn't sunburn as easily. Lee filed Article 138's against them, a legal right he was guaranteed and knew how to exercise.

Murder Charge

Then one night Lee's 20-month-old son fell out of his crib, fractured his skull on the concrete floor, and died. After three months of investigation, the CID (Criminal Investigation Division of the Army) charged Lee with murder.

To substantiate the charge, they rooted around for months trying to find a witness to child-beating, which was difficult since Lee was not a childbeater. He was not even at home the night of his child's death. But eventually they got a guy, who Lee had been drinking with at home that afternoon, to testify that he'd heard a thud from the child's room when Lee went in to answer the child's cries. Their means of eliciting this "testimony" were primitive: the GI was told that a 14-year-old girl had been raped by a Black man and if he would testify against Lee, he would not be charged with the crime, which carried a 15-year sentence.

This sordid story was revealed at the preliminary hearing, along with the "friend's" partial retraction of his story and the autopsy report that the cause of death could have been the fall. But the Army, whose desire for revenge seems to know few bounds in this matter, presses on.

We are defending Lee King, and his right to exercise the rights guaranteed him by the UCMJ (The Uniform Code of Military Justice) without being subjected to such an incredible frame-up. We will continue to defend GIs and to expand their rights. For this, the military attacks us and will continue to attack us. The more effective we are, the more viciously they will attack. We will fight back, and will not leave Asia voluntarily unless we are following the GIs home.

Bill Kurtis

Bill Kurtis, West Coast correspondent for CBS news, is eminently qualified to discuss the practical, political and legal problems of protecting the First Amendment guarantees of freedom of the press. After receiving his undergraduate degree in journalism from the University of Kansas in 1962, Kurtis attended the Washburn University School of Law, from which he obtained his J.D. He passed the Kansas Bar in 1966.

Upon completion of his legal education, Kurtis became a reporter for WBBM-TV in Chicago—a job which called upon him to cover many major political events of the late 1960s. From the ravaging urban riots in several American cities, to the 1968 Democratic Convention in Chicago and the ensuing trial of the Chicago 7, Kurtis' journalistic talents, augmented by his legal background, combined to produce award-winning coverage of the most pressing social and political stories of the day. For his documentary "Tokyo Rose: Two Years Later," Kurtis received the Dumond International Journalism Award followed by an Emmy Award for his insightful coverage of the Chicago Conspiracy Trial.

Moving to CBS in 1970, Kurtis regularly provided perceptive reporting at the trials of Charles Manson, Angela Davis, and Juan Corona. Presently, Kurtis is assigned to the Pentagon Papers trial of Daniel Ellsberg and Anthony J. Russo.

In addition to covering both national conventions last year in Miami, and the Managua earthquake, Kurtis has covered virtually every major news story on the West Coast in the last three years.

(The following excerpts were compiled from reports on the Chicago 7 Conspiracy trial which Bill Kurtis made while working for WBBM-TV in Chicago during 1969-1970.)

[The defendants are using their trial] as a forum for their views on Vietnam, racism, poverty, and what they called the injustices of the system....

Like most trials, it's based on an adversary system. By legal definition, adversary means opponent, contestant, an opposite party.

At its heart are rigid rules and the demand of respect for the system itself, before a judge who governs the whole proceeding and maintains fairness.

But adversary also means enemy or foe. And that might fit this trial a little better. For in the conspiracy trial, the adversary system

has been stretched to its limits and sometimes beyond....

Lack of Respect

From that first day, a pattern developed—it was clear the defendants, thinking they were charged for their beliefs (they called it a political trial), were not going to show much respect for this system that brought them to Chicago—they refused to stand when the Judge came in that first day, during opening arguments Abbie Hoffman blew the jury a kiss, and Tom Hayden raised his fist when introduced. It was clear the Judge liked neither them nor their actions. He admonished their laughing in court, "This is not the plaza downstairs; I will not tolerate this sort of thing...."

With each outburst, the trial took on a new dimension—suddenly the system itself seemed on trial. Its very ability to function, in the face of these defendants who defied that ability, became the issue, and again, perhaps like August 1968, the system found itself with an ugly dilemma: give in to demands or take measures to stop them.

Judge Hoffman took those measures....

A 'Right' To Talk

[One] morning when Bobby Seale entered the courtroom, he spoke to followers in the gallery and said, "Just hold your cool. I've got a right to speak out. If anybody attacks you, you have a right to defend yourself. But I've got a right to talk."

Seale persisted in exercising that right for days with almost daily interruptions of court proceedings, demanding his constitutional rights that he be allowed to represent himself and cross-examine witnesses.

Extra marshals were in the courtroom, and when Seale jumped up to interrupt an argument by government attorney Richard Schultz, several marshals forcibly put him back in his chair. It tipped and rolled backwards slightly as he struggled with the marshal.

Defense attorney Kunstler said, "Let the record show Mr. Seale was attacked by a marshal in the courtroom...."

The argument lasted nearly an hour before Seale's final interruption. Judge Hoffman [ordered the marshals to] "take him into the room and deal with him as he should be dealt with in this circumstance."

A white cloth rag was tied around his mouth; it was later reinforced with adhesive tape. His arms and legs were handcuffed to a metal folding chair placed at one corner of the defense table.

As he sat before the jury, Judge Hoffman explained, "It is necessary on occasion to impose stern measures to maintain order."

Bobby Seale's gagging is symbolic to both sides in this conspiracy trial which stems from the Democratic National Convention.

Function Vs. Dissent

In a single act, it represents to the defense the gagging of free speech and dissent; and to the government, it represents a critical test of the establishment's ability to function, especially in the face of those who doubt its ability to function.

That kind of confrontation may have been what the Democratic National Convention was all about....

The feeling of what the five months meant was found in the final arguments.

The defense [told the jury], "Your verdict will, in effect, determine the future of the principle of free speech in America.

"We are living in extremely troubled times: an intolerable war has split this nation; racism and poverty at home have been the causes of despair and discouragement. These problems do not go away by destroying their critics.

"You can crucify a Jesus Christ, poison a Socrates, hang a John Brown, you can assassinate a John F. Kennedy or Martin Luther King, but the problems remain.

"It is your responsibility to see that these men remain able to live as masters of their souls, able to live and speak freely. Perhaps by your verdict, singer Judy Collins will never again have to say the words, 'When will they ever learn.'"

Lack Of Communication

In trying to reach some conclusions about this trial, a popular phrase keeps coming back: a lack of communication. There seemed to be a gap of understanding between Judge, Government, and Defense, with attempts to restrict the flow of information instead of increase it.

The trial seemed to be a continuing confrontation with each side on the extreme edge of some middle ground of justice that was never reached.

The defendants seemed to hold a mystical power to force the system into an unattractive, embarrassing position.

The defendants would say it's because the system *is* unattractive. The government would say the appearance was caused by unorthodox defendants.

If the conspiracy trial became the test of the juridical process to handle unorthodox defendants, perhaps it was [also] a reflection of a system trying to handle unorthodox citizens.

Barbara Babcock

Prof. Barbara A. Babcock received her B.A. in 1960 from the University of Pennsylvania and her law degree in 1963 from Yale. She was valedictorian, Phi Beta Kappa, president of the Debate Council, and a Woodrow Wilson Scholar at Penn, and at Yale was on the Law Journal and received the Harlan Fiske Stone Prize.

Upon graduation from Yale she clerked for Judge Henry Edgerton of the U.S. Court of Appeals, District of Columbia Circuit. She then joined the Washington law firm led by famed attorney Edward Bennett Williams, where she specialized in criminal law litigation.

Following her tenure in the Williams firm, she was Staff Attorney for the D.C. Legal Aid Agency. During her two years with the Agency she represented approximately 200 people charged with serious crimes, conducting defenses before juries in about 60 cases. This prepared her for her next position, that of Director, D.C. Public Defender Service (PDS); this organization was the "descendant" of the D.C. Legal Aid Agency. The PDS has 44 attorneys, 16 social workers, 14 investigators, and is the major channel for the defense of serious criminal cases in the District of Columbia. As Director, Prof. Babcock conducted the staff training program, carried out administrative and policymaking duties, and tried major felony cases.

Since her resignation in 1972, she has been a professor of civil procedure and sex discrimination at Stanford. She recently finished a book, to be published this fall, entitled **Sex Discrimination: Causes and Remedies.**

Along with Prof. Babcock's other activities, she was a visiting Professor at Georgetown and Yale Law Schools, and is a member of the National Legal Aid and Defender Association Executive Board, the Criminal Law Council of the American Bar Association, the Committee on the Operation of the D.C. Bail Reform Act, and the Advisory Council to a Ford Foundation on the administration of law and justice.

While at Stanford she has been a popular guest speaker on criminal justice and sex discrimination, her major areas of expertise. She is also currently sponsoring a SWOPSI (Student Workshop on Political and Social Issues) course on alternatives in the legal profession for social activists.

(Perhaps the most basic constitutional right in criminal cases is the right to counsel. This usually refers to the public defender or

other appointed counsel programs. In an informal class discussion recently, Barbara Babcock comments on the difference between what our legal system promises the poor and what they actually receive.)

A lot of people who are in the system are getting severely misrepresented and sold down the river, because they're poor and not because of what they did....

Poor people accused of crimes are a special class. There's an element of fear and hostility towards them that is present to a much lesser degree towards poor people with civil law problems. . . . Society does not want to give the resources to represent poor defendants, because the things they are charged with are frightening and hateful....

Law has a tremendous educative effect on the people that deal with it. . . . If we gave everybody an adequate lawyer, even the people who were convicted would know that they had had the benefit of fairness and justice; and that really *does* make a difference, a step towards rehabilitation if you will. . . . [The quality of defense] certainly makes a difference in their attitudes when it's bad. . . . Poor people who go through the system today, even those who get lenient sentences, know that they have not "had" a lawyer in actual effect, and that their case was never really looked at. *This really* creates a lot of disrespect and hostility for the law....

Cynical Lawyers

Public defending grinds lawyers down and wears them out, and they sometimes become more cynical about their clients than even the judges, the social workers, the court personnel, and the prosecutors....

The system is not geared for the poor to get adequate representation. The lowliest clerks will resist you. The judge will give you a very hard time day after day, and there are lots of ways a judge can give you a hard time that will never appear on the record, that he could never get reversed for....

Although it is very seldom that you represent an accused person who is totally innocent of doing anything illegal, indigent defendants *are* usually overcharged, in order to induce guilty pleas to lesser charges. Typically, the authorities take one act, break it up into six crimes, and charge them all . . A lot of people are pleaded guilty in a mill-like fashion who could have gotten a better plea if the lawyer had done his job....

Poor people accused of crime in this country have never ever been adequately represented, and I don't think that that is basically understood by people. The person on the street believes that poor people get good representation, and in fact that poor people accused of big crimes are ripping off the system by getting good lawyers and getting off when they're really guilty. People believe this because it's comforting to believe, but they really should be disabused of the notion. . . .

The poor don't 'get a lawyer' in any traditional sense of the term. The ABA Canon of Ethics describes what the function of a lawyer is, and it's to be a learned counselor, a wise friend, and to really advise a person about all the options available, in addition to being in court and signing the papers on the day of trial. Most poor people don't even get these basic primary things....

In most places, the function of a public defender is to plea bargain; and he has no interest in what is a good bargain for the individual client, because he doesn't know anything about the individual client. He might not even see him until the day he arrives in court. The public defender doesn't have the tools to bargain *with*, because he doesn't have the resources to investigate the individual case....

Overwhelming Caseloads

In the vast majority of defender offices the lawyers have such overwhelming caseloads that basic little things like adequate pretrial preparation just don't get done....

When we're talking about the criminal justice system we're really talking about people pleading guilty, about plea bargaining. And to plea bargain adequately, you've got to have something to bargain *with*, like a defense you've worked out in advance with witnesses you have under subpoena. Otherwise you don't get a fair plea bargain at all...

I could name on the fingers of one hand the adequate public defender programs in existence today. *Almost every lawyer representing the poor who stands up in court and puts his name on court papers and stands beside a person as if he had been that person's counselor is telling a lie.*

It's hard to be a good public defender, even given the ability and resources. You suffer the quiet mistrust from the client that comes from being known as the "government lawyer" because of who pays your salary. Also, you are in court every day with the same prosecutors and judges. Any particular client will be gone tomorrow, but you and other clients will be back. It's very hard to be willing to antagonize that judge and the prosecutor for the sake of one client, especially if he is an unattractive personality....

Ramsey Clark

Ramsey Clark was born December 18, 1927 in Dallas, Texas. He is the son of Tom C. Clark who later became an Associate Justice of the U.S. Supreme Court.

He attended public schools in Dallas, Los Angeles and Washington, D.C., and after serving in the U.S. Marine Corps in 1945 and 1946, Clark received his B.A. from the University of Texas in 1949. He received both an M.A. in American History and a J.D. from the University of Chicago in 1950.

Clark was admitted to the State Bar of Texas in 1951 and was admitted to the Bar of the U.S. Supreme Court in 1956. From 1951 to 1961, he practiced private law in Dallas.

From 1961 to 1965, Clark served as Assistant Attorney General, heading the Lands Division of the Justice Department after being appointed by President John F. Kennedy. In 1965, President Lyndon Johnson nominated Clark as Deputy Attorney General, and Clark held that position until the Senate confirmed his nomination as U.S. Attorney General in 1967.

After his tenure as Attorney General had expired in 1969 when the Nixon Administration took over, Clark has been with the law firm Paul, Weiss, Rifkind, Wharton and Garrison.

He is married and has two children.

(The following is excerpted from Ramsey Clark's book **Crime In America.***)*

The crucial test of American character will be our reaction to the vastness of crime and turbulence in which we live. It will not be an easy test. The obvious and instinctive reaction is repressiveness. It will not work. You cannot discipline this turbulent, independent young mass society as if it were a child. Repression is the one clear course toward irreconcilable division and revolution in America. The essential action is to create a wholesome environment....

To fail this test is to destroy liberty for the individual in mass society. To pass it is to liberate the powers of the individual for the good of mankind—to provide even for the most miserable among us the chance to fulfill himself, to do all he can, to be whatever he has within him to be....

Reason fades as fear deprives us of any concern or compassion for others. Fear can destroy our desire for justice itself. Then there is little hope. We are prepared to deny justice to obtain what unreasoning, overpowering emotion falsely tells us will be security: arm yourself, suppress dissent, invade privacy, urge police to trick and deceive, force confessions, jail without trial,