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Fighting Murder and Racism in Unions

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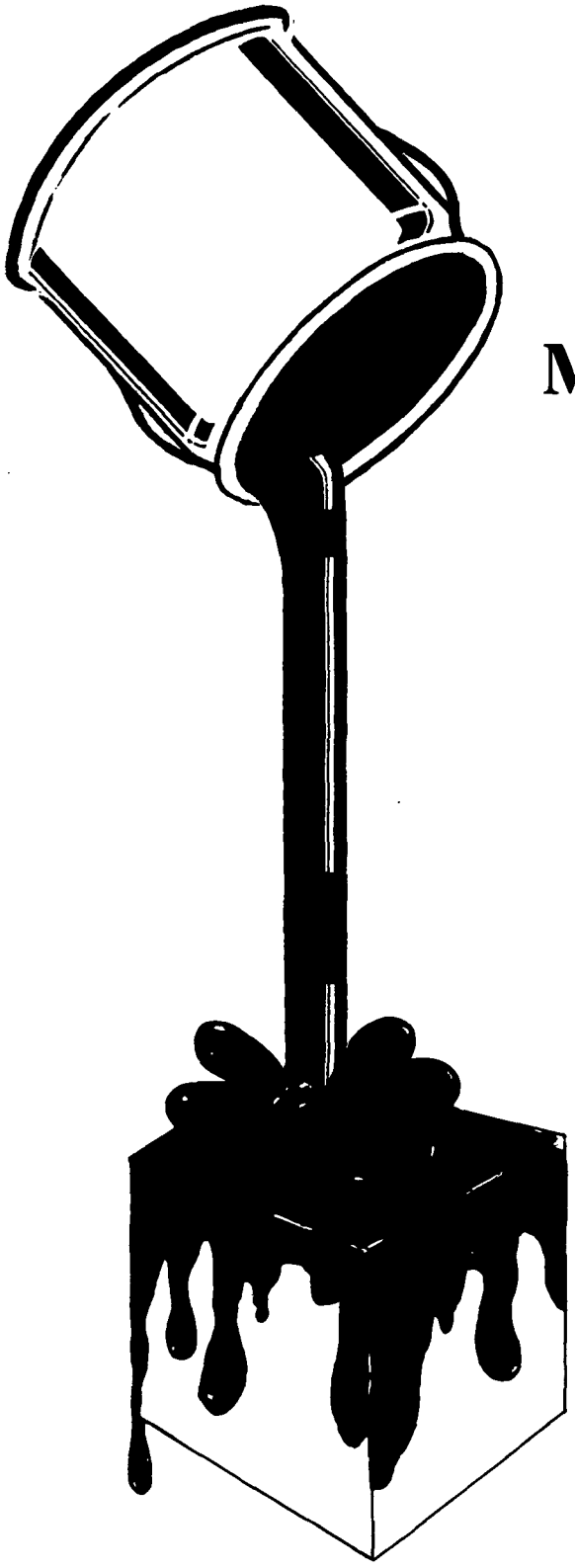

An interview with Francis J. McTernan

Fighting Murder and Racism in Unions

Interviewed by
Ann Fagan Ginger

AFG Frank McTernan is probably a classic example of what is now called an Old Left lawyer. He started practicing labor law in the New Deal establishment; went into private practice representing established unions; and recently has represented dissident rank and file union movements, with some victories and some tragedies.

McTernan When I was a student back in the thirties, labor law was the glamour field for the young, committed law students. Those were the days of organizing the unorganized, the development of the CIO, the great strikes—the San Francisco Waterfront Strike, the Little Steel Strike and the Chicago Massacre in 1937, the sit-down strikes in General Motors, and later the organization of Ford Motor Company. Very exciting days! I was a much envied person because I was able to walk out of law school and get a job with the National Labor Relations Board, the glamour agency of the New Deal to young, radical-minded lawyers.

AFG Did you think of yourself as a radical then?

McTernan Not as much as I do today. I think I've learned over the years. Maybe I shouldn't have used the word radical. Probably I wasn't even a radical. I was caught up in the New Deal and its promises.

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This interview appears in Ms. Ginger's latest book, The Relevant Lawyers.

AFG Why did you quit the NLRB and go into private practice?

McTernan I didn't quit; I was fired. The board was under increasing attacks from employer groups and was subjected to an unfriendly congressional investigation by Southern Reactionaries and anti-administration Republicans. One result of the attacks was a sharply decreased appropriation for the Board, and a lot of the junior people were laid off.

In those days, making a living was a very difficult thing. Salaries were very low, and professional jobs were impossible to find. War prosperity hadn't started yet, and I was blacklisted in Washington because none of the other agencies wanted to have anything to do with anybody who'd been on the Labor Board. So I came west.

In the 1930s most of the fellows doing the really hard organizing were probably members of the Communist Party and other radical political organizations. But as the unions became organized they became an establishment, and we hadn't finished the decade of the forties before the establishment started to purge the unions of all radical elements and individuals. Nine international unions were thrown out of the CIO because of their alleged Communist leadership. Some of them are still out of the CIO. Interestingly enough, some of the guys who organized the cases against the left-wing unions because of their "Communist domination" are present-day radicals.

AFG I think at least one of them now says he was wrong and shouldn't have done it.

McTernan Maybe. I think that those who won the right to organize in the late 1930s, particularly in the automobile industry, by engaging in sit-down strikes and some illegalities, are among those who yell out loudest now about students who sit in. And today, as you know, the establishment of the labor movement, including the head of the AFL-CIO, supports the President on Southeast Asia. Organized labor, as it is now operating, is politically irrelevant to the problems of the day.

Except that unions are composed of people, and these people are not irrelevant. Lots of them are in good jobs and get good wages and conditions because of the unions, but lots of them don't get what they should be getting. Lots of them are dues-paying people who just contribute their dues to support a bunch of fat cats sitting around in their offices.

This situation exists in most of the big trade unions today, but there are always some people who don't like it and try to do something about it. They are the shit-stirrers.

Perhaps one of the most undemocratic of the established unions is the Brotherhood of Painters, Decorators and Paperhangers of America, an old-line craft union that was ruled for so many years with such dictatorial power by a man named Raftery that when he retired he was able to have his son "elected" his successor.

I became involved with this union in the early 1960s when I had the good fortune to meet Dow Wilson, a member of the Painters Union in San Francisco. He had been at sea during World War II, was a radical, had been a Communist, but threw in his Communist Party membership in the early 1950s over an ideological struggle within the waterfront part of the Party. Dow Wilson was extremely able, a real durismatic leader who understood the labor movement, understood political economy, and understood workers. He learned how to paint aboard ship and drifted out of the waterfront into house painting. Eventually he started to lead a rank and file movement within the painters in San Francisco.

At that point the union had a classic kind of organization: the constitution and by-laws were designed to keep those in power entrenched. Elections were stolen; undemocratic representation in councils and conventions made it very difficult for the rank and file to get organized. Dow won his first election in the San Francisco local when his group prevailed upon the local to use the San Francisco County voting machines for their election. He

"Those who won the right to organize in the late 1930's... by engaging in sit-down strikes... are among those who yell loudest now about students who sit in."

probably had won several elections before that, but they were taken away from him when his ballots were thrown into the wastepaper basket.

One of the recurrent issues in the painting industry is what they call tool restrictions, and one of the principal restrictions in this area is against spray painting. There are two reasons for the restriction—one is that you can spray paint much faster than you can brush it on, so it cuts employment. But another is that the fumes from epoxy and other paints generated by the spraygun constitute a serious health hazard. Even though you can't use a spray gun without a mask, you still get some of these fumes. They get in the air you breathe, damage your lungs, and generally poison your system.

Painters are generally considered to be heavy drinkers, and there's always talk about all the alcoholics in the Painters Union, but a good part of that is a myth. These guys are not alcoholics. They're dying of blood poisoning rather than of alcohol, and perhaps they drink a little more than they should to try to make life a little pleasant for a few hours a day.

Dow Wilson made a very famous statement on tool restrictions. The employers always say, "The tool restrictions are killing us. They not only have a restriction on what you can spray; they have a list of things about the size of brush you can use and the size of roller you can use to roll the paint on." But the fact is in nonunion areas they have rollers two to three feet wide and about 36 inches around, and one man has to handle the whole thing. That's terribly hard work, but you can paint a room awfully fast with it. Wilson used to say, "Pay us decent wages; give us pensions and security for ourselves and our families; give us a proper share of the profits of this industry; and we'll put the paint on with a mop if you want us to."

Student How many months a year does the average painter work?

McTernan We had some statistics in one case I handled. They show that the average annual earning in 1957 was $5200 for 1600 hours work; in 1966, the average annual earnings were $7200 for 1290 hours work. However, I think that if you compare that with the increase in the cost of living you'll find that the painter probably earned less in 1966 than he did in 1957.

Student If you work 50 weeks a year at 40 hours a week, you'd have an average of 2000 hours; so, these guys were working only 1290 hours out of 2000 possible.

McTernan As with many other trades, the painters' trade is dying. That's one of the reasons for those decreased hours. Modern methods of decoration are replacing painting with plastics and other things that are manufactured in a plant and installed in the house or building. You look in any new public building and see how little paint there is. The employers say that's because the wages are so high that it's uneconomical to paint, but I don't think that's the real reason. It's part of the general automation of our society.

In any event, no sooner had Dow Wilson emerged into the leadership of his local than he gradually moved out into leadership in the San Francisco Bay Area. One of the methods of keeping the Painters Union officials in power was to have several small local unions in the cities surrounding San Francisco, and even to have two separate locals in a single city. This made no sense organizationally, but it made it easier for the establishment to maintain control of these locals from on top and more difficult for anyone from below to challenge that power. Thus, as Dow started reaching out into these locals, the attack came on him.

"Often someone would charge, 'You're a Communist!' 'You're goddamned right I'm a Communist. What's your next shot, buster?' That would break up the meeting."

Wilson had a good expression. He'd be in a union meeting and some guy would want to speak against him.

Wilson would get up and say, "OK, buster, take your best shot."

And when the guy got through complaining about something, Wilson would ask, "Is that the best shot you've got? Forget it!" And the union members would laugh.

Often someone would charge, "You're a Communist!"

"You're goddamned right I'm a Communist. What's your next shot, buster?" That would break up the meeting. Everybody would laugh and think Wilson was the greatest guy that ever lived. He appealed to the average guy because he could end the debate with a crushing bon mot—a thing we all dream of doing, but seldom do.

One of the things Wilson was able to use as an organizing tool was a challenge to the international and local officialdom on the use of dues money—not for theft or embezzlement but for not using the money as laid out in the by-laws.

One of the first big fights was over a dues increase. Part of the Landrum-Griffin Act of 1959 is known as "labor's bill of rights." It requires notice of the meeting and its purpose when an increase in dues is to be voted, and a vote by secret ballot. The piecards adopted some gimmick—

Student What's a piecard?

McTernan Someone on the staff of the union who gets paid a salary. It's a derogatory term used for union officials who just sit around the office and get paid without doing any work. In other words, the guy's union job is a ticket (card) to live well (eat pie).

The painters' international requires these various locals to belong to District Councils, with five delegates from each local union whether it has 50 members or 2000. Under the by-laws of the council, dues are increased automatically every time the painters get a pay increase. But the automatic increase is so large as to be ridiculous, and the by-laws thus provide that the delegates to the council can decide how much of the automatic increase goes into effect. So the delegates to the council actually decide what dues the local members have to pay. In 1966, the delegates to one council raised dues by $1.75 per month for 4000 painters. The decision was made by 34 delegates voting 18 to 16 for the increase.

One of the big rallying cries was that the automatic dues increase was illegal. The union officers went to their lawyer, who depended on them for his livelihood, and said, "Wilson says this dues increase is no good. Write an opinion saying it's all right."

So, the lawyer writes an opinion saying it's all right. Then Wilson's guys come to me and ask, "Is this right?"

I said, "No, I don't think under Landrum-Griffin they can do that."

"Well, what can we do? We won't pay it." And they didn't pay it, and we filed suit in 1966.

AFG Did you have any qualms about going into a capitalist court to settle an intra-union beef?

McTernan It was the only legal forum we had.

Of course, this brings up the question of what purpose does the lawyer serve? The argument I have with a lot of young radical lawyers is that I think the lawyer's job, until the revolution starts, is to be a lawyer, to keep the revolutionaries on the streets and out of jail. In the trade union business the unions themselves are capitalist organizations. They're a part of capitalism just as much as the capitalists are. But within the trade unions there is an opportunity to restore control to the rank and file. This provides the best chance for the trade unions to really advance radical and progressive goals.

Certainly I had some hesitancy in going into a court that normally is thought of as leaning toward the employers. But that's not necessarily true today. We went into the federal District Court in San Francisco because we were operating under a federal statute, and these judges are not necessarily all employer-oriented. They respond to the charges of union bossism and how the officers screw the rank and file out of what they're supposed to get and how they live fat and fancy off the dues of the working members of the unions.

AFG But how could you use the Landrum-Griffin Act on your side when it's an anti-labor law?

McTernan I distinguished between two parts of the Act. One part was anti-labor. The other part spelled out rights of union members against undemocratic procedures, unfair disciplinary action by union officials, and undemocratic dues increases, and the rights of locals against unfair discipline by internationals. The unions opposed the whole Act when it was before Congress, and at that time I went along with them, thinking it could be used to disrupt and break up labor unions.

But my experience, particularly in the Painters cases, has convinced me that the second part of it is not an anti-labor act, that it is available, can be used, and should be used by dissident groups within unions, by rank and file movements, as a shield against being crushed by the union establishment. For example, those who were in favor of this dues increase just crushed all the opposition talk within the established union, and it was only through our lawsuit that we were able to prevent this increase from becoming effective. It was only through the other provisions of Landrum-Griffin that we could protect the members who were taking on the establishment because otherwise they would have been thrown out of office without legal cause and suspended from membership.

Instead, we won the case in the federal District Court and Court of Appeals. The international union tried to get the United States Supreme Court to hear it, but they lost.

AFG: How long did their appeal take?

McTernan Four years. Meanwhile, Dow Wilson continued the struggle and built strong local leadership on both sides of the Bay. The union in this period made some significant gains. Let me give you an example, to show what a union under good leadership can do.

The Golden Gate Bridge has to be painted constantly. I was told that it takes a crew of 30 painters nine years to paint it completely. The weather out there, with that driving fog and the salt in the air swept up from the Bay by the wind, is very corrosive to the steel, so

it's a continual battle to keep the bridge from rusting away. It's tough, hard work. The painters are hanging from scaffoldings 200 to 300 feet over the water with that fog rolling in and blowing, and it's cold, half-raining.

All the work is outside, but it pays well. Under the California statute they have to be paid the journeyman's rate, which includes special premiums for the "high work." The painter who was getting about 1300 hours of work a year in 1966 made $7200, but the Golden Gate Bridge painter worked 40 hours a week, 52 weeks a year, and with the high work premiums he made $12,000 or $13,000 a year in 1966. Despite the hard work and bad working conditions, it's a pretty good job.

There had never been a black man employed as a painter on the Golden Gate Bridge up until about 1966. There had been an arrangement with the bridge management that when they needed painters they would seek them out of the painters' hiring hall.

Dow Wilson decided it was time to break the color bar on the Bridge. He had previously brought a large number of black painters and apprentices into the union, and locally it's one of the best integrated of the old building trades' unions. He finally found a guy who had the records to prove his experience in painting on steel, which is necessary for bridge painting. When the Bridge called in for two painters, one black guy and one white guy were sent down.

They were given the test they gave all painters, and they said the black guy failed the test. So he went back to the union, and they sent him down to the state Fair Employment Practices Commission, to file a complaint.

Now I'm doing a little guessing, but I think the bridge management went to a member of the union establishment and said, "You've got to find a black guy to put to work on the bridge." Maybe this man went into one of these automatic car washes and said to one of the black guys working there, "Do you know anything about painting?" Anyway, we do know that the next day a black man was hired to paint on the Golden Gate Bridge, and he had never had a paintbrush in his hand in his life, and his only work experience had been as a car washer.

Then the management got afraid again and let the first black man, the union man, go to work, and fired the second one. The second black man saw he was being used and came to us. We sent him down to the FEPC.

They let the first man work a few months, and then they fired him. They had put a watch on him, and every time he'd turn around and spit they'd make a notation. You see, when you're working out there on the bridge and the call of nature comes, you just get in the right direction of the wind and let it go. They were complaining that he was not getting in the right direction of the wind.

In order to try to erase the claim of discrimination when these two guys were both off during the FEPC hearing, management hired a third black painter.

We had a long hearing before FEPC. The union paid for my services to appear on behalf of the two black complainants, along with the FEPC attorney. And the union business agents were practically at my beck and call as investigators. This is what a good leadership can do.

We half won and half lost that one. The first black painter was an aggressive, no-shit guy. The second was kind of passive; he allowed himself to be used. By this time Reagan was Governor and had put his men on the FEPC. The FEPC decided that the militant one had done unsatisfactory work, but the passive man, who had never had a paintbrush in his hand before this, had done satisfactory work: he was ordered reinstated. With the decision of the FEPC forcing the second man back, the color bar was broken. Now there are three or four black painters out of the thirty on the Bridge.

This was a very important breakthrough in a small way. The union, with the proper leadership, used the tools of a lawyer to achieve an important social gain. The reason the state acted in this case was that there was a union banging on their door, not just an individual. That made a qualitative difference. And, in addition, with the financial backing of the union a private lawyer was hired, putting an aggressive advocate on the case to buck up the bureaucratic lawyer for the FEPC. Moreover, the union's advocate did not hold his job at the pleasure of a governor or the chairman of an administrative body. I hold my job as long as I do effective work for my client.

Now, in the case of Dow Wilson, I suddenly lost my client in the most tragic way. He was attending endless meetings on both sides of the Bay, to strengthen his movement. One night as he left a meeting, he was shot and killed. A month later, a reform leader in the East Bay was also murdered.

Student Did they ever find out who did it?

McTernan Yes–two small painting contractors from Sacramento who had been acting on behalf of Ben Rasnik, the top Painters Union leader in Alameda County and an avowed enemy of Wilson. All three were convicted of murder and are now serving sentences. The two contractors did the killing, according to the testimony of one of them, after they were promised a reward by Rasnik. And it turned out that the contractors had also been looting the welfare fund in the Sacramento local, over $100,000 worth.

When Dow Wilson was murdered and the head of the District Council was arrested for murder, the international president moved in. He put the District Council under trusteeship, which meant that he would send his representative into the council, take over its books and records and its bank account, suspend all officers, and run the council dictatorially until it got back in line. This made some sense because the head of it had just been arrested for murder.

But he also attempted to put under trusteeship the three local unions in the East Bay that supported Wilson. This led us to turn to the Landrum-Griffin Act once again. The act provides that you can't impose a trusteeship without having a reason. The reason the international president gave was that they weren't paying the dues they were supposed to be paying to the District Council. We weren't paying the increased dues because we contended that the increase had been enacted illegally. But we also weren't paying the dues that were assessed before the increase. This was because we contended that some of the money that was going into the Painters District Council from those assessments was being used for purposes that were not proper under the by-laws.

Now, under the law a union is an unincorporated association, and a member of an association has a contract with the other members and with the association as a whole. The constitution and by-laws constitute this contract. If you don't follow the rules set down in the constitution and by-laws, you've violated your contract. If you don't pay your dues you've violated your contract, and the association has the right to sue you for that breach of contract and collect the dues. Many trade unions have done that, and do it. They sue in small claims court to collect their dues from guys who refuse to pay. There are guys like that who take all the benefits of the organization and won't pay the dues.

"You see, when you are working out there on the bridge and the call of nature comes, you just get in the right direction of the wind and let it go. They were complaining that he was not getting in the right direction."

So, the international president said that we had violated our contract and had to be put under trusteeship. Again, we used the law and wrote to the District Council, saying, "You're violating your contract with us. You're using this money for general purposes when it's supposed to be used for a specific purpose, as set forth in the by-laws." They ignored us. Then we went on up to the international, and the international ruled that we were wrong.

So we said, "Well, we're sorry, but we'll just have to stop paying you because you violated your contract with us."

So here's the international president with all this power designating a trustee. What do we do?

I took the position (and the more I practice law the more I think it's a sound maxim) that possession is nine points of the law. We had possession of the union offices; the books, and the records: we had the muscle. We set up a 24-hour guard on each of the three local offices. We took all the bank accounts out of the bank they had been in and put them in a new bank. Only a few trusted officers knew where they were.

Then we said, 'Come and get it." We used Dow Wilson's tactic. We in effect told the president, Raftery, "Take your best shot."

He responded with a series of lawsuits in the state court, seeking injunctions to require us to comply with his trusteeship order, and we responded with a complaint to the Department of Labor under the Landrum-Griffin Act that the attempt to impose this trusteeship was illegal. But the international union officials in Washington had the ear of the Department of Labor and our complaint was thrown out with no consideration at all.

Student Why didn't you go into the courts instead of to the Department of Labor?

McTernan We had nothing to go to court about. If we had turned the stuff over and then gone to the court, we'd have been dead, because by the time we got the final decision from the court it would have been all over.

Our position was, "We're going to make you go to court." We went to the Department of Labor because the law says you can; we didn't expect anything helpful.

Meanwhile, for some reason, the international stalled its own case inthe state court. Then they suddenly dismissed it and sued in federal court.

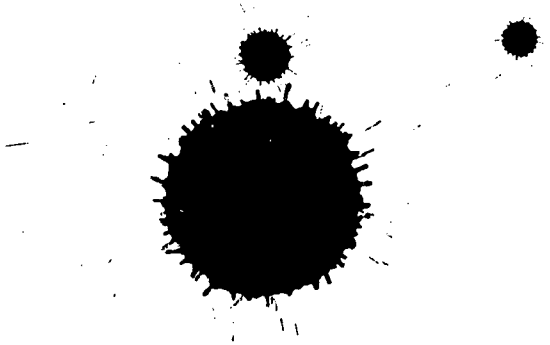
We had a hearing. Now, we had refused to pay both the basic dues and the increase. I wasn't worried about not paying the increased dues, but I got a little afraid about our financial responsibility for nonpayment of the basic assessment. The international was arguing that it couldn't run and this and that, because we refused to pay these dues.

So, I brought into court checks totaling about $25,000, which is all the money we could have owed in basic dues, and I said, "Your Honor, if the international's lawyer is afraid they can't operate, we offer to pay the legal part of the assessment right here and now. Here are the checks." And I turned around to the counsel table: "Do you want them, Mr. Brundage?"

He said, 'No."

He was on the spot. He had to say no, I think, from a political point of view. But from a legal point of view he lost his case right there, because his answer wasn't lost on the judge. Brundage later accused me of grandstanding—and I was, in a way, but it worked.

Student Why do you think he couldn't take the money?



Mcternan The international wanted to get rid of the local leadership and take over; they wanted those trusteeships. If he took the money he knew the basis for the trusteeship was gone. We had a good faith lawsuit going about the legality of the dues increase, and the judge said, "As long as they're fighting that increase in good faith, and I find that they are, they have a right to withhold payment until its legality is determined."

But we had no lawsuit going as to the legality of not paying that assessment, and it was a weakness in our case since the international had already ruled we were wrong on that. Later the District Council sued the locals involved to collect the basic assessment. The Superior Court in Alameda County ruled recently that the locals were correct in their contention that it was the council and not the locals that had violated the by-laws. Thus the locals never did have to pay the basic assessment.

I should tell the rest of the story. We won the case, but the revolt in the Painters Union was crushed by the murder of the two principal leaders. The reform and dissident movement still exists around the Bay Area, but it's falling apart and bickering within itself.

AFG: Do you feel that over the long haul the New Deal labor legislation has helped the unions in the country? I'm referring mainly to the Wagner Labor Relations Act that guaranteed the right to organize unions and set up the National Labor Relations Board.

McTernan I have many thoughts on that. I think they helped, but it was a fatal error of labor to allow itself to be placed at the mercy of Congress and the Board. The way labor law has developed now, I think the burdens of the Act far outweigh its advantages.

Some unions have already proved this. They refused to have their officers file non-Communist oaths required under the Taft-Hartley law, so they went on for several years without being able to use any of the services of the Labor Board. They had a rough time because the right-wing unions tried to raid them and take contracts away from them. But the ones that were really strong unions—that were run in a democratic manner and that fought for the members' demands—did survive. That includes a left-led union like the Longshoremen on the west coast, and an old-line union like the Typographers.

But some of the other unions came to place too much reliance on the Labor Act. For example, about a year ago I attended a meeting in Washington of attorneys for local unions from around the country. They were fighting to preserve the doctrine of accretion, which applies particularly to retail stores. Under this doctrine, when an employer has a union shop contract with a union, and it opens a new store, the new store automatically comes within the old contract. Recently there's been an attack on the accretion doctrine. The gist of the attack is that the workers in the new store should have the right to determine whether they want to be members of the union.

Well, this was the biggest problem bothering these lawyers and international officials: that they might lose this method of getting new workers under contract without convincing them to join. This means dues payments coming in to the union, but it's not organizing workers.

This is one way the law makes for lazy union leaders. It makes them the tools of anti-labor employers, because they are more interested in holding their jobs than in serving their members. Thus they don't want to rock the boat. Even among some of the good labor leaders, there's a tendency to want to find some way of organizing without going out and convincing that worker that he's better off in the union. That's hard work. They'd much rather sit in their offices and attend conferences and meetings and be looked upon as labor statesmen and community leaders.

Situations like that lend support to the theory that many hold, and I tend to agree with, that President Roosevelt was the greatest capitalist of them all, that he saved the whole goddamn system for them. This was one of the

ways he did it—through stabilizing labor relations by convincing big industry that they should accept organization, that they are better off with it.

Roosevelt was aware of this. In one of his speeches he said, "The criticisms they make of me remind me of the story of a fellow who was standing on the dock, well dressed, with a fur coat and wearing a beautiful high silk hat. Something happened to him and he fell in the water. A young man saw him and dove into the water and swam out to him. He dragged him in and saved him from drowning. No sooner was the fellow back on the dock than he noticed that his hat was floating down the stream, and he gave his rescuer hell for losing the hat."

AFG: Frank, do you think your political views have affected your practice, especially in terms of union clients? For example, would you be willing to discuss whether you have ever been before an un-American committee or anything like that?

McTernan I have been before un-American committees as a witness and as an attorney for other witnesses; two of my partners have been called before the committee, and undoubtedly our firm does not have labor law clients that it should have because of our reputation.

Take one local union for which we have been attorneys for over 20 years. The head of the local union first came to my partner, Benjamin Dreyfus, in the 1940's and asked us to take over representation of his local because he was dissatisfied with the services being rendered by what was then, and still is, a leading establishment labor lawyer. He thought he was getting advice that was colored by political considerations from the wrong side of the political spectrum, and that the lawyer's loyalties were more to the higher echelons of the labor movement than to his local.

But when Dreyfus got involved in defense of the Communist leaders indicted in Los Angeles under the Smith Act, the international president came in to the local president and said, "You'd better get rid of those lawyers, or we're going to take over your local."

Student The same business of trusteeship!

McTernan Right. That was before the Landrum-Griffin Act. The local president temporized with the international president, and put him off. Finally the thing slipped by.

Our partner, Al Brotsky, represented a certain local union before he came into our firm about three years ago and brought the client with him. . . most lucrative client. Because of the peculiar nature of their work, the members often suffer severe injuries under circumstances that give rise to well-paying personal injury suits. The injured workman tends to retain his union attorney in these cases.

AFG Listen to him! Frank, you sound as if you're gloating over somebody's injuries!

McTernan Those are the less glamorous sides of the law, Ann. You've got to make a living, you know, and it's out of these cases that you make it. Besides, a union attorney can understand the workman's problems better and thus do a better job for him.

This was a particularly good client from a money-making point of view. But we lost all that business, because that union is one of the most racist in this area. As soon as we were publicly identified with the Black Panthers they backed away. We get no work from them anymore.

Many of the trade unions are still represented by the older breed of labor lawyers who don't use imagination, just give pedestrian advice, but demand and get big fees for it. So, I'm sure we'd be representing a lot more unions if it weren't for our reputation.

AFG By the way, when workers are laid off, the number of personal injury suits for job injuries goes down. So, that hits the lawyer's pocketbook, too.

Student How does your office operate at this point?

McTernan In the course of developing the kind of practice we now have, we have put together an institution that takes money to hold it together and keep it

going. But it's an institution that provides the personnel and office machinery to take on these big, difficult legal struggles that can't be handled successfully by one or two lawyers who are scurrying around trying to survive or by lawyers in a commune who are committed to typing and answering the phone part of the time.

Take the struggle our firm put on in the Huey Newton case, led by Charlie Garry. That took resources that you just can't put together from scratch. The position we took is that you got to find a way to keep sufficient dough coming in to keep the institution going, so that it is available when the need comes along in these political cases. And as long as we're trying to do any work in court it seems to me that this is the preferable way of doing it, rather than having the commune lawyer spend half his time doing community organizing, and part of his time doing movement legal work, never building any kind of organization in the law office with depth enough to take on big difficult litigation. Maybe I'm wrong, but I don't think the time has yet come that we can give up the law practice as we know it.

Student I think the life-style of many people today is incompatible with learning the trade and becoming good lawyers.

McTernan I think it is. That's what I criticize about their approach.

Student Isn't life-style sort of irrelevant, though? I mean, you can't be a revolutionary through being a lawyer, but you can be used by the revolution. You are the tool. If you're willing to accept that, fine. If you're not, then you've got a problem.

McTernan Yes, you can have a problem trying to be a lawyer, a practicing lawyer, and a revolutionary, because the two are incompatible.

AFG A lot of people say that the Huey Newton case was a $100,000 case, and that your firm is rolling in wealth.

McTernan Well, that's a lot of baloney. We have had times when we had to scrape hard for money to meet payrolls in the last few months. Right at the moment we have some cases that brought some money in, but that wasn't Panther money that staved off the crisis; it was money from other cases.

AFG Why did the Panther case cause such problems?

McTernan Because it wasn't just one case or one lawyer. We received money from the Panthers, and I frankly don't know how much it was, but we were not paid in full for the effort we put in. The money just wasn't there. And the demands on the time of the lawyers in our firm was so great in the Panther cases that our other cases weren't being processed. Clients were complaining, "I see you on TV all the time. You obviously don't have any time for my case; you seem to have much more important things to do than worry about my case." The client might have a little personal injury case that might be settled for $4500, with a $1500 fee, that is important to us. And I'm sure we didn't get cases that would otherwise have come to us, because people felt we were too busy.
Garry isn't doing anything but the Panther work now, and three or four of us have to argue pretrial motions in Panther cases and handle what Charlie calls his "mistakes" on appeal.

AFG What did Charles Garry do before that?

McTernan Well, he was the best money-maker in the firm, although he did a lot of political work as well. But he was the guy who used to turn over the big P.I. cases that kept us going. So I'm denying the charge that lawyers are rolling in dough; we aren't. We may face a crisis where we're going to have to make some very, very important decisions on our life style if there's no money left to keep it going. And you ought to watch us and see which way we jump—whether in a pinch the middle class in us is going to win out, or the revolution.

AFG Do you think your kids will affect the decision you make?

McTernan My kids are grown up, so I don't have any financial responsibilities for them. But I think that perhaps my children would influence me to jump the right way—or the left way, to be more accurate.