

Political Trials and *Felquistes* Defendants:  
Defending the *Front de Libération du Québec* (FLQ) in the Courtroom

by

Darren J. Pacione

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Carleton University  
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Darren Pacione

## Abstract

Anchored in trial-related archival material and written French-language accounts of high-profile *Front de Libération du Québec* (FLQ) trials and their defendants, this project considers the performative dimension of political trials. To this end, this study examines how the FLQ defendants and their representatives navigated their legal encounters. FLQ defendants' deployment of political defence strategies through their active period (1963-1972) is further grounded in the historical context of the legal regime through which they navigated, recent debates about contemporary political trials, and broader debates about the politicization of approaches to legal representation. Through three case studies: (1) The LaGrenade Affair (the manslaughter trials of the Vallières-Gagnon Network), (2) the Trial of the Montréal Five (a seditious conspiracy prosecution), and (3) the FLQ contempt of court trials, I argue that the politicized legal defence strategies of the FLQ defendants emerged relative to shifting ideological commitments and growing legal pressures from the state. Through consideration of how FLQ defendants utilized legal procedures and arguments, political histories, and the rule of law narratives, new insights are gained into the confrontations between the accused, Crown, and the Québec bench within the high-stakes context of the pre- and post-1970 October Crisis FLQ trials.

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## List of Abbreviations

ASIQ	<i>Action socialiste pour l'indépendance du Québec</i>
BAnQ	<i>Bibliothèque et Archives nationales du Québec</i>
CAGVG	<i>Comité d'aide au groupe Vallières-Gagnon</i>
CLDL	Canadian Labour Defence League
CSN	<i>Confédération des syndicats nationaux</i>
DOJ	Department of Justice
DORA	<i>Defence of the Realm Act</i>
FLF	<i>Front de libération des femmes</i>
FLQ	<i>Front de libération du Québec</i>
MDDPP	<i>Mouvement de défense des prisonniers politiques</i>
MPQDH	<i>Mouvement populaire québécois droits de l'homme</i>
NGC	National Gallery of Canada
OAG	Ontario Art Gallery
PQ	<i>Parti Québécois</i>
POA	Public Order (Temporary Measures) Act
RIN	<i>Rassemblement pour l'indépendance nationale</i>
RN	<i>Ralliement National</i>
WMA	War Measures Act

## Chapter One: Towards a Legal History of *Felquistes* Defendants

In 1990, the National Gallery of Canada (NGC) purchased fifty-four black ink drawings by Ontario artist Dennis Tourbin (1946-1998). Entitled *La crise d'octobre / Chronology*, Tourbin's collection sketched out *Front de Libération du Québec* (FLQ) trial-related newspaper clippings of headlines and photos through the 1970-1 period.<sup>1</sup> The clippings are represented as disjointed, partial, and sometimes out of chronological order. The images cast moments of defiance (e.g., a defendant's raised fist on the courthouse steps) against competing expressions of state strength (e.g., Pierre Trudeau addressing the nation). On 31 July 1995, just months before the planned September and October exhibition of the collection at the NGC, controversy erupted when *Ottawa Citizen* columnist Paul Gessell suggested that the NGC would face criticism for showing the collection during the lead-up to the 1995 Québec Referendum vote (scheduled for 30 October 1995) and through the 25<sup>th</sup> anniversary of the 1970 October Crisis. Three days later, NGC management cancelled its exhibition of Tourbin's collection. Instead, through a joint agreement with the Ontario Art Gallery (OAG), the collection was hosted in its Ottawa-based gallery between 14 September and 29 October 1995.

In March and April 2014, Carleton University Art Gallery exhibited the collection.<sup>2</sup> Tourbin's interpretive renderings of the 1970 October Crisis—the Prime Minister's declaration of war powers, Paul Rose's defiantly raised fist on the steps of a Montréal

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<sup>1</sup> Clive Robertson, *Policy Matters: Administrations of Art and Culture* (Toronto: YYZ Books, 2006), 181-87; Lisa Whittington, "October Crisis exhibit," *Arthur* November 4, 1997, 13.

<sup>2</sup> In short, it was this collection that generally inspired this project. I was invited (with Dr. Anne Trépanier) to the opening to give a lecture on the historic context of the collection.

courthouse, and Justice Roger Ouimet's gaze from the bench—are fragmented. Much like Tourbin's interpretation of the events, the FLQ's legal encounters offer similarly fragmented representations of the historical moment. To read the FLQ trials as fragmented—or as incomplete accounts—speaks not only to the limitations of available archival materials to tell the story, but also to the limits of what we can know about how individual motivations and political beliefs informed the legal strategies of FLQ defendants. Of the many accused persons who self-represented, few followed a consistent formula. Fragmented organizational and legal strategy reveals much about the spontaneity and perceived weaknesses of FLQ direct actions. The voice of the FLQ defendant was not a homogenous one, but one composed of the multiple narratives of disenfranchisement and oppression. Further, when it came to the voices of the accused, characterizations of the FLQ trials are disjointed through their representative accounts in French and English. While English accounts offer more outcome-oriented interpretations of the events and trials related to the October Crisis (usually from the perspectives of journalists or political insiders), French language accounts tend to be interested in more robust accounts of the media (especially French-language accounts) and with what the defendants (and those closer to the political movement) had to say.<sup>3</sup> Within the fragmented accounts of the FLQ legal encounters emerge themes concerning how self-represented defendants mobilized legal and public support and the effectiveness of self-representation as a legal strategy within political trials. Such themes, which interrogate the politicization of legal processes,

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<sup>3</sup> Writing more broadly about the collaborative disconnect between English and French language historical and sociological scholarship in Canada, Dominique Clément, among other examples, uses the 1970 October Crisis to illustrate his point. With this in mind, this project attempts to centre Francophone scholarship and French-language archival accounts of the FLQ as I write an English-language legal history of the *felquistes* legal encounters in Québec. Dominique Clément, “A Sociology of Human Rights: Rights through a Social Movements Lens,” *Canadian Review of Sociology/Revue canadienne de sociologie* 48, no. 2 (2011): 132.

also expound larger patterns in the relationship between law and politics.

Reading the FLQ criminal trials as political trials takes a broader look at what was at stake for its participants. While the bench and the Crown attempted to eschew doubts concerning the fair administration of justice (e.g., that the FLQ trials were not simply an exercise in the elimination of a political foe), at stake was the maintenance of the political status quo and general deference to the police and executive authority. By considering how the Québec justice system responded to FLQ activities and likewise how the FLQ responded to criminal indictments, this project asks broad questions that aim to reorient the existing FLQ scholarship. How did the FLQ defendants translate *felquistes* (a popular and interchangeable colloquial term for FLQ members and sympathizers) politics into the courtroom? As criminal defendants, how did indicted FLQ members participate, or not, in the legal proceedings filed against them by the Québec Crown? How did they prepare for their trials? How did FLQ defendants tend to plead: guilty or not guilty? Moreover, what were the effects of chosen plea strategies? Not guilty pleas tended to result in the orchestration of a political defence. Political defences revealed how the defendants viewed the rule of law and showed how defendants' political beliefs influenced their legal strategies. As such, not all defences were similar. Some politicized legal defences aimed to confront state authority, while others sought to hold the state accountable to the existing laws. Others attempted to provoke the bench and Crown into errors of judgement or partisanship. Malleable personal and political motivations of individual FLQ defendants often formed the basis of employed defence strategies. For the criminal defendants, their trials often represented a final stand.

This project takes up the stories of those who often stood before Montréal courts,

and although relatively few FLQ members would find themselves before the court on multiple occasions, all FLQ defendants in some way or another attempted to politicize the proceedings. As such, I examine the performance of FLQ defendants politicized legal defence strategies as they confronted the state at every opportunity.

These strategies, I suggest, attempted to undermine and interrupt the roles performed by the Québec Crown and the bench through the trial. As evidence, I emphasize the role of the self-represented litigant in the overruling of many lower trial court decisions. Reasoning that those courts overreacted, the Québec Court of Appeal quashed convictions in high-profile trials and condemned the Crown's partisan behaviour. In what follows, I introduce the *felquistes* political movement, outline the argumentative arc of the dissertation, and chronicle the emergence of the FLQ in four waves. Importantly, each of the four waves of FLQ criminal activity was responded to by the Québec Crown and bench in a variation of context-specific approaches. From plea agreements to one of the longest sentences in Canadian history, to acquittals due to lack of sufficient evidence, the legal responses to FLQ action were often disproportional and inconsistent. In mapping a history of the FLQ's legal encounters relative to the Québec Crown's legal approaches, I also contextualize the selection of FLQ trials analyzed in this project.

### **1.1 Introduction: Québec and the *Front de Libération du Québec* (FLQ)**

The summer of 1960 in Québec was ushered in with the defeat of the *Union Nationale*, (the provincial conservative nationalist party led by Maurice Duplessis, which until his death in 1959 he held office in Québec six times between 1936 and 1966).<sup>4</sup> Into its place

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<sup>4</sup> Herbert F. Quinn. *The Union nationale: Québec Nationalism from Duplessis to Levesque*. 2<sup>nd</sup> ed. (Toronto: University of Toronto Press, 1979), 98.

emerged the Québec Liberal Party led by Jean Lesage. Through the 1960s a mobilized working class became a visible symbol of a politically engaged nationalist Francophone population. Known as the Quiet Revolution, the period was one of flourishing political organization.<sup>5</sup> In a 2008 book chapter entitled “The Intellectual Origins of the October Crisis,” Éric Bédard distinguished between two characterizations of the followers of postwar Québécois nationalism. On the one hand, the *souverainistes*—those, like long-time *Parti Québécois* (PQ) leader René Lévesque, who viewed the existing state as containing the tools to realize the Québec nation.<sup>6</sup> The *souverainistes* emerged from the Francophone middle class and had opposed the long reign of the conservative *Union nationale*. On the other hand, the *indépendantistes*—those who viewed the struggle for Québécois independence in colonial terms and sought liberation from Anglo-Saxon political and economic dominance.<sup>7</sup> The *indépendantistes* who viewed the struggle in Québec as the continuation of revolutionary struggles that dated back to the 1837-1838 Rebellions, its violent suppression by military force, law, and suspension of the legislature by way of an extended executive rule foreshadowed by counter-revolutionary British reaction in Québec in the 1790s.<sup>8</sup> Many of the *indépendantistes* were Québécois youth, influenced by what they viewed as the successes of the Cuban and Algerian independence movements, as well

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<sup>5</sup> Dominique Clément, “The October Crisis of 1970: Human Rights Abuses Under the *War Measures Act*,” *Journal of Canadian Studies* 42, no. 2 (2008): 162-165. Also, for an extended history on the October Crisis and events leading up to the historical moment, consult Professor Clément’s resourceful website: <http://historyofrights.ca/history/october-crisis/>. For richer historiographical consideration of social and class realities through the period of the Quiet Revolution see John A. Dickinson and Brian Young, *A Short History of Quebec*. 4<sup>th</sup> ed. (Quebec City: McGill-Queen’s University Press, 2003), 305-344.

<sup>6</sup> Éric Bédard, “The Intellectual Origins of the October Crisis,” in *Creating Postwar Canada Community, Diversity, and Dissent 1945-75*, eds. Magda Fahrni and Robert Rutherford (Vancouver: University of British Columbia Press, 2008), 49-53.

<sup>7</sup> *Ibid.*, 53-8.

<sup>8</sup> Robert Comeau, Charles-Philippe Courtois, and Denis Monière, eds., *Histoire intellectuelle de l’indépendantisme québécois. Tome I, 1834-1968* (Montréal: VLB, 2010), 17-74.

as other international colonial liberation movements. It was within *indépendantistes* circles that the FLQ, among other groups, emerged.

The underpinning political message of these groups was a clear denunciation of the conservative nationalism bolstered by the Duplessis government and a tenuous articulation of modern nationalism, emancipation, and independence.<sup>9</sup> For Ivan Carel, the political ideology of the *felquistes* was a melding of leftist revolutionary thinking and a nationalist liberation agenda. In brief, *felquisme* linked revolutionary socialist ideas to the national question.<sup>10</sup> As such, the early socialist separatist Raoul Roy laid the theoretical groundwork for *felquistes* political thinking. Roy, who founded *Action socialiste pour l'indépendance du Québec* (Socialist Action for the Independence of Québec) and edited *La Revue socialiste* (The Socialist Review), argued that such a political struggle was one of dual entanglement.<sup>11</sup> As Roy put it, the struggle was on two fronts: first, between oppressed peoples and the colonialist Canadian state; and second, between exploited workers and the ruling social class.<sup>12</sup> At the same time, the *Rassemblement pour l'indépendance Nationale* (Rally for National Independence) and the *Ralliement National* (National Council, which, later, in part, came to form the PQ) offered a voice for the disenfranchised Francophone working class, but in doing so, also nurtured *felquistes* militancy.<sup>13</sup>

As political scientist Denis Monière concluded, the political ideology of the

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<sup>9</sup> Ivan Carel, "Violence et décolonisation, FLQ et FLB," *Fédéralisme Régionalisme* 13 (2013): 4.

<sup>10</sup> The 1<sup>st</sup> FLQ Manifesto, published in April 1963, indicated that the independence of Québec is only possible through social revolution. Guy Lachapelle, "La crise d'Octobre 1970...quarante ans plus tard," *Recherches sociographiques* 52, no. 2 (2011): 379-91.

<sup>11</sup> Felix Kuntzsch, "The Violent Politics of Nationalism: Identity and Legitimacy in Palestine, Kosovo and Québec" (PhD diss., University of Laval, 2014), 417.

<sup>12</sup> Raoul Roy, "Propositions programmatiques de la Revue socialiste," *La Revue socialiste* 1 (1959): 13.

<sup>13</sup> Between 1960 and 1968, the RIN was a key organizing force that offered a space for the political voice of the youth, student, artists, intellectuals, labour activists, radicals, religious minorities, women, gays and lesbians, students, unions, Indigenous people, and others who came together in unprecedented numbers. Clément, "October Crisis of 1970," 162.

*felquistes* splintered over time and reflected the perspectives of each respective autonomous cell. At first, it was much more nationalist-oriented, but then over time and influenced by Pierre Vallières and Charles Gagnon, later FLQ communications emphasized workers' rights and a clear anti-clericalism.<sup>14</sup> For the FLQ, however, violence was the catalyst to consciousness-raising among the Québécois people. Violence was viewed as necessary because the FLQ did not believe that Ottawa would accept a peaceful move to independence.<sup>15</sup> FLQ bombings aimed to provoke repressive responses from state powers and awaken the Québécois people to a new political reality.<sup>16</sup> This political awareness would spark involvement in Québécois social and political life, for union members, for instance, it would give broader meaning to their struggle. Moreover, while not all would jump on board with the cause of the FLQ, the national awakening would spur the Québécois people to demand more from a federalist system unwilling to bend to such requests.<sup>17</sup>

Active between 1963 and 1972, the FLQ's campaigns of political violence emerged in four waves with actions carried out by fifteen independent cells or networks.<sup>18</sup> Through review and cross-verification of Public Safety Canada's records with the Canadian Incident

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<sup>14</sup> Denis Monière, *Le développement des idéologies au Québec des origines à nos jours* (Montréal: Éditions Québec-Amérique, 1977), 279.

<sup>15</sup> Kuntzsch, "Violent Politics of Nationalism," 428; Éric Bédard, "De la quête millénariste à la thérapie de choc: la pensée *felquiste* jusqu'à la Crise d'octobre 1970," *Journal of Canadian Studies* 37, no. 2 (2002): 39-44.

<sup>16</sup> Ivan Carel, "Vallières, Gagnon et la violence politique: entre idéalisme et matérialisme," in *Violences Politiques: Europe et Amériques, 1960-1979*, eds. Ivan Carel, Robert Comeau, and Jean-Philippe Warren (Montréal: Lux Éditeur, 2013), 58.

<sup>17</sup> Gabriel Hudon, *Ce n'était qu'un début: ou la petite histoire des premiers pas du FLQ* (Montréal: Les Éditions Parti Pris, 1977), 62-3 as quoted in Kuntzsch, "Violent Politics of Nationalism," 430.

<sup>18</sup> Marc Laurendeau, *Les Québécois Violents: La Violence Politique, 1963-1972* (Montréal: Boreal, 1990), 321-7; Kuntzsch, "Violent Politics of Nationalism," 438-40; Joanna Amirault and Martin Bouchard, "A group-based recidivist sentencing premium? The role of context and cohort effects in the sentencing of terrorist offenders," *International Journal of Law, Crime and Justice* 43, no. 4 (2015): 512-34.

Database (which denotes numbers of perpetrators and convictions if data was available),<sup>19</sup> prominent chronologies of the FLQ's legal encounters by Gustav Morf (1970), Donald Riseborough (1975), Louis Fournier (1984), Marc Laurendeau (1990), and William Tetley (2010), and related case law, I have identified an estimated 122 FLQ-related trials.<sup>20</sup> These trials, which include recorded FLQ-related trial court criminal convictions, acquittals, appeal court trials, constitutional appeals, pre-emptory juror challenge cases, and appeals of contempt of court convictions, involved an estimated 113 individual defendants.<sup>21</sup> Criminologists Joanna Amirault and Martin Bouchard add that FLQ defendants tended to plead not guilty 82.4% of the time.<sup>22</sup> What these numbers do not account for are the 497 people arrested under the authority of the *War Measures Act*, 1970 (WMA) and the 3,068 searches conducted without police warrants.<sup>23</sup>

While the majority of the near five hundred people arrested under the WMA were released, sixty-two faced charges and eighteen were convicted of October Crisis-related offences such as membership to an outlawed organization.<sup>24</sup> However, as a result of the 15 June 1971 acquittal of Charles Gagnon and Jacques Larue-Langlois for emergency measures-related offences, the Crown suspended prosecution against a group of thirty-four FLQ members and sympathizers who awaited trial.<sup>25</sup> Angered by the mere suspension, charged *felquiste* called for trials as suspended charges may be reopened. Finally, on 2

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<sup>19</sup> Canadian Network for Research on Terrorism, Security, and Society. Canadian Incident Database, Accessed through September and October 2017 via: <http://www.extremism.ca/>

<sup>20</sup> This number is a best estimate as it is extrapolated from historical texts, the Canadian Incident Database, and available trial and appeal court records.

<sup>21</sup> Laurendeau, *Les Québécois Violents*, 321-7; Louis Fournier, *FLQ: The Anatomy of an Underground Movement*, trans. Edward Baxter (Toronto: NC Press Ltd., 1984).

<sup>22</sup> Amirault and Bouchard, "A group-based recidivist sentencing premium?" 522.

<sup>23</sup> Clément, "October Crisis of 1970," 167; Dominique Clément, *Canada's Rights Revolution: Social Movements and Social Change, 1937-82* (Vancouver: University of British Columbia Press, 2008), 108.

<sup>24</sup> Clément, "October Crisis of 1970," 167

<sup>25</sup> Fournier, *FLQ*, 295.

September 1971, at a joint press conference with the Québec Minister of Justice, Jérôme Choquette stated that the charges would be withdrawn and not reopened.<sup>26</sup>

While the FLQ criminal trials and related legal proceedings represented a relatively small element of the *indépendantistes* movement, the legal encounters were much more than individual criminal trials. These political trials were a deep reflection of central elements of the FLQ resistance and its clashes with the state.

## 1.2 The Legal Argument: Situating *Felquistes* Defendants

Through the FLQ legal encounters, the defendants aimed “to make the court look ridiculous.”<sup>27</sup> What exactly did this mean? How did defendants attempt to do this? What impact, if any, did such an approach have on the proceedings? How FLQ defendants defended themselves in court is too often relegated to a footnote. Developing a historical account of the FLQ legal encounters aimed at examining how FLQ defendants interacted with the legal system begins by asking: How did the FLQ orchestrate legal defences of criminal charges and was it, as a tactic, politically or legally successful? Who employed legal representatives? Who moved forward without legal counsel and self-represented? How did the defendants and their legal representatives understand the law, the court, and the trial proceedings?

Vallières used the legal system throughout his criminal trials and early incarceration to stage politicized legal confrontations in the courtroom. For him, the law was viewed as a site of contradiction. The law was viewed as repressive, partisan and unfair, but also

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<sup>26</sup> William Tetley, *The October Crisis, 1970: An Insider's View* (Montréal: McGill-Queen's University Press, 2010), Appendix E: The Aftermath to the Crisis, 3. Accessed via: [https://historyofrights.ca/wp-content/uploads/documents/FLQ\\_appendix.pdf](https://historyofrights.ca/wp-content/uploads/documents/FLQ_appendix.pdf)

<sup>27</sup> Gustav Morf, *Terror in Québec: Case Studies of the FLQ* (Montréal: Clarke, Irwin & Co., 1970), 12.

offered a space for open contestation and theatrics. The law provided defendants the tools (e.g., rights to a fair trial, rules of evidence, claims to the rule of law) to deflect vague indictments and sweeping arguments of the Crown. As such, the vaguer the Crown's charges were, the bolder the defendants' political claims became. For Gagnon, Canadian law was unfair because it was the law of the privileged class. He argued that his view of justice was unobtainable before the courts.<sup>28</sup> How did such complicated views of the law affect the use of politicized legal strategies relative to the aims or motivations of individual defendants? The reality is that some legal strategies worked in some circumstances, but not in others. Some self-represented defendants or legal representatives began with certain approaches and then shifted tactics when they perceived that one approach was no longer effective. For example, strategies that involve a client accepting guilt accomplish different goals than those strategies aimed at disrupting the court.<sup>29</sup>

This dissertation examines how FLQ criminal defendants—those with representative legal counsel and those who elected self-representation—navigated the criminal courts in Montréal throughout the group's active period. I argue that the performance of politicized legal defence strategies attempted to undermine and interrupt the Crown's narrative of criminality and justice, revealing the political character of the FLQ criminal trials. This argument, which builds on Jean-Philippe Warren's excellent analysis of FLQ legal argumentation, reconsiders FLQ defendants' arguments and their immediate impacts on the disposition of the bench. Reflecting on the imprisonment of

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<sup>28</sup> Charles Gagnon, "Letter to the Front de Libération du Québec," *Dossier d'information: Charles Gagnon* (F-10), undated, but prepared by the CAGVG (Mar. 1967 – Nov. 1969), 18, William Ready Archive, McMaster University, Stanley-Gray Files; Igor Webb, "The Quebec Liberation Struggle—interview with Charles Gagnon," *New Left Review* (1970): 62-68.

<sup>29</sup> Emiliios Christodoulidis, "The Objection that Cannot be Heard: Communication and Legitimacy in the Courtroom," in *The Trial on Trial, Volume One: Truth and Due Process*, eds. Antony Duff, Lindsay Farmer, Sandra Marshall and Victor Tadros (Portland: Hart Publishing, 2004), 179-202.

*felquistes* offenders after the dissolution of the FLQ, Warren outlines the political tension that *felquistes* defendants encountered as they engaged the justice system.

*Felquistes* prisoners began to appreciate the wisdom of those who asserted that the existence of political justice could open wide the doors to intentional processes and the arbitrariness of the authorities and who believed that recent history tends to prove that courts of this kind are often instruments of repression in the service of a privileged political ideology. When the *felquistes* prisoners realized that this specific political ideology had no chance of being theirs, they fell back on the importance of respecting the rules of law and the impartiality of the judiciary.<sup>30</sup>

Here my analysis and arguments diverge from Warren. While he broadens his scope to reconsider the slippery slope of the politicization of the trial, I focus in on the interactions between the accused (and their legal advisors and representatives), Québec Crown, and the judges who presided over the FLQ trials. While Warren focuses on the trial as a political institution, I seek a deeper examination of the defendants implicated in criminal trials. As the judiciary and the Crown struggled to maintain the appearance of due process and impartiality, the FLQ defendants made space to orchestrate a politicized legal defence. In this context, FLQ legal strategies succeeded in destabilizing court proceedings, but also marshalled the courtroom as a space of public advocacy and confrontation of the state. At times, defendants ridiculed the law and the court, while on other occasions they strategically relied on the rule of law. In short, the trial transformed into a forum for political struggle—one characterized by the often-competing ideological tensions of the

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<sup>30</sup> Warren quoted Rico: “Ils commencèrent ainsi à apprécier la sagesse de ceux qui affirmaient que l’existence d’une “justice politique” pouvait “ouvrir toute grande la porte aux procès d’intention et à l’arbitraire des autorités” et qui croyaient que “l’histoire récente tend[ait] à prouver que les tribunaux de cette espèce [étaient] le plus souvent des instruments de répression au service d’une idéologie politique privilégiée.” Quand les détenus felquistes se rendirent compte que cette idéologie politique spécifique” n’avait aucune chance d’être la leur, ils se rabattirent sur l’importance de respecter les règles du droit et d’observer, pour les magistrats, une stricte impartialité judiciaire.” Jean-Philippe Warren, ““Outrage au peuple!” L’horizon international des procès politiques des détenus felquistes,” *Globe: Revue internationale d’études québécoises* 14, no. 1 (2011): 138; José M. Rico, “Les événements d’octobre 1970 et l’administration de la justice pénale au Québec,” *Criminologie* 13, no. 2 (1980): 44.

FLQ defendants.

To that end, this study reads the FLQ criminal trials as political trials. While the necessary next question—what was political about the FLQ criminal trials?—underpins the following chapter, this examination of the FLQ trials and defendants also puts to work portions of an analytical framework of the political trial proposed by Jens Meierhenrich and Devin O. Pendas, which recognizes the critical interplay between dimensions of power, procedure, and performance.<sup>31</sup> In other words, political trials are performed power struggles between the state and politicized defendants.<sup>32</sup> FLQ defendant and Chenier Cell member Francis Simard argued that FLQ actions, which were illegal and violent, gave the *felquistes* the power to speak and to be heard.<sup>33</sup> As the state attempted to quash the FLQ through its use of emergency laws and enhanced police powers I suggest that the outcomes of the FLQ criminal trials are less significant than how the defendants politicized their legal speech vis-à-vis their defence strategies. For example, while many *felquistes* defendants made jokes at the expense of the court and articulated the historical importance of their resistance efforts, more high-profile defendants including Pierre Vallières and Charles Gagnon organized their political defence strategies around condemnations of state repression and the marginalization of the poor. While the defendants addressed the bench and the Crown, they spoke through courts and at the state.<sup>34</sup>

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<sup>31</sup> On a secondary analytical plane, they argue, political trials are also decisive, didactic, and destructive. Jens Meierhenrich and Devin O. Pendas, “‘The Justice of My Cause is Clear, but There’s Politics to Fear’: Political Trials in Theory and History,” in *Political Trials in Theory and History*, eds. Jens Meierhenrich and Devin O. Pendas (Cambridge: Cambridge University Press, 2016), 49-60.

<sup>32</sup> Awol K. Allo, “Law and Resistance: Toward a Performative Epistemology of Law” (PhD diss., University of Glasgow, 2013), 79-82.

<sup>33</sup> Ronald Crelinsten, “Limits to Criminal Justice in the Control of Insurgent Political Violence: A Case Study of the October Crisis of 1970” (PhD diss., Université de Montréal, 1985), 547.

<sup>34</sup> For more, Codaccioni explores this idea in her analysis of Maoist dissidents in France in the 1960s and 1970s. Vanessa Codaccioni, “Justice populaire et mimétisme judiciaire: Les maoïstes dans et hors la Cour de sûreté de l’État,” *Droit et société* 89 (2015): 25.

The court—as a site of political tension—is described by Otto Kirchheimer as a possible space to “exert influence on the distribution of political power,” adding that “the objectives may be to upset—fray, undermine, or destroy—existing power positions, or to strengthen efforts directed at their preservation.”<sup>35</sup> Alternatively, Kirchheimer explained, “it may be doubtful whether such court action really does consolidate the established structure; it may even weaken it. Yet that it is in both cases aimed at affecting power relations in one way or another denotes the essence of a political trial.”<sup>36</sup>

This project distinguishes itself from other examinations of the FLQ trials, which have asked, for example: “Who killed Pierre Laporte?”<sup>37</sup> “What were the public and media perceptions of the FLQ trials?”<sup>38</sup> Or, “was there an apprehended insurrection?”<sup>39</sup> Instead, my account of the FLQ legal encounters narrows its focus to the FLQ defendants and examines their defence strategies. To do this, available archived FLQ trial transcripts, written political communications, and supplemental court-related documents are drawn upon to support the English language, and more comprehensive French language, accounts

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<sup>35</sup> Otto Kirchheimer, *Political Justice: The Use of Legal Procedure for Political Ends* (New Jersey: Princeton University Press, 1961), 49.

<sup>36</sup> *Ibid.*

<sup>37</sup> For more autobiographical accounts of the events consider Pierre Vallières, *The Assassination of Pierre Laporte* (Toronto: J. Lorimer, 1977); Francis Simard, *Talking it Out: The October Crisis from Inside*. Translated by David Hamel (Montréal: Guernica Editions, 1987); and Carole de Vault, *The Informer: Confessions of an Ex-Terrorist* (Toronto: Fleet Books, 1982).

<sup>38</sup> For example, see generally, Raphael Cohen-Almagor, “The terrorists’ best ally: The Québec media coverage of the FLQ crisis in October 1970,” *Canadian Journal of Communication* 25, no. 2 (2000): 251-84; Michel Bellavance and Marchel Gilbert, *L’opinion publique et la crise d’Octobre* (Montréal: Éditions du jour, 1970); Bernard Dagenais, *La crise d’Octobre et les médias: le miroir à dix faces* (Outremont: VLB Éditeur, 1990); Guy Lachapelle, *Claude Ryan et la violence du pouvoir: le Devoir et la Crise d’Octobre 1970 ou le combat de journalistes démocrates* (Sainte-Foy: Presses de l’Université Laval, 2005); Arthur Siegel, “Canadian Newspaper Coverage of the F.L.Q. Crisis: A Study of the Impact of the Press on Politics,” (PhD diss., McGill University, 1974); and Robinson, Gertrude Joch. “The Politics of Information and Culture During Canada’s October Crisis.” In *Studies in Canadian Communications*, edited by Gertrude Joch Robinson and Donald F. Theall, 141-161. Montréal: McGill University Studies in Communication, 1975.

<sup>39</sup> Reg Whitaker, “Apprehended Insurrection? RCMP Intelligence and the October Crisis,” in *Contemporary Québec: Selected Readings and Commentaries*, eds. Michael D. Behiels and Matthew Hayday (Montréal: McGill-Queen’s University Press, 2011), 228-44; Herbert Marx. “The Apprehended Insurrection of October 1970 and the Judicial Function,” *University of British Columbia Law Review* 7 (1972): 55-69.

of the FLQ legal encounters. This dissertation, when read as a roadmap that tracks the emergence of and shifts in the politicization of the FLQ legal proceedings, develops a legal history of the *felquistes* defendant. In this analysis, I account for the interconnectivity of the “performance of politics” and the “communication of political content” relative to the FLQ criminal trials.<sup>40</sup> While legal narratives of the FLQ occupy marginal space in literature focused on political movements of the period, this project also contributes to historiographical debate in Québec about current contestations of state power.<sup>41</sup>

As a case study in the political trials genre, the FLQ trials show how *felquistes* defendants attempted to marshal accounts of perceived historical injustices and procedural malfeasances to articulate a defence of politically violent actions both before and after the 1970 October Crisis. However, does that mean that all FLQ trials were political trials? If not, which trials were political? To answer this question relative to Québec and through the group’s active period requires insight into a broader, historically-informed context. For example, Nicole Daignault, a lawyer for many imprisoned FLQ members, detailed the chronic abuses of the *habeas corpus*, judicial impartiality, rights to a fair trial and a full defence, and equality before the law throughout the FLQ trials.<sup>42</sup> In short, through the ten-year period of FLQ activity, the FLQ defendants opposed the ruling powers of the day.

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<sup>40</sup> Andrew R. Murphy, “Trial Transcripts as Political Theory: Principles and Performance in the Penn-Mead Case,” *Political Theory* 41 (2013): 777.

<sup>41</sup> André C. Drainville, “Present in the World Economy: Québec’s Students in the Springtime,” *Globalizations* 10, no. 6 (2013): 785-801; Darren Pacione, “The FLQ Trials, 1969-1971: Judicial tensions and constitutional questions,” *Québec Studies* 55 (2013): 101-18; Temitope Oriola, “Counter-terrorism and alien justice: the case of security certificates in Canada,” *Critical Studies on Terrorism* 2, no. 2 (2009): 257-74; Roozbeh (Rudy) B. Baker, “Radical formation in Québec: A legal retrospective,” 10 (2008): 1-30; Michael Gauvreau, “Winning Back the Intellectuals: Inside Canada’s ‘First War on Terror,’ 1968-1970,” *Journal of the Canadian Historical Association* 20, no. 1 (2009): 161-190.

<sup>42</sup> Nicole Daignault, “Les procès politiques au Québec depuis 1963” (unpublished manuscript, 1975), 33-34. On file with the dissertation author. Daignault responded to a Fall 1975 Amnesty International report that declared there was no political prisoners in Québec. While the report held a view of political prisonerhood and political trials that diverges from the debates engaged with here, it was widely read at the time.

They were judged for acts committed or that they may commit. Widely publicized, their trials, expeditiously facilitated within a political climate of fear, symbolized broader struggle.<sup>43</sup> For the FLQ defendants, their criminal prosecution was a political act orchestrated by the ruling powers of the day, and they resisted. Not all FLQ trials were treated the same by the Québec Crown or the judiciary, who became especially sensitive to the political climate of particular moments. As such, salient examples of juridical responses to the FLQ compose the selected case studies.

### 1.3 Reconsidering the Legal Responses to the Emergence of the FLQ

In taking stock of the legal responses to the emergence of the FLQ, this introduction maps how personnel shifts and changes in state postures of authority toward it impacted how FLQ members and their representatives responded to the Québec Crown in the legal arena. As case studies, the LaGrenade Affair (the multi-year legal saga of the manslaughter trials of Charles Gagnon and Pierre Vallières), the Trial of the Montréal Five (a controversial seditious conspiracy trial), and the FLQ-related contempt of court proceedings spanned a period from 1966 to 1972. While I draw on case studies from the last six years of the group's activity, contempt of court proceedings spans throughout the FLQ's active period. How representative are these high-profile *felquistes* cases of all the FLQ-related criminal trials? In short, the selected trials, in which all accused plead not guilty, are foregrounded relative to others due to their relation to the Vallières-Gagnon Network and the more formalized mobilization of legal defence supports. These trials also included a more concerted use of legal advisors.

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<sup>43</sup> Barbara J. Falk, *Making Sense of Political Trials: Causes and Categories* (Toronto: Munk Centre for International Studies, 2008), 4.

Importantly, the LaGrenade Affair, which ushered in the second wave of the FLQ bombings, also marked the introduction of the FLQ legal defence committee, the *Comité d'aide au groupe Vallières-Gagnon* (CAGVG). The CAGVG was a significant development relative to how the FLQ defendants proceeded with or without legal consultation through their criminal trials. Formed in 1966 by Michèle Saulnier (an activist and education professor) and Jacques Larue-Langlois, the CAGVG was the hub of FLQ legal and public political advocacy. The CAGVG, which included external support from lawyers, journalists, academics, artists, labour organizers, and students, mobilized in the wake of the first indictments of Vallières and Gagnon related to the bombings of the LaGrenade shoe factory in Montréal and the Dominion Textile plants in Drummondville, Québec. Notably, the CAGVG's political communications, notes, interviews, and the trial-related documents are available at the McMaster University William Ready Archive and offer a robust opportunity for analysis.<sup>44</sup> In 1967 and working with the CAGVG, imprisoned FLQ defendants Vallières and Gagnon broke with the legal strategies of past defendants. Instead of only ridicule and dismissal of the court, Vallières and Gagnon picked up legal textbooks and began to research legal precedents. The Vallières-Gagnon Network engaged with the law in ways their predecessors had not (e.g., earlier *felquistes* such as George Schoeters would not even acknowledge the 'foreign' Anglophone criminal law). These defendants marshalled the law to make partisan arguments instead of dismissing the law and ridiculing the courts. The LaGrenade Affair trials also marked the first casualty-related FLQ criminal trial in which defendants used the legal strategy of self-

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<sup>44</sup> The William Ready Archives at McMaster University hold the FLQ-related Stanley Grey files (an accessible and unrestricted collection). Information and background on the Grey files is accessed via: <http://archives.mcmaster.ca/index.php/stanley-gray-fonds>

representation. Finally, the selected cases, which compose the analytical focus of this study are not based on complete records.

Next, I ground each temporal phase in a historical context relative to its FLQ legal proceedings. Four phases of FLQ resistance and related legal encounters are briefly mapped out here and elaborated on in the chapters that follow. The first phase (1963-1964), which boasted the highest group membership, the most criminal activity, and targeted symbols of Anglo-Saxon dominance such as post boxes and military buildings, was also the deadliest. In the early 1960s, Montréal was Canada's largest city and an economic hub. Split along economic and linguistic lines, Montréal was ripe with political symbols of Anglophone hegemony. "Spatial contestation and intimidation," argued Jason Burke, "became a method of asserting control over the city."<sup>45</sup> In a critique of the initial selected FLQ targets, a Canadian University Press journalist questioned why the FLQ did not target apparatuses of economic power such as the Canadian and American corporations that exploited the Québec workers (later waves of the FLQ would shift from colonial to capitalist symbols).<sup>46</sup>

On 8 March 1963, three Montréal armories were targeted with bombs. In the days that followed, local French radio played paid pre-recorded FLQ broadcasts that promised a campaign of violence aimed at federal and imperialist institutions. In the ten weeks that followed, the FLQ defaced the lieutenant-governor's house in Québec City, bombed the Black Watch Armory, a RCAF technical services building, an RCMP garage, and an

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<sup>45</sup> Jason R. Burke, "Conflict in Cities and the Struggle for Modernity. Toward an Understanding of the Spatiality of the October Crisis," *Cahiers de géographie de Québec* 53, no. 150 (2009): 343.

<sup>46</sup> Canadian University Press - Québec Special Service #11, "A short History of the FLQ – QSS Part II," Service des archives et de gestion des documents, UQÀM, 14 February 1971, Bernard Mergler Files, 25P-148:03/109-123.

Armed Forces regimental headquarters building. Led by a Belgian immigrant named George Schoeters, who had been involved with a a Belgian resistance group at the end of World War Two, the first wave of FLQ activity exploded bombs on 29 March, 6 and 21 April 1963. On 21 April, an explosion killed night watchman Wilfred O'Neill.<sup>47</sup> The next month, May 1963, police officer Walter Leja was injured in an attempted bomb defusing in Westmount, Montréal.

On 1 June 1963, twenty-one people including George Schoeters, Gabriel Hudon and Jacques Villeneuve were arrested for a series of bombings (one which resulted in the death of O'Neill), thefts, and robberies orchestrated to raise funds for the group. The accused were all held incommunicado, separated from one another, and not permitted to contact legal counsel or their families. In the days following the arrests, the police who conducted the investigation and arrests called a televised press conference in which they exhibited alleged evidence including dynamite and the detonators. Despite protests about the broad assertion of police power and detainment practices, Premier Lesage emphasized that if the police are to fight such revolutionary anarchist groups, all powers including the extraordinary ones (e.g., indefinite detention without trial) must be at their disposal. Montréal Police Chief Adrian Robert echoed this sentiment stating that indeed the FLQ, a small group of anarchists, had been “smashed,” and that: “I don't think we'll hear any more from them.”<sup>48</sup> The Police Chief could not have been more wrong. The televised performance was coupled with a coroner's inquest into the death of the security guard, Wilfred O'Neill. The inquest, which held all twenty-four FLQ suspects criminally

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<sup>47</sup> Tetley, *The October Crisis, 1970*, Appendix C: The Events Preliminary to the Crisis, 3-4. Accessed via: [https://historyofrights.ca/wp-content/uploads/documents/FLQ\\_appendixc.pdf](https://historyofrights.ca/wp-content/uploads/documents/FLQ_appendixc.pdf)

<sup>48</sup> Fournier, *FLQ*, 39.

responsible for the death of O'Neill, was conducted without access to legal counsel.

When brought before a court to plead guilty in the death of O'Neill and the injury of Leja, some FLQ defendants refused at times to testify and demanded to swear on a "revolutionary bible" (such as Frantz Fanon's *Les Damnés de la Terre* (1961) or its translation *The Wretched of the Earth* (1963)).<sup>49</sup> The plea deal was that everyone pleads guilty or Schoeters would be prosecuted for murder and the crown would ask for the death penalty, which was still an option. Schoeters, for example, denounced the jurisdiction and legitimacy of the court to pass judgement. This refrain would become part of the *felquistes* defendants' approach for years to come. In brief, what Schoeters attempted to do was advance a political message and disregard the consequences of his actions. This disregard of consequences, maintained through a variety of FLQ communications with authorities, further polarized a tepid public. Schoeters stated:

As a member of the FLQ, I do not acknowledge foreign law by which I am accused. However, my lawyers informed me that this law applies. I acknowledge therefore these facts mentioned in the act of accusation. It is true that I committed these acts, but . . . I still believe that this is the only attitude that can free the people of Québec of the yoke of colonialism hanging over them.<sup>50</sup>

This statement was the last from George Schoeters in a courtroom, but its sentiment echoed before judges for years to come. On 7 October 1963, once an agreed statement of facts and the guilty plea deal was reached for all who were involved in the early actions of the FLQ, Justice Maurice Cousineau convicted twenty-one FLQ members, acquitted two, and one,

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<sup>49</sup> Morf, *Terror in Québec*, 11-12.

<sup>50</sup> Schoeters: "Comme membre du Front de Libération Québécois, je ne reconnais pas la loi étrangère en vertu de laquelle je suis accusé. Cependant, mes avocats m'informent que cette loi s'applique actuellement. Je reconnais donc les faits mentionnés dans l'acte d'accusation. Il est vrai que j'ai commis ces actes, mais si je l'ai fait c'est que sûrement je croyais, et je crois encore, que c'est la seule attitude qui puisse libérer le peuple Québécois du joug colonialist qui pèse sur lui." Daignault, "Les procès politiques," 36.

Gilles Pruneau, skipped out on his bail and fled to Algeria. The sentences ranged from lengthy imprisonment to extended probation.<sup>51</sup> Even the most conservative of media outlets criticized the actions of the police and Crown.<sup>52</sup>

Marked by the entrance of Pierre Vallières (a self-trained journalist) and Charles Gagnon (a teacher), the second phase (1965-1967) of FLQ resistance showed signs of a more sophisticated approach to the *felquistes* legal encounters. On 1 June 1963, FLQ activists travelled to Algeria to train with the *Front de Libération Nationale* (National Liberation Front), an experience that led to the formation of *La Cognée* Network (or the 1<sup>st</sup> Central Committee of the FLQ's political wing) the following year. It was in association with *La Cognée* Network that Pierre Vallières published on the liberation of Québec.<sup>53</sup> Alain Carrier identifies the emergence of the second phase of the FLQ as punctuated by the formation of the Vallières-Gagnon Network—itsself a ‘socialist’ off-shoot of the *La Cognée* Network. The unprecedented work of Vallières and Gagnon, who together formed what Carrier called the 2<sup>nd</sup> Central Committee of the FLQ (1965-9), sparked an era in which the FLQ received its most popular public support.<sup>54</sup> Influenced by readings of Marx and the Cuban revolutionary war, Vallières and Gagnon rearticulated the struggle of the FLQ as less so between Québec and the Federation and more about the struggle and oppression

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<sup>51</sup> Morf, *Terror in Québec*, 12.

<sup>52</sup> Daignault, “Les procès politiques,” 35-6.

<sup>53</sup> Following a line of questioning raised by Dr. Dominique Marshall on the historical and literary influences of the intellectual *felquistes* (e.g., Pierre Vallières), I point to Barry Cooper's work on Gaston Miron's (the Québec poet and writer who was arrested alongside Vallières in October 1970) influence on Vallières in the formation of his political consciousness and *independentistes* beliefs. See generally, Barry Cooper, “Vallières' confession,” *Journal of Canadian Studies / Revue d'études canadiennes* 1 (1971): 3-17.

<sup>54</sup> Alain Carrier, *The Québec Liberation Front (FLQ) as an Insurgency* (Fort Leavenworth: School of Advanced Military Studies, 2010), 48-50.

of the worker.<sup>55</sup> In short, Vallières and Gagnon shifted the focus of FLQ clandestine action to labour strife.<sup>56</sup> This dual entanglement of revolutionary socialist ideas and anti-imperialism put the national question in the back seat.<sup>57</sup>

As the Vallières-Gagnon Network emerged as a vocal rally-point for the FLQ, its membership grew broader to include young students, journalists, and workers who shared leftist militant ideas. For Vallières and Gagnon, writes Ivan Carel, “violence was the lever of the revolution, but must be done in the interests of the people, so that the people themselves take up arms against their exploiters.”<sup>58</sup> In a 1966 guiding document entitled “*Qu’est-ce que le FLQ?*” Vallières, who had adopted the language of Cuban revolutionary leaders, wrote that the liberation of the Québécois people would be an armed violent and organized struggle. The work of the FLQ is to organize violence as “revolutionary vanguard.”<sup>59</sup> As bombing targets shifted away from symbols of Anglo-Saxon domination to symbols of capitalist exploitation (e.g., factories, railways, and corporate headquarters), Vallières and Gagnon took their plight to the United Nations in Manhattan to raise awareness for the movement. The impact the Vallières-Gagnon Network had on the *felquistes* movement is central to this project as it was their imprisonment and subsequent criminal trials, in which they engaged in the development and delivery of legal self-

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<sup>55</sup> For more on the influence of third-world and global south Marxist thinking on the *felquiste* in 1970 Québec, see Pierre Beaucage, “Le vent du sud: Les idées du Tiers-Monde et les marxistes québécois dans les années 1970,” *Canadian Review of Sociology & Anthropology* 27, no. 1 (1990): 95-114.

<sup>56</sup> Tetley, *The October Crisis, 1970*, Appendix F: “General Contestation in Québec Society (1960-1970), 4. Accessed via: [https://historyofrights.ca/wp-content/uploads/documents/FLQ\\_appendixf.pdf](https://historyofrights.ca/wp-content/uploads/documents/FLQ_appendixf.pdf)

<sup>57</sup> David A. Charters, “The Amateur Revolutionaries: A Reassessment of the FLQ,” *Terrorism and Political Violence* 9, no. 1 (1997): 144;

<sup>58</sup> Carel: “la violence reste le levier de la révolution, mais doit se faire dans les intérêts du peuple, afin que le peuple lui-même prenne les armes contre ses exploiters, qui sont désormais moins les Anglais que les capitalistes.” Carel, “Violence et décolonisation,” Accessed via: <http://popups.ulg.ac.be/1374-3864/index.php?id=1196>

<sup>59</sup> Fournier, *FLQ*, 95.

representation strategies. These strategies thrust key questions about the politicization of the FLQ legal encounters to the foreground in Québec.

September 1968 marked an escalation in violence and the beginning of a third phase (Sept. 1968 to Sept. 1970) of the FLQ offensive. The bombing targets became more varied and the bombs larger.<sup>60</sup> For example, in early 1969, the Montréal stock exchange building was bombed, and twenty-seven people were injured. On 3 March 1969, Pierre-Paul Geoffroy, a 24-year-old student who did not have a criminal record was arrested in connection with the bombing of the stock exchange and charged with 129 offences including thirty-one counts each of conspiring to make a bomb, making a bomb, conspiring to place a bomb, and placing a bomb, and five counts of possession of dynamite. Geoffroy, who remained silent throughout his detention, plead guilty four days later and was sentenced to 124 life sentences—the longest sentence in commonwealth history.<sup>61</sup> Judge André Fabien’s sentencing report from the Court of the Sessions of the Peace, which commended the Québec Crown counsel, Mr. Daviault, for reaching such an impressive guilty plea arrangement with an FLQ suspect. In the judge’s sentencing report, he indicated that Geoffroy, while conscious of the political, economic, and social implications of his actions, was not strictly speaking a common-law criminal. In making such a distinction about the political characterization of Geoffroy as a criminal offender, Justice Fabien linked Geoffroy’s political activism to his further danger to the public and doubted his potential for rehabilitation (judges expressed similar doubts about Vallières in a later sentencing hearings).<sup>62</sup>

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<sup>60</sup> Bédard, “Intellectual Origins of the October Crisis,” 53-8.

<sup>61</sup> Clément, “October Crisis of 1970,” 162; Clément, *Canada’s Rights Revolution*, 106

<sup>62</sup> Jean-Philippe Warren, “À la défense des prisonniers politiques québécois: Autour du Comité d’aide au Groupe Vallières-Gagnon,” *Bulletin d’histoire politique* 19, no. 2 (2010): 58-9.

In response, FLQ members and their supporters expressed outrage. For example, on 11 March 1970, Jacque Larue-Langlois (president of the CAGVG) wrote: “Pierre-Paul Geoffroy’s 124 life sentences constituted the total gag that the repressive system chose to impose on all Québécois conscious of leading the struggle against exploitation. Through Geoffroy, it is us all, fighters on every level, that they gagged 124 times to life. Are we not going to resist?”<sup>63</sup> The legal response to the Geoffroy bombing demonstrated the justice system’s growing impatience with the FLQ. As an intended deterrent (not even the sentences related to the October Crisis were so severe), such a sentence would galvanize support around emerging FLQ cells.

The fourth and final phase (Oct. 1970 - 1972) led to the fall of the FLQ. After a failed kidnapping attempt in February 1970 of an Israeli diplomat (in which two FLQ members were pulled over by police on their way to the kidnapping for a traffic violation), two other FLQ cells completed two kidnappings that October. On 5 October 1970, the Liberation Cell<sup>64</sup> kidnapped James Cross. The success of the Cross kidnapping caught the Chenier Cell<sup>65</sup> off guard as they were still in the US when they found out.<sup>66</sup> With uncoordinated haste and pressure to maintain the momentum generated by the actions of the Liberation Cell, the Chenier Cell kidnapped Québec Labour Minister Pierre Laporte.<sup>67</sup> The legal response to the fourth wave of FLQ activity was swift. Empowered with wartime

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<sup>63</sup> Larue-Langlois: “Les cent-vingt-quatre sentences à perpétuité de Pierre-Paul Geoffroy constituent le bâillon total que le système de répression a choisi d'imposer à tous les Québécois conscients de la lutte à mener contre les exploiters. Par Pierre-Paul, c'est nous tous, combattants de tous niveaux, qui sommes bâillonnés 124 fois à perpétuité. Allons-nous nous laisser faire?” Warren, “défense des prisonniers politiques québécois,” 59.

<sup>64</sup> The Liberation Cell was composed of Jacques and Louise Cossette-Trudel, Jacques Lanctôt, Marc Carbonneau, Yves Langlois, and Nigel Barry Hamer.

<sup>65</sup> The Chenier Cell was composed of Francis Simard, Bernard Lortie, Paul Rose, and Jacques Rose.

<sup>66</sup> Charters, “Amateur Revolutionaries,” 154.

<sup>67</sup> Kuntzsch, “Violent Politics of Nationalism,” 448-9.

powers, the military and the police rounded up FLQ members and sympathizers and outlawed the FLQ under a newly enacted emergency law. In total, related to the October Crisis, the police arrested 497 people, but released 435 with no filed charges. The remaining sixty-two people faced eighty-six emergency measures-related charges and nineteen criminal charges.<sup>68</sup> Eleven of those accused underwent jury trials.<sup>69</sup> In total, eighteen people were convicted in relation to the October Crisis, but only two under the public order regulations.<sup>70</sup> In the wake of the mass arrests in Montréal, many wrote about the fears and uncertainty surrounding the sweeping executive powers exercised under the authority of the WMA. As we shall see, orders issued by the federal cabinet under the WMA expanded police powers and suspended *habeas corpus* (e.g., permitting arrest without charge for seven days and detention for twenty-one days without being presented before a court).<sup>71</sup>

The legal responses to the fourth and final wave of the FLQ are very different to that of prior groups. The FLQ, now outlawed via temporary emergency law, faced new legal hurdles. Chapters five and six examine how the FLQ's legal strategies changed relative to the post-October Crisis context. Did waning popular support impact their legal approaches? In that vein, how effective was self-representation as a legal defence strategy compared to its relative utility in prior contexts?

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<sup>68</sup> Pierre Vallières, *The Assassination of Pierre Laporte* (Toronto: J. Lorimer, 1977), 187; Clément, *Canada's Rights Revolution*, 108.

<sup>69</sup> *La Commission d'enquête des Citoyens sur les Mesures de Guerre*, Service des archives et de gestion des documents, UQÀM, Bernard Mergler Files, 25P-148:03/115, 11.

<sup>70</sup> Clément, "October Crisis of 1970," 167.

<sup>71</sup> Harry Kopyto, "War Measures Act is Police State Law," *Labour Challenge*, October 23, 1970, <https://www.marxists.org/history/canada/socialisthistory/Docs/1961-/Quebec/October-2.htm>

## 1.4 A Roadmap

Chapters two and three situate the FLQ criminal trials as political trials, in which its defendants marshalled—sometimes through legal counsel and sometimes through self-representation—political defence strategies in the courtroom as a response to a Québec Crown operating in a political climate of uncertainty and fear. Chapter two anchors the FLQ criminal trials in the post-war political trials literature. In doing so, and with the assistance of literature that considers the performances of the trial relative to its political defendants, I examine an alternative reading of the FLQ legal encounters. Many scholars have taken up similar critical examinations in other jurisdictions. This study is the first to examine the FLQ trials through these parameters. Finally, I conclude with an analysis of the general challenges faced in conducting the archival research for the project. Chapter three expands the notion of the FLQ’s political defence strategy (*la guérilla judiciaire*) to capture a discussion of the types of strategies deployed by the FLQ defendants. Further, the chapter also introduces the legal personnel who composed the CAGVG and plots a typology of politicized legal defence strategies employed through political trials. In situating the work of the CAGVG relative to the previous generation of Canadian progressive lawyers who faced similar oppressive legal and economic forces, I consider what makes such strategies effective.

Chapters four, five, and six examine how FLQ defendants deployed a variety of political and legal defence strategies throughout their criminal trials. Chapter four introduces the LaGrenade Affair, the highlight of the second phase of the FLQ resistance and legal encounters described above. The Affair, which began with an expulsion from the United States and a series of manslaughter trials related to the May 1966 bombing death of

Thérèse Morin, marked the most public organized action of the Vallières-Gagnon group for the FLQ. Although not involved in the delivery of the bomb to H.B. LaGrenade Ltd., a shoe manufacturing company in Montréal, Pierre Vallières and Charles Gagnon faced series charges in relation to her alleged murder. After extended delays, Gagnon was tried and acquitted. Vallières, however, was convicted of manslaughter and sentenced to life imprisonment. The chapter, which analyzes the prosecutorial approaches of the Québec Crown, the legal defences advanced by the two *felquistes* defendants, and the Québec trial and appeal court judgements, concludes that an overzealous Crown, who had strong-armed earlier FLQ group into plea agreements, was not sufficiently prepared to prosecute Vallières and Gagnon.

Chapter five presents a historically contextualized legal analysis of the Trial of the Montréal Five, a key legal encounter of the fourth phase of FLQ resistance. The Trial, a seditious conspiracy prosecution of prominent FLQ members (e.g., Vallières, Gagnon, Robert Lemieux, Michel Chartrand, and Jacque Larue-Langlois), was a high-profile FLQ political trial. The Trial of the Montréal Five resulted in the acquittals of all defendants. This chapter concludes that the political defences of the four self-represented FLQ defendants (Larue-Langlois secured legal counsel) attempted to delegitimize the prosecutorial ambition of the Crown in an already politicized proceeding as the presiding judge weaponized contempt of court charges and moved in and out of closed court sessions.

Chapter six takes historical inventory of the law of contempt of court in Canada and examines the FLQ trial-related contemptuous speech of Pierre Vallières, Michel Chartrand and Chenier cell member Paul Rose. The Chenier cell kidnapping and murder trials are possibly the best known of the FLQ trials, and the ones most easily characterized

as criminal rather than political, but they were nonetheless part of a much larger whole of political proceedings. While contempt of court-related FLQ trials highlight the difficulties of presiding over cases with uncooperative defendants, these political trials are often overlooked as they tend not to be appealed. However, as FLQ defendants appealed contempt convictions, this chapter identifies that in some cases convictions in the court of first instance were overturned on appeal due to inappropriate usage of the law of contempt in the trial court. Chapters four, five, and six suggest that despite expedited charges and convictions in the short term, neither charges nor convictions tended to stick for the long term.

This project engages the breadth of written French-language resources related to the emergence and actions of the FLQ with the view that analysis of the FLQ trials deepens historical understanding of the political and legal trajectory of the group beyond the existing scholarship. As a legal strategy, self-representation, whether successful or not, was harnessed as a tool of contestation by FLQ defendants and their advisors in the courtroom through a volatile period in Québec history. A period in which the government and the Crown set out to use war power and the consequent legal encounters to discourage those who questioned the status quo. Although beyond the scope of this project, the politicization of the criminal justice system in the wake of the October Crisis had a longer-term impact beyond the FLQ trials and influenced the policing of dissent and national security intelligence gathering through the 1970's and 1980's. The next chapter sets the stage for this study by situating the FLQ legal encounters as a case study in the political trials genre.

## Chapter Two: Framing Political Trials

FLQ actions and their legal consequences gave the *felquistes* the power to speak and to be heard.

—Ronald Crelinsten on the FLQ.<sup>72</sup>

### 2.1 Introduction: FLQ Criminal Trials as Political Trials in Québec

Political trials, in this study, include prosecutions for violations of public order or national security-related laws, routine offences committed for political ends, and proceedings related to regime change. Importantly, they are more than reflections of state power as exercised through the legal system. For defendants, political trials offer a forum to contest government actions and express political grievances. As Robert Lemieux—the young FLQ lawyer—lamented in a June 1971 issue of *MacLean's*, “when you get a ‘revolutionary’ on trial, the court desires nothing more than a guilty plea and to pass a swift sentence.”<sup>73</sup> However, what happens, he questioned, when uncooperative defendants do not bend to the authority of the state and plead guilty? What happens, Lemieux asked, when these types of defendants choose to challenge the social, political, and legal status quo? What happens when they contest the authority of the court and perceived legitimacy of the legal system?

The argument that the FLQ criminal trials are political trials is grounded in three related premises: (1) all *felquistes* criminal activity was committed with explicit political objectives; (2) for the FLQ defendants, the courtroom, whether intentionally or not, was marshalled as a public and publicized forum for the politicization of the FLQ movement in

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<sup>72</sup> Crelinsten, “Limits to Criminal Justice in the Control of Insurgent Political Violence,” 547.

<sup>73</sup> Erna Paris, “The radicalization of Robert Lemieux,” *MacLean's*, June 1971, 58.

Québec; and (3) rather than maintain distance from the political antics of the FLQ defendants that emerged within the criminal trials, the Québec Crown used political rhetoric of their own to encourage the expeditious conviction of FLQ defendants and the maintenance of the status quo. The FLQ trials offer an illustration of the performative aspects of courtroom practices and an opportunity to examine the performed legal defences of *felquistes* defendants. As the physical targets of FLQ action shifted (as new networks shifted their attention away from symbols of Anglo-Saxon dominance to labour politics and the support of striking workers) so too did the ideological fervour of their public advocacy and courtroom polemics. Through consideration of theories of the political trial as advanced by Awol K. Allo and Başak Ertür, the FLQ trials are analyzed with a view to their performative structures and as spaces of politicized litigation. Developed in what follows relative to the FLQ trial, for Ertür, political trials are those trials whose “performative structures are publicly exposed.”<sup>74</sup> Moreover, as noted in the introductory chapter, the politicization of the FLQ’s legal defence strategies attempted to delegitimize the proceedings to render more visible the politics of the criminal justice. This argument reads the FLQ political trials as unbalanced power struggles between their defendants and the Québec state.

As such, the first section of this chapter surveys political trials literature with an aim to describe how trials function as spaces of political contestation. Next, the broader argument of this dissertation—that the FLQ defendants’ legal defence strategies had destabilizing and thus politicizing effects on the FLQ criminal trials—is grounded in consideration of legal performances in the context of political trials. Finally, and anchored

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<sup>74</sup> Başak Ertür, “Spectacles and Spectres: Political trials, Performativity and Scenes of Sovereignty” (PhD diss., University of London, 2015), 87.

in some general observations about archives, this chapter considers the methodological challenges of modern political trials research. Permanent restrictions on FLQ-related archival files at the *Bibliothèque et Archives nationales du Québec* (BAnQ) encourage reflection on the statutory regulation of politically sensitive private collections and solicitor-client privilege.

## 2.2 A Consideration of the Political Trial

On 5 November 1970, Pierre Vallières, flanked by his four alleged co-conspirators, listened as a court clerk read the indictments for seditious conspiracy. The indictments, which delimited the timeline of the offence committed by Vallières and company between January 1968 and 16 October 1970 set the stage for the 1971 Trial of the Montréal Five. Vallières, speaking out of turn, questioned the judge reading the indictment: “Why January 1968? We could go back to 1838, not January 1968, it’s completely absurd.”<sup>75</sup> Vallières’s historical reference to the struggles and uprisings of the 1838 *patriotes* in Lower Canada (as the British colony of Québec was called at the time) would resurface through the FLQ trials. It was fitting, however, for Vallières to make the comment before the bench in Montréal. In the autumn of 1838, a session of the Montréal General Court Martial was convened to try captured *patriotes* rebels. The colony’s legislature and regular criminal courts had been suspended, the former replaced by an executive governing Special Council, while the latter reflected a lack of confidence in regular legal processes, especially by juries and some francophone judges. Recourse to summary military justice and executive rule

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<sup>75</sup> Vallières: “. . . pu remonter en 1838, pas janvier 68, c’est complètement idiot et complètement absurde.” *Queen v. Chartrand, Vallières, Gagnon, Lemieux and Larue-Langlois*, Pre-trial arraignment, Case #70-6700, 5 November 1970, *Bibliothèque et Archives nationales du Québec* (BAnQ), Old Montréal, P839, S2, D13, Container: 2010-12-004\2, at 9.

sent a clear political message that Québécois people could not be trusted to support the existing order.<sup>76</sup>

For activist and writer Andrée Ferretti, the *patriotes* 1837-38 rebellions were ‘national’ movements. That repression was harsher against *patriotes* in Lower Canada than those who had revolted in Upper Canada (who were tried by regular criminal courts, until the later *patriotes* raids across the American frontier and where the legislature was not suspended), pointed to a deeper political chasm in Québec at the time. While the Francophone majority supported the *patriotes* movement, this majority was governed by a vastly outnumbered Anglophone minority. In this context, the summary justice of the Montréal General Courts Martial may be “explained by its aim to make clear that restive behaviour would not be tolerated by the British authorities.”<sup>77</sup>

Steeped in this political history of the *patriotes* struggle, whose depiction watermarked the pages of the 1970 FLQ Manifesto, the *felquistes* defendants championed historical narratives of the *patriotes*, Québécois nationalism, and a liberated working class throughout their trials. Trial after trial, Pierre Vallières, Charles Gagnon, and Michel Chartrand continued to return to the imagery and history of the 1759 Conquest of Québec and the 1837-8 rebellions as referent points that contextualized their present contestations of the political and social system in Québec.<sup>78</sup> More to the point, how did the FLQ political

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<sup>76</sup> F. Murray Greenwood, “The General Court Martial at Montréal, 1838-9: Operation and the Irish Comparison,” in *Canadian State Trials II: Rebellion and Invasions in the Canadas, 1837-1839*, eds. F. Murray Greenwood and Barry Wright (Toronto: University of Toronto Press, 2002), 280.

<sup>77</sup> Kuntzsch, “Violent Politics of Nationalism,” 464. Also see, Steven Watt, “Supporting Documents,” in *Canadian State Trials II: Rebellion and Invasions in the Canadas, 1837-1839*, eds. F. Murray Greenwood and Barry Wright (Toronto: University of Toronto Press, 2002), 459-486; Jean-Marie Fecteau, “The Ultimate Resource: Martial Law and State Repression in Lower Canada, 1837-8” in *Canadian State Trials, Volume II: Rebellion and Invasions in the Canadas, 1837-1839*, eds. F. Murray Greenwood and Barry Wright (Toronto: University of Toronto Press, 2002), 216.

<sup>78</sup> While the defence strategies employed by the most illiterate *patriotes* were almost non-existent, historicizing the FLQ trials relative to the Montréal General Court Martial consider the trials and military

trials function as forums for the articulation of complex histories, political protest, and critiques of law? Put another way, what procedural openings for contestation were afforded to the FLQ defendants by the Québec Crown, unintentionally or not? More importantly, and discussed further in the next chapter, what strategies could be used to contest the proceedings?

For example, when Vallières and Gagnon pressed the Crown to drop the LaGrenade-related manslaughter charges against them, the Crown made it known that volumes of FLQ movement pamphlets including *La Cognée* (The Axe) and *l'Avant-Garde* (the official publication of *Le Comité Central* of the FLQ) would anchor their prosecution of the *felquistes* activists.<sup>79</sup> This move, a controversial decision on the probative value of this evidence, permitted a legal discussion of political claims in the courtroom. Was this an attempt by the Crown to undermine the FLQ defendants' efforts to politicize the proceedings in an unruly manner? Alternatively, was it the opening in the Crown's strategy that the FLQ needed to induce a prosecutorial misstep? In the next two sections, I consider the influence of Kirchheimer and Shklar, among others, in the development of the political trial genre, and outline the scaffolding of a performative conception of the political trial.

### 2.2.1 What is Political about the FLQ Criminal Trials?

In broad terms, what is political about the political trial? Does the concept of the

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tribunals as forums for the assertiveness or silencing of nationalist narratives. Bernard Dagenais, "Octobre 1970: la stratégie discursive de l'État," in *Violences Politiques: Europe et Amériques, 1960-1979*, eds. Ivan Carel, Robert Comeau, and Jean-Philippe Warren (Montréal: Lux Éditeur, 2013), 39-40; Awol K. Allo, "Marwan Barghout in Tel Aviv: Occupation, Terrorism, and Resistance in the Courtroom," *Social & Legal Studies* 26, no. 1 (2017): 47-68.

<sup>79</sup> For further consideration of the early writing of the FLQ including *La Cognée* and *l'Avant-Garde* see Éric Bédard, *Chronique d'une insurrection appréhendée: La crise d'Octobre et le milieu universitaire* (Sillery: Les Éditions du Septentrion, 1998), 42-50.

political trial imply that legal and political spheres are usually distinct and that political trials are exceptions? To read trials as political—and therefore as spaces for confrontation—means first a rejection of this distinction. Law’s normative claim to objectivity and impartiality neutralize questions of its possible political character and implications, such a claim also views the law as an authoritative and neutral site of conflict resolution because of those very aspects.<sup>80</sup> This claim, however, turns a blind eye or attempts to contain the political possibilities and realities of legal proceedings.<sup>81</sup> Political trials, therefore, blur this separation and implicate the politics of the law. To resort to criminal prosecution in response to public order or national security concerns sits uneasily with such a perspective. Moreover, legal spaces, and especially trials, are rife with power imbalances and institutional inequalities. Political trials are political not because they are so very distinct from formal legality, but because they bring into contention two parties with incompatible understandings of law and society.<sup>82</sup> While the *patriotes* treason trials in 1838 departed from the norms of legality, the 20<sup>th</sup> century FLQ political trials unfolded in a jurisdiction anchored in the rule of law rather than an authoritarian context. Moreover, it is this incompatibility that threatens to disrupt “the court’s power rationalizing and order-legitimizing functions.”<sup>83</sup>

Read as political trials, the FLQ trials are characterized through the nature of the power struggles between the defendants, the bench, the and Crown. For example, the FLQ defendants viewed Canadian law as political and a tool of domination and repression

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<sup>80</sup> Allo, “Law and Resistance,” 77-8.

<sup>81</sup> Emiliios A. Christodoulidis and T. Scott Veitch, “Litigating Dangerous Politics,” *The Journal of Human Justice* 6, no. 1 (1994): 26-28.

<sup>82</sup> Leora Bilsky, “Criminal Trials in an Age of Terror,” *Adalah’s Review* 5 (2009): 13-14.

<sup>83</sup> Allo, “Law and Resistance,” 80.

manipulated by those who held political power and controlled the means of production. Resistance to the law, which came in the form of challenging the legal authority of the presiding government and the legitimacy of the courts who enforced that authority, was translated into politicized legal defence strategies by the defendants in an attempt to capitalize on how the judiciary struggled to rationalize and legitimize the Crown's overreach after the government's decision to invoke emergency measures. For the FLQ, the rule of law was contestable because it lacked legitimacy. In what follows, I map out the notion of the political trial from the perspectives of how selected modern thinkers have considered such trials in the post-war context.

In *Legalism* (1964), Judith Shklar asserted that “it is not the political trial itself but the situation in which it takes place and the ends that it serves which matter.”<sup>84</sup> In keeping sight of how trials are spaces for political contestation, Shklar, who realized that political trials—law—were but another form of politics, continued: “when one analyzes the ideologies and regimes which are incompatible with legalism . . . one recognized the extent to which law is both the expression of and participant in another sort of politics.”<sup>85</sup> Rather than ask if the law is political, the key question is: “What sort of politics can law manifest and reflect?”<sup>86</sup> What was at stake, suggested Shklar, was the politics of persecution, not that courts offered a space to orchestrate it.<sup>87</sup> For Shklar, political trials included instances in where there was law, but no criminal act; no law that deemed an act criminal, but enough to construct criminality; and, instances in which there were law and criminal action.<sup>88</sup>

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<sup>84</sup> Judith Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge: Harvard University Press, 1964), 145.

<sup>85</sup> *Ibid.*, 144.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*, 145.

<sup>88</sup> Shklar, *Legalism*, 152-3.

While this definition begins to consider what a political trial is, it urges another question: which types of trials are political?

In *Political Justice* (1961), Otto Kirchheimer accepted the trial as holding the potential to transform political climates, but emphasized the use of such trials to challenge or eliminate a political foe.<sup>89</sup> While his often-cited typology of political trials prioritizes the intentions of the state over other important trial actors, it is, however, useful as it distinguished contexts within which trials emerged as sites of political contestation.

1. Trials involving a common crime committed for political purposes and conducted with a view to the political benefit which might ultimately accrue from successful prosecution;
2. the classic political trial: a regime's attempt to incriminate its foe's public behaviour with a view to evicting him from the political scene; and
3. the derivative political trial, where the weapons of defamation, perjury, and contempt are manipulated to bring disrepute upon a foe.<sup>90</sup>

While it is not the purpose of this section to fit the FLQ trials into one category or another, typologies of political trials are used to highlight some of the perceived and real boundaries and possibilities of this malleable concept. With many contexts and definitions of the political trial, what I am interested in here is the relationships and roles between criminal defendants and the state or Crown in the domestic common law criminal trial context.<sup>91</sup> Relative to the criminal defendants in political trials, Theodore Becker argued that the politics of a trial come into focus when the defendant is viewed as a perceived or direct threat to the political status quo or those who benefit from its maintenance.<sup>92</sup>

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<sup>89</sup> Kirchheimer, *Political Justice*, 6.

<sup>90</sup> *Ibid.*, 46.

<sup>91</sup> Leon Friedman, "Political Power and Legal Legitimacy: A Short History of Political Trials," *Antioch Review* 30 (1972): 158.

<sup>92</sup> Theodore L. Becker, ed. *Political Trials* (New York: The Bobbs-Merrill Company, Inc., 1971), xi.

In Kirchheimer's view of the historical importance of such trials, the criminal defendant and the public are provided with an opportunity to re-create history and potentially shape the future. "It matters little that the segment offered in proof may be too limited, [or] the witness from whose tales the story is reconstructed too close to or too remote from the historical events."<sup>93</sup> What Kirchheimer described was the fragmented formation of a historical record through the ambiguity of trial narratives. This ambiguity, a result of a political contestation, is indicative of power struggles between those who intended to maintain order and those determined to disrupt it.

For Nathan Hakman, who made a significant departure from views about political trials at the time, the trial was less a contestation between individuals, but one entrenched in the broader community. Thus, "when ideological theories, or their group goals, become relevant or controlling issues in a judicial proceeding the trial becomes political in ways that differentiate it from normal, or reformist, court action."<sup>94</sup> In this vein, media organization, labour unions, and political parties and organizations all had a stake in the trial. For example, in Québec, the FLQ movement was quashed. However, the events of the 1970 October Crisis—the kidnapping of the British Trade Commissioner and the kidnapping and murder of the Québec Labour Minister—continued to occupy historical space in Québec's nationalist imagination.<sup>95</sup> Kuntzsch's argument, which contemplated the unintended role of FLQ action relative to the consolidation of Québécois nationalism through the political ascension and 1976 election of the PQ, considered the relevancy of the October Crisis to readings of the transformative potential of (armed) political struggle. Further, and albeit

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<sup>93</sup> Kirchheimer, *Political Justice*, 422-3.

<sup>94</sup> Nathan Hakman, "Political Trials in the Legal Order: A Political Scientist's Perspective," *Journal of Public Law* 21 (1972): 95.

<sup>95</sup> Kuntzsch, "Violent Politics of Nationalism," 460.

partial to the movement, in a 1978 interview Jacques Rose (one of the FLQ Chenier Cell members convicted of the kidnapping and murder of Laporte) claimed that the October Crisis was an event that was necessary in the history of the people of Québec and that collective awareness could lead to liberation from dominance (Anglophone) social and economic forces, which is not unconnected to the rise of the PQ to power.<sup>96</sup>

Moreover, according to Lawrence Douglas, “the criminal trial is used as a tool of collective pedagogy and as a salve to traumatic history.”<sup>97</sup> However, used by whom? It matters who marshals the power of the criminal trial and to what ends. Using the trial of Adolf Eichmann as an example, Douglas expanded how history and memory are read relative to the courtroom and how they influenced public perceptions of trauma and identity. He argued that trials hold the ability to function as didactic tools, which can bolster “collective interest in the past.”<sup>98</sup> In *The Memory of Judgment* (2001), Douglas explained that while “individual trials are staged to reach closure . . . the discourse of legal judgment and the historical understandings it contains remain fluid and can be complexly revised.”<sup>99</sup> Furthermore, he added distinctions between show trials, security-related political trials, and non-political charges with political motives.<sup>100</sup>

Shifting away from the institutional possibilities of trials, I make a note of the juridical actors of the trial. Through accepting the jurisdiction of a court as a forum for dispute resolution, trial participants—witnesses, jury members, victims, defence counsel,

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<sup>96</sup> Manon Leroux, *Les Silences D’Octobre: Le Discours des acteurs de la crise de 1970* (Montréal: VLB Éditeur, 2002), 76 as quoted in Kuntzsch, “Violent Politics of Nationalism,” 466-7.

<sup>97</sup> Lawrence Douglas, *The Memory of Judgment: Making law and history in the trials of the Holocaust* (New Haven: Yale University Press, 2001), 2.

<sup>98</sup> *Ibid.*, 4.

<sup>99</sup> *Ibid.*

<sup>100</sup> Lawrence Douglas, “Political Trials,” in *The New Oxford Companion to Law*, eds. Peter Cane and Joanne Conaghan (Oxford: Oxford University Press, 2012), 903-4.

judges, prosecutors, court clerks and experts—accept, what Pierre Bourdieu argued are “[the] rules of legislation, regulation, and judicial precedent by which legal decisions are ostensibly structured.”<sup>101</sup> He goes on to add that “specific codes of the juridical field—the shaping influence of the social, economic, psychological, and linguistic practices—underlie the law's explicit functioning and have a determining power that must be considered if we are to comprehend how the law really functions in society.”<sup>102</sup> However, the dynamics within the courtroom itself, as a space of symbolic power, are reproduced in the field of legal history as accounts of political struggle are relegated to the periphery and subverted by the dominant forces of the trial narrative.<sup>103</sup>

In the trials of members of clandestine and illegal political movements, criminal defendants’ legal defence narratives tend to operate as foils of often-repressive state actions. As an analytical tool, the political trial interrogates how the rule of law is viewed and exposes tensions between substantive and procedural law. Political trials, despite Kirchheimer’s characterization, need not only privilege the state perspective. Trials, in the wake of acute or systemic episodes of political dissent or violence, are challenged not only by the politics and histories of the people and participants in the region, but are also tasked with attempting to deter future violence,<sup>104</sup> degrade perpetrators,<sup>105</sup> mediate the politics of vengeance,<sup>106</sup> form

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<sup>101</sup> Pierre Bourdieu, “[Translated by Richard Terdiman] The Force of Law: Toward a Sociology of the Juridical Field,” *The Hastings Law Journal* 38 (1987): 807.

<sup>102</sup> *Ibid.*

<sup>103</sup> Ronald Christenson, “A political theory of political trials,” *Journal of Criminal Law and Criminology* 74, no. 2 (1983): 547-77; Michael Belknap, ed. *American Political Trials* (New Jersey: Transaction Publishers, 1994), xiii-xxviii.

<sup>104</sup> David Whippman, “Atrocities, Deterrence and the Limits of International Justice,” *Fordham International Law Journal* 23 (1999): 473-88.

<sup>105</sup> John Braithwaite, “Shame and Modernity,” *The British Journal of Criminology* 33, no. 1 (1993): 1-18.

<sup>106</sup> Gary Bass, *Stay the Hand of Vengeance* (NJ: Princeton University Press, 2000).

and contest an emerging identity politics and to reaffirm or resurrect the rule of law through the trial.<sup>107</sup>

### 2.2.2 Trials, Contestations, and the Defendants

The FLQ trials were political in two central ways: (1) the trials were the legal consequences of actions conducted as part of a political movement that was in direct opposition to the state; and (2) the trial defendants openly questioned the legitimacy of the law and courts. As this section begins to consider performative aspects of political trials and the legal performances of the FLQ defendants, I ask: How did defendants attempt to subvert the trial process? Do all efforts to politicize the process fall outside permissible courtroom cooperation and decorum? How do uncooperative defendants disrupt or interrupt the court? Moreover, what role did histories of injustices play for the FLQ through their trials? Through consideration of what was being said relative to what was being done, for example, how defendants made political claims using legal tools, the performative utterances and disruptive undercurrents of the trial proceedings take on considerable relevance.

Allo, who draws on Foucault to outline productive iterations of political trials and its participants, writes that we should not “concentrate the study of punishment mechanism on the repressive effects, or their punishment aspects alone, but situate them in a whole series of their possible positive effects.”<sup>108</sup> Rather than understand power in negative terms (i.e., as repressive, censoring, or masking), he argued, power must be considered in

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<sup>107</sup> Liora Bilsky, *Transformative Justice: Israeli Identity on Trial* (MI: University of Michigan Press, 2007).

<sup>108</sup> Allo, “Law and Resistance,” 90.

productive terms as “it produces domains of objects and rituals of truth.”<sup>109</sup> For Allo, courtrooms function as sites of contestation that offer opportunities for the emerging of destabilizing strategies and discourses. In short, the dominant discourses of the state are pitted against the legal resources of the defendants. So how do defendants contest the dominant position of the state?

While trials depend on cooperation between the defendants and the Crown, the parties to the trial playing within the rules, and presumptions of certain standards of process and decorum, this is not always the case with political trials. For example, while the processes through which defendants and their legal counsel strategically filed motions for disclosure, the withdrawal of jurors, the recusal of the judge, acquittal, dismissal and appealed questions of fact and sentences are all normal procedural parts of a trial. In political trials, these processes also open moments for the reiteration of defence narratives and political contestation.

For the FLQ defendants, each intervention was an opportunity to delegitimize the Crown, bench, and legal processes. For example, some defendants (particularly Paul Rose) relied on the refrain that the law was a foreign imposition by a colonial government and that the bench both lacked the legitimacy and authority to respond to the political grievances of the Québécois people. Other defendants used every opportunity to emphasize how the social and economic systems in place disenfranchised the people of Québec and that the law by extension was the stick used to maintain the status quo. The rules, argued the FLQ defendants, were unfair. Even with these grievances about the law—that it was a ‘foreign’ imposition or that the law was unfair due to its political utilization and

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<sup>109</sup> Michel Foucault, *Discipline and Punish* (London: Penguin Books, Ltd., 1975), 23 as quoted in Allo, “Law and Resistance,” 90-1.

application—the FLQ defendants continued to marshal the legal tools at their disposal. In this vein, the rules and law were satisfactory, but it was their political application that was deemed unacceptable. On two different levels: (1) the defendants continued to oscillate between denunciation of the court and appeals to the rule of law and legal rights; and (2) the defendants’ malleable political views on the appropriateness and legitimacy of the laws and trials. As the *felquistes* defendants struggled to navigate a system of government and legal system that they viewed as non-representative, a hopefulness for the future, for the possibility of political change became a palpable rhetoric undertone employed through the trials.

The question, then, is what happened when FLQ defendants and their representatives broke from the conventional advocacy strategies used in criminal trials and attempted to stage performative moments of political contestation in the courtroom (e.g., refusal to testify as a witness, file motions for the recusal of the judge, leveraging the public audience during legal argumentation)? How did they struggle through such contestations? As a starting point, I take cues from the work of J.L. Austin, Judith Butler, and Marianne Constable before examining performative conceptions of the political trial.

In *How to Do Things with Words* (1975), J.L. Austin distinguished between the constative and the performative utterance. For Austin, while the former stated the fact of something, either truthfully or not, the latter described an action. The performative utterance *does* rather than describes. It produces or transforms a situation by being uttered.<sup>110</sup> The examples Austin points to include: ‘I do’, ‘I bet that . . .’ or ‘I promise that . . .’ He understood that “many of the ‘acts’ that concern the jurist include the utterance of

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<sup>110</sup> J.L. Austin, *How to Do Things with Words*. 2<sup>nd</sup> ed. (Cambridge: Harvard University Press, 1975), 4-10.

performatives.”<sup>111</sup> Rather than assess the performative utterance relative to its truthfulness, it is measured against its appropriateness (i.e., its felicity or infelicity). Above all, for a performative utterance to occur under the appropriate conditions, conventional procedures must exist and be in place.<sup>112</sup> The trial is a useful site to examine the performative utterance as it is full of ‘actions’: objecting, finding (as a matter of fact), holding (as a matter of law), convicting, acquitting, and, among others, sentencing.<sup>113</sup> An act is accomplished or a legal context transformed (e.g., a judge finding a defendant in contempt of court) through the enunciation of a performative expression.<sup>114</sup> Austin’s theory of the performative is viewed as a launch point for the study of law and performance relative to trial structures and processes.

For example, in *Excitable Speech* (1997), Judith Butler elaborated on Austin’s formulation of the illocutionary speech act. She explained that the act of enunciating performs *the moment* of its utterance, “yet to the extent that the moment is ritualized,” for example through certain legal processes in criminal law, “it is never merely a single moment.”<sup>115</sup> While the legal speech act impacts the moment, it also transcends that moment. Butler continued that “the ‘moment’ in ritual is a condensed historicity: it exceeds itself in past and future directions, an effect of prior and future invocations that constitute and escape the instance of utterance.”<sup>116</sup> As she developed Austin’s speech-act theory, she considered the legal context relative to the performative utterance and explained how the utterance succeeded to the “extent that *it draws on and covers over* the constitutive

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<sup>111</sup> Ibid., 19.

<sup>112</sup> Ibid., 14-15.

<sup>113</sup> Ibid., 153-163.

<sup>114</sup> Shoshana Feldman, *The Scandal of the Speaking Body* (Palo Alto: Stanford University Press, 2002), 6.

<sup>115</sup> Judith Butler, *Excitable Speech: A Politics of the Performative* (New York: Routledge, 1997), 3.

<sup>116</sup> Ibid., 3-4.

conventions by which it is mobilized.”<sup>117</sup> Moreover, in *Just Silences* (2008), Marianne Constable examines the reading of the *Miranda* warning as a performative utterance that produced a new context within which rights were now afforded and notified to a police suspect through reading this warning.<sup>118</sup> As Constable put it the performative utterance is one that does what it says in being said: it promises, it bets, it warns, and it commands—it performs an effect.<sup>119</sup> Finally, in Ertür’s analysis of the performativity of the criminal trial, she explained that the criminal proceeding is felicitous—that is it meets the criterion of performative operations. Trials disguise “performative operations as constative.”<sup>120</sup> In doing so, trials establish facts, interpret the law, and apply substantive rights to the facts of the case. Ertür argues the trial is performed:

It has to take its course, play itself out, preferably without any seeming or at least overwhelming prejudice on the part of those who are to arrive at a verdict at the end of the process, so that the outcome is not fully foreseeable in advance. This quality of live performance, the process of making a case, representing, defending, arguing, challenging, evaluating narratives of fact and matters of law in the setting of a forum is part of what lends the trial its authority to pass as inevitable, as fate. Hence the necessity to submerge the trial in an avalanche of conventionality.<sup>121</sup>

The politicization of the criminal trial is a deviation from conventionality. In this view, a political trial is distinguished when a trial can no longer disguise its performative operations as constative. Adversarial criminal trials are ordered by such processes including objecting, cross-examining, convicting, sentencing, acquitting, pleading, quashing, and repealing among others. These processes are understood as conventional or

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<sup>117</sup> *Ibid.*, 51. Emphasis her own.

<sup>118</sup> Marianne Constable, *Just Silences: The Limits and Possibilities of Modern Law* (New Jersey: Princeton University Press, 2005), 149-74; and Ertür, “Spectacles and Spectres,” 74.

<sup>119</sup> Marianne Constable, “Law as a Claim to Justice: Legal History and Legal Speech Act,” *University of California Irvine Law Review* 1, no. 3 (2011): 634.

<sup>120</sup> Ertür, “Spectacles and Spectres,” 87.

<sup>121</sup> *Ibid.*

constative to the extent that they uphold the authority of law and the predictability of the trial.<sup>122</sup> As such, consideration of performative characterizations of the FLQ trials and defendants' legal performances amplifies how the effects of the politicization of criminal proceeding are understood in the Québec context.

### 2.3 Towards a Performative Consideration of the FLQ Political Trials

With the public eye trained on Montréal courthouses, the FLQ defendants stood out and attempted to expose the politics of the judicial process. For example, in its first major attempt to prosecute FLQ members who pleaded not guilty, the Québec Crown's decision to indict Vallières and Gagnon in the wake of the LaGrenade Affair was a risk. As the Crown attempted to take two heads from the hydra, Vallières and Gagnon were detained in New York and expelled to Canada. FLQ supporters and the broader public identified the pending trials of the pair as a political effort to connect the intellectual leaders of the FLQ to a bombing death for which the Crown had little probative evidence beyond their political writings. Three competing juridical performances are characterized in the *felquistes* trials: as the bench bolstered a sense of impartiality and authority, the Crown maintained its confident objectivity to assuage public criticism, and *felquiste* defendants contested and countered as they attempted to claim a political and moral high ground.<sup>123</sup> For Vallières, the trial was a call to arms: he urged mobilization and action on the part of disenfranchised Québécois people. Each time Vallières spoke in his defence, he reiterated his political message and marshaled the court as a political stage. Taking the FLQ's objective of the

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<sup>122</sup> Ibid., 87-88.

<sup>123</sup> Henning Grunwald, *Courtroom to Revolutionary Stage: Performance and Ideology in Weimar Political Trials* (Oxford: Oxford University Press, 2012), 179.

liberation of Québec from the repressive socioeconomic forces of an Anglophone majority as the ultimate act of the movement, I posit that the repetition of that objective—an articulation of their labour radicalism—through the LaGrenade Affair and the Trial of the Montréal Five sought to galvanize support through the FLQ trials and undermine its operational processes.

The trial, wrote Martha Merrill Umphrey, is rooted in its law-making ability and not just its law-applying or law-interpreting events. Law operates, she suggests, not only in the more conventional sense such as the application of formal legal rules or past precedent. The performativity of law also takes place through enunciations made, for example, on the street corner, in the interrogation room, at the district attorney's office, at a lynching scene, and at a trial.<sup>124</sup> On the last site, Julie Peters, who read political trials as sites of legal performance, adds additional clarity:

. . . criminal trials must be public, but not too public; show trials are bad, but secret trials are bad as well; evidence must be relevant, but not so dramatic as to be *too* relevant (no mutilated bodies on the legal stage); testimony must be live, but not be too lively (witnesses must stay in the box); what witnesses say and show should move juries, but it shouldn't move them too much.<sup>125</sup>

Peters explained that by dramatizing storytelling in our legal system, the political defendants blur fact and fiction within the adjudicative process.<sup>126</sup> More to the point, the uncooperative trial participant reveals the performative operations of the trial when defendants 'act out.' While (self-represented) defendants' actions politicize trial

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<sup>124</sup> Martha Merrill Umphrey, "Law in drag: Trials and Legal Performativity," *Columbia Journal of Gender & Law* 21, no. 2 (2011-2012): 121.

<sup>125</sup> Julie Stone Peters, "Legal Performance Good and Bad," *Law, Culture and the Humanities* 4 (2008): 199.

<sup>126</sup> Alan M. Dershowitz, "Life is not a Dramatic Narrative," in *Law's Stories: Narrative and Rhetoric in the Law*, eds. Peter Brooks and Paul Gewirtz (New Haven: Yale University Press, 1996), 101 as quoted in Peters, "Legal Performance," 198n71.

proceedings, legal counsels' actions remain framed within their professional roles.<sup>127</sup> However, the professional function of a lawyer is not static nor is it necessarily apolitical. For example, the five special prosecutors appointed to prosecute the FLQ in the wake of the October Crisis were a product of a political climate. The appointment of special prosecutors was a gesture by the Crown to the public to show how prepared the Crown was to take on the serious threat of the FLQ and to uphold the administration of justice. And, furthermore, differences in how defence counsel viewed their roles emerged as a defining feature of the FLQ trials. Where public defendants sought out plea deals for minor FLQ-related activities, Bernard Mergler and Robert Lemieux (who advised and defended major FLQ personalities) approached the criminal defence of the FLQ with different strategies, voices, and senses of self.<sup>128</sup>

Finally, through the development of a legal history of the FLQ trials and defendants, I examine the performative aspects of the FLQ political trials and analyze the legal strategies deployed by its defendants. To do this, I use the complementary analyses of Ertür and Allo, both of whom advance a performative theory of the political trial that views the trials as a site of productive contestation. Adversarial criminal trials are by their very form ordered by performative processes, and as Ertür explained, these processes are “conventional” or “constative” to the extent that they uphold the authority of law and its predictability.<sup>129</sup> While the following outlines dimensions of Allo’s theory of the political

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<sup>127</sup> Kathryn Lee Leader, “Trials, Truth-Telling and the Performing Body” (PhD diss., University of Sydney, 2008), 72n161; Ronald Sokol, “The Political Trial: Courtroom as Stage, History as Critic,” *New Literary Theory* 2, no. 3 (1971): 495-516.

<sup>128</sup> Whereas Lemieux, who was charged with multiple counts of contempt of court, personalized of politicization of the trials and politically aligned himself with the defendants, Mergler compartmentalized his politics from his representative duties.

<sup>129</sup> Ertür, “Spectacles and Spectres,” 86-7.

trial, it also develops the analytical scaffolding used to examine the FLQ trials in chapters four through six.

For Allo, a performative conception of the political trial is threefold. First, he writes that political trials are contestations between the sovereign and the subject.<sup>130</sup> And while this is apparent when we consider the players in the FLQ trials, Allo further explains (reading my subject into his analysis) that the FLQ sought to contest the status quo to “summon the consciousness of the *body politic* by drawing attention to the myth [the inevitability of Anglophone socioeconomic dominance], the fiction and the paradox that undergirds the imposed order of justice, and suggest that there is *nothing inevitable about the present* and that things could have been different.”<sup>131</sup> Again and again, this characterization—that Anglophone socioeconomic dominance at the cost of Francophone-Québécois oppression is predestined or inevitable—was represented through the militant exclamations of the FLQ membership as they paraded in front of the courts. Lorne Weston, for example, writes that without a doubt the contempt for the state and legal system permeated through the defendants and into the courtroom. Pointing to claims made in the first FLQ trials, Weston highlighted the refutation of the first wave FLQ defendants: “[we are] before a foreign court having no jurisdiction in Québec and being judged according to a law [we do] not recognize.”<sup>132</sup> While not legally effective in the moment, such a claim attempted to call into question the authority of law relative to a perceived disparate socioeconomic and culturally oppressive context.

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<sup>130</sup> Allo, “Law and Resistance,” 94.

<sup>131</sup> Ibid. Emphasis my own.

<sup>132</sup> Lorne Weston, “The FLQ: Life and Times of a Terrorist Organization” (MA diss., McGill University, 1989), 103.

In an angry letter, dated 6 April 1968, sent from prison by Charles Gagnon to the CAGVG, Gagnon made his assessment of the manslaughter trial of Pierre Vallières clear: the trial was nothing more than a state-orchestrated stage production, in which truth and justice did not count at all.<sup>133</sup> Participants and commentators alike often refer to the FLQ trials as theatre, but what does this mean—to conflate the dramaturgy of the theatre with the political trial?<sup>134</sup> While Allo and Ertür both refer to political trials as theatre, Ertür argues that trials “stand out in their theatricality” when their conventionalities can no longer “bolster the sense of inevitability” or predictability.<sup>135</sup> She suggests that when the rigidities of trial, for example, the organization of the courtroom, the acceptance of the court’s jurisdiction, the rules of evidence, the formalities of the juridical script, and legal procedure are compromised through its politicization, the inevitabilities of the trial are undermined, and new, potentially alternative, political and legal narratives can emerge.<sup>136</sup> For Allo, the performatives of the trial are staged and include, among other processes, the opening statement, statements of evidence, direct-examination, cross-examination, and the verdict.<sup>137</sup> Each of these processes, which are usually filtered through procedural rules,

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<sup>133</sup> Charles Gagnon, “Letter from the Front de Libération du Québec,” *Dossier d’information de Charles Gagnon* (F-10), Montréal, April 6, 1968, William Ready Archive, McMaster University, Stanley-Gray Files.

<sup>134</sup> Sudipta Kaviraj, “The Politics of Performance: Gandhi’s Trial Read as Theatre,” in *Staging Politics: Power and Performance in Asia and Africa*, eds. Julia C. Strauss and Donal B. Cruise O’Brien (New York: I.B. Tauris & Co Ltd., 2007), 71-90; Awol K. Allo, “The Show in the Show Trial: Contextualising the Politicization of the Courtroom,” *Barry Law Review* 15 (2010): 41-72; and see generally, Awol K. Allo, ed. *The Courtroom as a Space of Resistance: Reflections on the Legacy of the Rivonia Trial* (Surrey: Ashgate Publishing Ltd., 2015).

<sup>135</sup> Ertür, “Spectacles and Spectres,” 67-8; Burt Van Roermund, “The Political Trial and Reconciliation,” in *The Trial on Trial, Volume Two: Judgment and Calling to Account*, eds. Antony Duff, Lindsay Farmer, Sandra Marshall, and Victor Tadros (London: Hart Publishing, 2006), 173.

<sup>136</sup> Also, see Jens Meierhenrich and Catherine M. Cole, “In the Theater of the Rule of Law: Performing the Rivonia Trial in South Africa, 1963-1964,” in *Political Trial in Theory and History*, eds. Jens Meierhenrich and Devin O. Pendas (Cambridge: Cambridge University Press, 2016), 229-233.

<sup>137</sup> For further comments on the performative nature of opening statements and examinations, see Robert P. Burns, *A Theory of the Trial* (New Jersey: Princeton University Press, 2001), 34-72.

characterize the defendant's and the prosecution's account of events.<sup>138</sup> More to the point, Allo explains that evidence introduced by either side brings with it its own sets of tensions over the competing stories that the evidence allegedly tells.<sup>139</sup>

Third, Allo argues that political trials are “double performative.”<sup>140</sup> Put another way, political trials also function as “strategic resource” that may be “redeployed” in similar struggles. And not as mere precedent, but as resources that tap “the discursive environment created by the event to filter new images and alternative realities into the public domain.”<sup>141</sup> While political defendants may use the potential of a political trial's strategic historical narrative to significant effect and resistance, these same narratives are co-opted, appropriated, and politicized by other juridical actors to maintain or further suppress the status quo. To this end, I suggest that *felquistes* defendants viewed their trials as political as they conflated the roles of judges and the Crown with the role played by the state.<sup>142</sup> Conflating the bench with the Crown, however, was short-sighted as it was the Justice Ouimet, in 1971, who quashed the Crown's underdeveloped case for seditious conspiracy and Justice Brossard in Vallières' manslaughter appeal that criticized Crown Paradis for failing to uphold the expected standards of objectivity of his office.

Finally, in late September 2012, Montréal student strike organizer and activist Gabriel Nadeau-Dubois was convicted of contempt of court for inciting students to ignore a court order.<sup>143</sup> In the decision, Justice Denis Jacques relied on the contentious decision

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<sup>138</sup> In some instances, however, exclamations in open court do not heed such rules.

<sup>139</sup> Milner S. Ball, “All the Law's Stage,” *Cardozo Studies in Law and Literature* 11, no. 2 (1999): 216 as quoted in Allo, “Law and Resistance,” 96.

<sup>140</sup> Allo, “Law and Resistance,” 98-9.

<sup>141</sup> *Ibid.*, 99.

<sup>142</sup> Bilsky, “Criminal Trial,” 14.

<sup>143</sup> Kevin Gould, “Gabriel Nadeau-Dubois case heading to Supreme Court,” *CTV Montréal*, 22 October 2015. Accessed via: <http://montreal.ctvnews.ca/gabriel-nadeau-dubois-case-heading-to-supreme-court-1.2622225>

of a forty-year-old union-breaking case decided in the chilling wake of the FLQ Crisis.<sup>144</sup> Quoting the presiding judge, Justice Jacques awakened President Kennedy’s 1962 speech in the *New York Times*: “Our nation is built on the principle that the observance of the law is the eternal bulwark of freedom, and that the challenge to the law is the surest road to tyranny.”<sup>145</sup> Here, preying on decades-old fear and situating dissent as external to the rule of law, Justice Jacques cautioned those standing before him —using the words of a past American head of state—of the hegemony of law while performing a subtle dog-whistle to ‘law and order’ advocates who looked for allies on the bench in the months after the mass mobilizations and strikes.

#### 2.4 Political Trials Research Challenges: A Note on Public Access Restrictions

He wanted to destroy them.

—Renée Millette on Lemieux’s files.<sup>146</sup>

From robust assessments by human rights organizations of the federal government’s use of emergency powers<sup>147</sup> to domestic governmental proceedings of the October Crisis ‘Operations Centre’ at the Department of External Affairs<sup>148</sup> to accounts of international diplomatic relations between Canada and France (in which France’s *Ministère des affaires étrangères* watched with patient interest and a critical eye as events

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<sup>144</sup> Nick Auf der Maur, “The May Revolt Shakes Québec,” *Last Post*, July 1972, 15.

<sup>145</sup> *Morassee v. Nadeau-Dubois* [2012] QCCS 5438, at 36; Stanley H. Fuld, “The Right to Dissent: Protest in the Courtroom,” *St. John’s Law Review* 44, no. 4 (1970): 591-596.

<sup>146</sup> André Duchesne, “Un fonds du FLQ totalement interdit d’accès à BAnQ,” *La Presse*, September 9, 2013.

<sup>147</sup> Clément, “October Crisis of 1970,” 160-86.

<sup>148</sup> The Operations Centre was the central hub established by the Government to manage political, military, communication, and intelligence logistics related to the kidnapping of James Cross. It was in operation from 5 October 1970 - 4 December 1970. Paulette Dozois, “‘Watching’ the October Crisis through its archival records,” *Québec Studies* 55 (2013): 69-75.

unfolded),<sup>149</sup> FLQ-related archive-sourced historiographical debates continue to develop as documents emerge or become available. Public access restrictions, not only regarding the usual impact of the conventions of government secrecy but also ranging from solicitor-client privilege to archive-donor agreements, create real barriers to a full analysis of the legal dimensions of this historical experience. Researchers studying modern political trials and the work of lawyers face formidable challenges.<sup>150</sup> Broadly, there are restrictions on the release of national security records and other sensitivities around secrecy that influence archival policies. These typically include lengthy sunset clauses related to access, refusals of departments to release historical national security-related legal records to the national archives, and related restrictions and redactions for records requested through *Access to Information* processes.

As explained below, governments also rely on solicitor-client privilege, the conventions of professional confidentiality, to shield access to legal sources from scholarly scrutiny.<sup>151</sup> More generally, this privilege has a wide-ranging impact on access to the records of lawyers. Also, relevant to the FLQ legal proceedings are the restrictions placed on private archival collections donated to the *BAnQ*. These restrictions impact how stories are told and what can be known.

A central point of controversy is the records associated with FLQ lawyer, Robert Lemieux. The post-October Crisis juridical context was a flurry of legal activity for

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<sup>149</sup> David Meren, “*Les sanglots longs de la violence de l’automne*: French Diplomacy Reacts to the October Crisis,” *The Canadian Historical Review* 88, no. 4 (2007): 613-44.

<sup>150</sup> Relative to the secrecy of certain archives, should particular politicized archives be treated differently? What about the private lives of poor people? Or the secrecy of religious archives? Thanks to Dr. D. Marshall for pressing this question for consideration.

<sup>151</sup> Patricia McMahon, “A Note on Access-to-Information Challenges,” in *Canadian State Trials, Volume IV: Security, Dissent, and the Limits of Toleration in War and Peace, 1914–1939*, eds. Barry Wright, Eric Tucker, and Susan Binnie (Toronto: University of Toronto Press, 2015), 465-70.

Lemieux (discussed further in section 3.4), who split his time between jail for various contemptuous outbursts and providing legal representation for many arrested FLQ members and sympathizers.<sup>152</sup> As a result, his legal files for many of the FLQ-related hearings and cases are spread between multiple institutions. Private collection restrictions on FLQ-related documents at the *BAnQ* take one of two forms. First, archival restrictions governing private collection donations detailed in the *Québec Archive Act*. Sunset clauses related to the accessibility of the file restrict such donations for periods of time determined in the legislation (e.g., 100 years from the production of the document).<sup>153</sup> Second, the solicitor-client privilege provisions outlined in the *Professional Code* also authorize the permanent access restrictions of files covered under professional obligations to maintain the secrecy and confidentiality of all information filtered through the professional (solicitor-client) relationship.<sup>154</sup> In some instances, however, the process of restrictions are not consistent. Legal records related to solicitor-client engagement are found available for public consultation.

Because the narratives of how the FLQ members approached their trials were communicated through lawyers and legal advisors, the restriction parameters of solicitor-client privilege impact the study of the *felquistes* legal encounters. In this context, restricted or partially restricted material includes records of trial transcripts, personal files of legal counsel, notes related to the activities of a variety of FLQ defendants, communications to public figures (e.g., letters to *Le Devoir* 's editor, Claude Ryan), and varieties of letters of

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<sup>152</sup> Robert Lemieux, et. al. *Dossier sur les prisonniers politiques au Québec*. 2<sup>nd</sup> edition (Ottawa: Comité d'information sur les prisonniers politiques, 1976), 7-71; also, see forthcoming section 3.4.

<sup>153</sup> For example, a partial consultation restriction note reads: "Note: Files are inaccessible for consultation for a period of 100 years from the date of creation. Source: *Archives Act*, RSQ, c. A-21.1, s. 26."

<sup>154</sup> Unlike the *Archive Act* restrictions, no sunset clauses seem to govern private collection documents covered by the *Professional Code*. For example, a partial consultation restriction note reads: "Client files produced by lawyers are inaccessible. Source: *Professional Code* RSQ, c. C-26, s. 60.4."

correspondence between involved parties. While privilege operates to ensure open and clear disclosure between a lawyer and client throughout legal disputes, what impacts do such restrictions have on what we can presently know about the FLQ criminal trials and what strategies may be used to navigate, negotiate, or subvert these restrictions? Do the FLQ-related documents have the power to expose the historical legacies of state violence or repression? Access restrictions, among other archival regulations, beg questions about the politics of the archive and how the archive is a space of contestation.<sup>155</sup> This section, while not an examination of the political character of the Québec national archives, reflects on fieldwork conducted in Hamilton, Ottawa, and Montréal, and considers the implications of confidentiality and solicitor-client privilege doctrine on legal history research and particularly the study of trials.

Solicitor-client privilege is a long-established concept that can be distorted in ways that have little to do with the protection of the legal interests and client privacy.<sup>156</sup> Privilege has been reimagined relative to substantive rights to confidentiality emerging as a more recent iteration of older principles.<sup>157</sup> In Québec, solicitor-client privilege rules operate through the broader framework of professional secrecy. Adam Dodek writes that the doctrine of professional secrecy in Québec is set up through a series of statutes that aim to secure the ‘recognition and protection of communications’ of the legal profession among

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<sup>155</sup> Mawani’s examination of the law and politics of archives also considers the law’s role relative to the archive as a space of erasure and strategies of resistance. Renisa Mawani, “Law’s Archive,” *Annual Review of Law and Social Science* 8 (2012): 351.

<sup>156</sup> McMahon, “A Note on Access-to-Information Challenges,” 465-70.

<sup>157</sup> Also, see Brian Bucknall, “The Archivist, the lawyer, the clients, and their files,” *Archivaria* 33 (1992): 181-87; Douglas Hay, “Archival Research in the History of the Law: A User’s Perspective,” *Archivaria* 24 (1987): 36-46; Robin G. Keirstead, “Legal History, Archives and Law Librarians,” *Canadian Law Libraries* 14 (1989): 46-50; and “Ken Whiteway, “Voyeurs with Pedigree? Historical Legal Research and Solicitor-Client Privilege,” *Commonwealth Law Libraries* 2 (1993): 137-46.

others (e.g., medical professionals).<sup>158</sup> The doctrine draws its authority from section 9 of Québec's *Charter of Human Rights and Freedoms* and the *Professional Code* in which the former expresses that "every person has a right to non-disclosure of confidential information . . . [and] no person bound to professional secrecy by law . . . even in judicial proceedings, disclose confidential information revealed to him by reason of his position or profession, unless he is authorized to do so by the person who confided such information to him or by an express provision of law."<sup>159</sup> The latter, however, requires all members of professional orders to abide by professional secrecy rules.<sup>160</sup> Dodek argues that the Québec context is instructive as it shows that the Legislature is agreeable to treating solicitor-client communication on par with other professionals. Like Europe, rights-based discourses ground solicitor-client privilege in Québec.<sup>161</sup> Although as this research was conducted for the Canadian Bar Association, he does little to reflect on the relationship between privilege and historical research.

Researchers who encounter solicitor-client privilege restrictions often also are met with varying forms of institutional resistance. For example, Patricia McMahon describes national security exemptions relative to the responses by the Department of Justice (DOJ) to her request for World War One-related files on the *Gray* and *Lewis* cases as replete with delays and inconsistencies. While Justice withheld some of the nearly 100-year-old files in the *Gray* case, the *Lewis* case files were subject to a complete access restriction due to an alleged need to protect personal information, which through various channels is available

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<sup>158</sup> Adam Dodek, "Solicitor-Client Privilege in Canada: Challenges for the 21<sup>st</sup> Century" (discussion paper, The Canadian Bar Association, Ottawa, ON, February 2011), 46-7.

<sup>159</sup> *Charter of Human Rights and Freedoms*, R.S.Q. c. C-12, para. 9.

<sup>160</sup> Professional Code, R.S.Q., c. C-26.

<sup>161</sup> Dodek, "Solicitor-Client Privilege," 46.

online. After filing ATIP requests and a complaint with the Office of the Information Commissioner (OIC), some redacted files from the *Lewis* case were released. In this example, the OIC, which struggled with resources as they attempted to review the privilege claimed by the DOJ, which as per section 23 of the *Access to Information Act* is discretionary.<sup>162</sup>

Informal and formal channels for navigating claims of solicitor-client privilege differ relative to the location of the document and whose privilege is at stake. In the *Grey* case, it was the privilege of the DOJ, but in the case of the FLQ-related files at *BAnQ* the privilege is that of the deceased client. More to the point, what types of documents are restricted and how those documents make their way to their current stations? How various FLQ-related documents make it to their respective archival stations across Ontario and Québec is an important part of this story, and as such I attempt to trace out the path of the documents held under restriction at *BAnQ*.

In April 1991, criminal lawyer Renée Millette donated an extensive private collection of Robert Lemieux's legal files (denoted as P347) to the *BAnQ*, which among other trial-related documents included privileged lawyer-client correspondences between FLQ members and their legal counsel. Millette explained: "Il voulait les détruire [He wanted to destroy them]," of Lemieux's intentions, in a 9 September 2013 interview with *La Presse* journalist André Duchesne, who was drawn to the file as it was among 30 of about 1400 private archive files that were restricted. In 2013, he also pointed out that this restriction was further unusual as the FLQ-related files limitations did not at the time have a termination date. This has since been adjusted and the dates are viewable through the

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<sup>162</sup> McMahon, "A Note on Access-to-Information Challenges," 465-70.

BAnQ website. The interview between Millette and Duchesne reveals that while Lemieux had intended to destroy the files, Millette sought to preserve them for the benefit of the historical record. The breadth and diversity of P347, as it is identified in the archival catalogue, is impressive as it includes stenographic transcript files from multiple trials.<sup>163</sup> Entitled the ‘*Fonds Procès du Front de libération du Québec: 1964-1975*,’ P347 consists of 4.73m of records. Again, in his 2013 article on the FLQ case files, Duchesne suggests the stringent restrictions are, in part, due to the sensitive nature of the documents.<sup>164</sup> While P347 remains restricted, related records are available through consultation of connected court submission and trial-related files. While early fieldwork conducted at *BAnQ* confirmed the earlier *La Presse* report, the archive expressed that the restrictions were due to solicitor-client privilege rules with the reasoning that P347 and all its contents are considered part of Lemieux’s client files. And, since the files were a private donation, they are inaccessible under the authority of professional secrecy laws.<sup>165</sup>

In the Millette interview with Duchesne, it is noted that the consultation prohibition is not immutable, and thus may be subject to change.<sup>166</sup> The restriction protocols at *BAnQ*, I suggest, seem more guided by donor agreement than file content (e.g., as stenographic records, which would have been a part of Lemieux’s files, are public documents related to

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<sup>163</sup> For example, the court files include those related to Charles Gagnon, Gabriel Hudon, Jacques and Paul Rose, Réjean Tremblay, Pierre Vallières, and Michel Viger, and various personal files of Robert Lemieux, Paul Rose, and Bernard Lortie.

<sup>164</sup> André Duchesne, “Un fonds du FLQ totalement interdit d'accès à BAnQ,” *La Presse*, September 9, 2013, accessed on May 23, 2017, <http://www.lapresse.ca/cinema/cinema-quebecois/201309/09/01-4687479-un-fonds-du-flq-totalement-interdit-dacces-a-banq.php>

<sup>165</sup> Due to institutional priorities and the limits of resource allocation, it is possible that resources have not been allocated to go page by page through P347 to determine if all the documents therein are in adherence to the appropriate restrictions guidelines. It is also worth noting that since the documents are a private donation and not documents generated the government, access-to-information request are not an option.

<sup>166</sup> Yavar Hameed and Jeffrey Monaghan, “Accessing Dirty Data: Methodological Strategies for Social Problems Research,” in *Brokering Access: Power, Politics, and Freedom of Information Process in Canada*, eds. Mike Larsen and Kevin Walby (Vancouver: University of British Columbia Press, 2012), 142-66.

the public submissions to the *Cour du Banc de la Reine* (now called the Québec Court of Appeal) in the event of legal appeals). Perhaps, it is the way certain documents make their way to the archive. The channels through which documents move (e.g., were documents donated to an archive from a private citizen or collection or were they used in public legal matters) play a major role in the restrictive practices surrounding them. In the case of the Lemieux documents, the files made their way from the lawyer's desk through a third party to the archive. However, in the FLQ cases, transcripts, depositions, affidavits, and petitions, which were filed with the courts, are unrestricted and accessible as they made their way to the archive via the courts. It is precisely the contested nature of trials, the persons involved in them, and the professional secrecy provisions that govern them that lead to restrictive measures and policies. As such, our understanding of events such as the October Crisis will remain fragmented.

## **2.5 Conclusion**

As archives present access-related challenges, researchers studying modern political trials are similarly challenged by often incomplete records. That said, using the notion of the political trial as critical tool to study the legal encounters of a particular group, such as the FLQ, opens analytical possibilities. Pushing beyond the institutional narratives of (in)justice purported by the state, the bench and the Crown to examine defendant views and voices (through what was already a high-stakes political and legal encounter) adds another complex layer to how political trials are studied. As noted at the outset of this chapter, a full examination of FLQ defendants' legal strategies requires consideration of the performative aspects of political trials. By reading literature on the performative

characteristics of political trials to glean a richer understanding of how and to what extent defendants' resistance strategies function in the courtroom, the FLQ defendants offers a complex case study as the Crown responded to FLQ activity relative to the legal conventions and political currents of the day. Further, through contextualizing the FLQ cases in broader studies of political trials, considerations of legal performances, and the Anglo-American political lawyering literature (see Chapter 3), the experiences of the FLQ defendants offer insight into how Québec and those who orchestrated dissent navigated the legal challenges of domestic political violence and how the FLQ reacted to the consequences of its use of violent tactics.

The chapter that follows examines two questions central to such analysis: (1) Who engaged in strategies of subversion within the trial? (2) How did legal representative and self-represented defendants marshal politicized legal strategies to subvert the trial process? Responding to these questions, I develop a typology of *felquistes* political objectives and legal strategy. While no one overarching legal or political strategy guided FLQ defendants through their complicated legal encounters, as an analytical tool this typology considers the manner in which different *felquistes* defendants appealed to different views of politics and the law at different moments of their respective legal encounters.

## Chapter Three: Representing *Felquistes* Defendants

The politicization of the courtroom is premised on an increased generality in argumentation.

—Elbaz Sharon on political trials.<sup>167</sup>

### 3.1 Introduction: A Consideration of FLQ Defendants' Legal Strategies

For political trial defendants, courtrooms provide the opportunity for public contestation. In a broad view of the *felquistes* legal proceedings, FLQ defendants turned to political claims over legal ones, especially when the charges brought against them by the Montréal Police and the Québec Crown were vague and underdeveloped (e.g., seditious conspiracy). The vaguer the charge, the bolder the political claims. For the police, vague charges were a product of casting a wide net and seeing what may stick. These practices worked well for the police and the Crown through the initial period of FLQ activities.

Capitalizing on the first wave of the FLQ, many of the militant groups that engaged in fund-raising robberies, assaults, and bombings either plead guilty to minimize prison time or used the opportunities of court appearances as forums to delegitimize and ridicule the courts. It was not, however, until the arrests and trials of the Vallières-Gagnon Network (an FLQ cell that began its activities in 1966) that a more coherent political defence strategy and organized legal defence committee formed around the FLQ militant activists. Key to the arguments advanced in chapters one and two—that the political defence strategies of self-represented defendants (and FLQ legal counsel) had disruptive effects on their

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<sup>167</sup> Sharon: “La politisation du prétoire s'appuie essentiellement sur une rhétorique politique structurée sur une montée en généralité de l'argumentation.” Elbaz Sharon, “L'avocat et sa cause en milieu colonial: La défense politique dans le procès de l'Organisation spéciale du Mouvement pour le triomphe des libertés en Algérie (1950-1952),” *Politix* 16, no. 62 (2003): 78.

criminal trials—was the formation of the CAGVG. The FLQ political defence strategy, attributed to Mergler, became known as *la guérilla judiciaire* and was employed by FLQ defendants to capture the public’s attention.<sup>168</sup> Anchored in an ideological conviction that centred a refutation of the influence exerted on Québec by power brokers in Ottawa and called for the destruction of capitalism, imperialism, and the exploitation of the worker, the content of the Vallières-Gagnon Networks’ politicized legal defence marked a maturation in the legal approach used by previous FLQ defendants before the courts.<sup>169</sup>

Only three years prior, FLQ defendant Georges Schoeters used his opportunity to speak at his trial to exclaim: “The hour of the national revolution has arrived! Independence or death!”<sup>170</sup> Shifting from such a binary characterization of the revolutionary movement, the *felquistes* political defence first took the form of a communication strategy outlining the scope of the FLQ defendants’ political position. For Charles Gagnon, the law and the charges before him were much less important than the plight of the worker. In his view, the exploited poor formed the frontline of anti-imperialist struggle. The overarching struggle within which the FLQ was engaged was far broader than their criminal activity.<sup>171</sup> As the scope of ideological commitments roused more popular support (through the LaGrenade Affair, but before the 1970 October Crisis), the Crown attempted to criminalize the FLQ political belief through the LaGrenade Affair trials.

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<sup>168</sup> Fournier, *FLQ*, 104; Germain Dion, *Une Tornado de 60 Jours: La Crise D’Octobre 1970 à la Chambre des Communes* (Hull, QC: Les éditions Asticou, 1985), 168.

<sup>169</sup> Jean-Marc Pottie, “Note de lecture: Charles Gagnon, *Feu sur l’Amérique (Écrits politiques, vol. 1, 1966-1972)*, Lux, 2006, 213 p.” *Bulletin d’histoire politique* 15, no. 3 (2007): 311-318.

<sup>170</sup> Morf, *Terror in Québec*, 5.

<sup>171</sup> Criticizing the effectivity of the Vallières-Gagnon Network, for example, Ivan Carel explained that violence initiated by such a frontline group leads to a state response too strong to be thwarted. Ivan Carel, “‘La gauche n’a pas de tradition:’ l’histoire à gauche vue par Charles Gagnon,” *Bulletin d’histoire politique*, 19, no. 2 (2011): 43-44.

However, the performed political defence strategies of the FLQ defendants were more than a dissemination of ideological commitments. During the trial of the Montréal Five, after a request for the dismissal of the presiding judge failed, the defendants used all the procedural tools at their disposal to undermine what they viewed as the politicization of justice. Gagnon, who pretended to be Crown counsel, used the motion before the court as an opportunity to inform the jury on the implications of a vague charge like seditious conspiracy and mock the criminal indictment. He play-acted: “We [the Crown] have prepared a large bag where we will be able to put anything.”<sup>172</sup> While political defence strategies made use of a wide variety of legal rules and procedures, Gagnon—who in this instance argued from a position that purported regard for the rule of law—denounced the Crown for abrogating his rights to orchestrate a fair and full defence.

Building on how Fernand Foisy, Louis Fournier, Jean-Philippe Warren, and Germaine Dion have characterized how *felquistes* ideology informed the political defence strategies used in the courtroom, I focus on how the FLQ defendants oscillated between leveraging politicized histories of injustice and economic disenfranchisement, while on the other hand, marshaling rule of law claims and legal rights.<sup>173</sup> Disjointed in its application, for example, how *felquistes* defendants viewed the law often diverged from how they used the law and legal process with their trials.<sup>174</sup> Viewed as a theatrical by journalists, the FLQ trials presented as irregular and in opposition to normal legal processes.<sup>175</sup> Julie Peters

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<sup>172</sup> Gagnon: “On a préparé un grand sac dans lequel on va pouvoir mettre n’importe quoi.” Michel Chartrand, et. al. *Le Procès des Cinq*. Preface by Louis Hamelin (Montréal: Lux Éditeur, 2010), 13.

<sup>173</sup> Isadore Silver, “Towards a Theory of the Political Defence,” *The Catholic Lawyer* 18, no. 3 (1972): 211n19; Donald Kommers, “The Spiegel Affair,” in *Political Trials*, ed. Theodore L. Becker (New York: Bobbs-Merrill Company, Inc., 1971), 23.

<sup>174</sup> In the chapters that follow, I characterize

<sup>175</sup> As Nick Auf der Maur and Robert Chodos put it: the 1971 FLQ trials were “excellent theatre.” Nick Auf der Maur and Robert Chodos, *Québec: A Chronicle: 1968-1972* (Toronto: James Lewis & Samuel Publishers, 1972), 77.

offered this consideration of legal theatricality, which I read relative to the FLQ political trials:

In short, law's history is marked by an oscillation between the antinomies of theatricality and anti-theatricality, in a relationship of attraction-revulsion—a kind of *fort-da*—between the theatrical and its antithesis. Theatre is law's twisted mirror, its funhouse double: ever-present, substantiating, mocking, reinforcing, undermining.<sup>176</sup>

The performativity of trials “refers to the inherent and ongoing potential of specific cultural, discursive or political configurations to generate social, aesthetic or transcendental realities.”<sup>177</sup> More specifically, put another way, it “refers to acts or strategies (stated or more incoherent) adopted by parties with a stake in the trial to try to persuade their target audience(s) in (and outside) the courtroom of the justice of their narrative(s) and the injustice of the one on the opposite side of the bar.”<sup>178</sup> As such, the political defence strategies of the FLQ operated through multi-layered argumentation and multiple arenas. The strategies employed procedural *mêlée*, timed disruptions, provocations to interrupt the legal proceedings against, personal attacks, and appeals to law. In some instances, defendants pivoted between characterizing themselves as revolutionaries and victims. Reversing the narrative of victimhood away from the casualties of the FLQ's crimes, the accused *felquistes* claimed to be victims of the violence of capitalism and Anglophone socioeconomic dominance. A system, in their view, which the courts maintained and on those grounds the defendants petitioned for the dismissal of the criminal indictments.

FLQ defendants also argued, to little avail, that the courts lacked the jurisdiction to

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<sup>176</sup> Peters, “Legal Performance,” 198.

<sup>177</sup> Henning Grunwald, “Justice as ‘Performance’? The historiography of legal procedure and political criminal justice in Weimar Germany,” *InterDisciplines* 2 (2012): 52.

<sup>178</sup> Beatrice de Graff, “Introduction: A Performative Perspective on Terrorism Trials,” in *Terrorists on Trial: A Performative Perspective*, eds. Beatrice de Graff and Alex P. Schmid (Leiden University Press, 2016), 14.

preside over the FLQ trials. However, this argument was usually undermined when the court was designated a foreign imposition. The FLQ strategies attempted to call the court's claim to legitimacy into question, further politicizing the trial. Put another way, Ertür wrote: "the political trial can be defined as a legal proceeding whose performative structures are publicly exposed. When the conventions of trial performance cannot bolster the sense of inevitability, they begin to stand out in their theatricality."<sup>179</sup>

For further background to the emergence of the *felquistes* legal strategy, this chapter has three parts. First, while the FLQ legal representatives were not direct successors of earlier legal representatives who defended labour activists against criminal law such as sedition, unlawful assembly, and section 98 of the Criminal Code,<sup>180</sup> the experiences of the counsel retained by the Canadian Labour Defence League (CLDL), other lawyers who defended groups such as the On-to-Ottawa Trekkers and Regina rioters, and counsel who helped later Cold War era targets of anti-Communist repression were nonetheless a reference point. For example, Frank R. Scott, who was active in these earlier struggles, remained influential at McGill University and the Montréal bar through the sixties.<sup>181</sup>

Following consideration of this immediate context of radical lawyering, the legal defence strategies of the FLQ are read relative to a brief survey of the conversations about politicized approaches to legal representation. In doing so, I emphasize the tension between professional responsibilities and political commitments and advance a typology of FLQ defendants' legal strategies.

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<sup>179</sup> Ertür, "Spectacles and Spectres," 87.

<sup>180</sup> In effect from World War One to 1936, section 98 outlawed membership in listed radical organizations.

<sup>181</sup> For more on Scott's internal dialogue concerning tensions between Trudeau's use of the WMA to quell the FLQ and his visions of national unity, civil liberties and federalism, see Sandra Djwa, *The Politics of the Imagination: A Life of F.R. Scott* (Toronto: McClelland and Stewart, 1987), 404-418; Robert G. May, "F. R. Scott, the FLQ, and the October Crisis," *Quebec Studies* 55 (2013): 119-133; Frank R. Scott, *A New Endeavour: Selected Political Essays* (Toronto: University of Toronto Press, 1986), 129-130.

Finally, consideration of the formation, mobilization, and early political litigation of the CAGVG as an intervention into the conversation about the strategic roles of defence counsel and self-represented defendants within militant political movements. The Committee, among its activist focuses, paid FLQ lawyers, advocated for whom it viewed as political prisoners, and aided in the preparation of those FLQ members who chose self-representation as their legal defence strategy.<sup>182</sup>

### **3.2 Patterns of Defiance: Historicizing the Legal Representation of Political Defendant in Canada**

The mobilization of legal resources by political movements in response to the criminalization of dissent by the state is commonplace in Canadian history. Situating the experiences of the legal representatives of FLQ defendants and their self-representation strategies relative to other periods and other parts of Canada encourages contextualized historiographical consideration of the legal representation of politicized defendants in Québec.<sup>183</sup> To this end, this section briefly surveys the previous generation of civil rights-oriented defence counsel who battled repressive state actions taken against labour radicals and other groups perceived to be a threat to the political, social and economic order.

The tenor of the trials, and most relevantly the animated exchanges between legal representative on behalf of political defendants and the bench, resonates similarly to the heated debates over process and substance between Québec trial court judges and FLQ defendants. First, I consider the work of Hugh J. MacDonald on behalf of the CLDL during the 1931 trials of the Toronto Communists. Then, I point to the work of Peter Makaroff,

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<sup>182</sup> Warren, “À la défense des prisonniers politiques québécois,” 53-7.

<sup>183</sup> Such histories, often language locked, receive much less comparative or contextual attention in English language literature on similar matters.

Emmett Hall, and Tom Newlove, who defended a group of On-to-Ottawa Trekkers and those charged with riot and assault offences stemming from the Regina Riot.<sup>184</sup> Finally, I highlight the strategies used by J.L. Cohen despite being hamstrung by emergency measures through the Gouzenko Affair and subsequent spy trials (1946-9). Cohen's experiences showed the political utility of using statutory challenges during times of heightened national security interests.

In this section, I outline some of the struggles faced by the CLDL as an example of how legal resources were mobilized in response to the state's criminalization of organizing-related labour activities and how criminal trials were used to snuff out dissent. The story of the Toronto Communists' trials began similarly to that of the FLQ trials. The CLDL was established by the Communist Party of Canada (CPC) to provide legal defence resources for activists and radicals, mobilized the important legal resources (e.g., bail and legal representation) to all eight accused. Organizing members of the CPC were charged with unlawful association, unlawful membership and seditious conspiracy as the state attempted to stymie legitimate political organizing.<sup>185</sup> The criminalization of communists in Canada and the trial of the Toronto Eight or *Buck et. al.* (1931) emphasized the challenges faced by CLDL defence counsel Macdonald. These trials, nonetheless, offer insight into early litigation and organizational strategies (e.g., procedural petitions of vague indictments)

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<sup>184</sup> As Waiser puts it, the trekkers were die-hard communist agitators dedicated to sowing dissent and fomenting chaos with little regard to Canadian law. Bill Waiser, "Wiping out the Stain: The On-to-Ottawa Trek, the Regina Riot, and the Search for Answers," in *Canadian State Trials, Volume IV: Security, Dissent, and the Limits of Toleration in War and Peace, 1914—1939*, eds. Barry Wright, Eric Tucker, and Susan Binnie (Toronto: University of Toronto Press, 2015), 402-35; and the 1935 Regina Riot Trials also presented challenging politicized cases for the CLDL, see Jaroslav Petryshyn, "Class Conflict and Civil Liberties: The Origins and Activities of the Canadian Labour Defence League, 1925-1940," *Labour/Le Travailleur* (1982): 39-64.

<sup>185</sup> Laurel MacDowell, *Renegade Lawyer: The Life of J. L. Cohen* (Toronto: University of Toronto Press, 2001), 32-53.

employed by lawyers defending alleged political dissidents as the state attempted to dismantle and disband organizations that contested the status quo.

On 2 November 1931, Tim Buck, the secretary of the CPC, and seven other party members and organizers were tried in Toronto at the Supreme Court of Ontario, Fall Assizes.<sup>186</sup> With the powerful breadth of Section 98 of the Criminal Code, the state, and by extension the police, had a permanent mandate to target and pursue seditious organizations. Section 98, which emerged alongside the 1928 WMA, was a powerful tool used by the state to prosecute perceived political dissidents, the FLQ included. As put by Dennis Molinaro, section 98 sought to “regulate acceptable ideology and behaviour during peacetime.”<sup>187</sup> That is, the state put the political beliefs and the intellectual history of The Communist Party on trial. Procedurally, as was common in similar political trials, the defence counsel did not enter a plea of guilty or non-guilty, but instead contested the indictment detailing that the statement of offence was insufficient. The judge found otherwise. Aside from calling the charges into disrepute, the trial centered on whether the objectives of the party intended to instigate, with the use of force, governmental, industrial or economic change within Canada. MacDonald argued that the Communist Party had always conducted itself within the law, and that the ‘violence’ referenced in CPC literature was “not something which it ‘advocated’ or ‘taught’ in the sense of ‘aim[ing] to bring about,’ but was rather a form of violence which according to the Communist interpretation

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<sup>186</sup> Jaroslav Petryshyn, “A.E. Smith and The Canadian Labour Defence League” (PhD diss., University of Western Ontario, 1977), 179-87.

<sup>187</sup> Dennis G. Molinaro, “Section 98: The Trial of *Rex v. Buck et. al.* and the ‘State of Exception’ in Canada, 1919-36,” in *Canadian State Trials, Volume IV: Security, Dissent, and the Limits of Toleration in War and Peace, 1914–1939*, eds. Barry Wright, Eric Tucker, and Susan Binnie (Toronto: University of Toronto Press, 2015), 324-5; and Dennis G. Molinaro, *An Exceptional Law: Section 98 and the Emergency State, 1919-1936* (Toronto: University of Toronto Press, 2017).

of history was inevitable and for which the Communist Party merely prepared.”<sup>188</sup> Similar to the LaGrenade Affair, the crown attempted to draw the connection between the political literature and tangible outcomes. Ideas were on trial. Tim Buck was convicted. For Frank R. Scott, political trials are ‘somewhat of a waste of time,’ his reasoning resting in the contestability of the nature and definition of such trials.<sup>189</sup> For me, however, it is agreeable that the definition remains contestable, as it is how legal strategies are employed within such trials that are most politically salient.

Documents filed by the RCMP about CLDL added further light to the internal tensions of political lawyering within an organization during the Depression years. In a 12 September 1934 weekly Report on Revolutionary Organizations and Agitators in Canada, the RCMP referenced the CLDL’s preparation for a strike trial in Flin Flon, Manitoba, and outlined that the CLDL lawyers requested to conduct the defence on behalf of the indicted strikers. However, after consultation with the CLDL, the accused strikers decided that they would conduct their defences in an effort “to bring out the history of the strike and take advantage of the trials for propaganda purposes.”<sup>190</sup> This tension between the use of legal representation or self-representation is a common theme throughout the FLQ trials.

Next, Peter Makaroff, a Saskatoon lawyer and activist, who had recently defended Doukhobor leader Petrovich Verigin from deportation<sup>191</sup> was asked by the defence

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<sup>188</sup> Frank R. Scott, “The Trial of the Toronto Communists,” *Queens Quarterly* 39 (1932): 522.

<sup>189</sup> *Ibid.*, 526.

<sup>190</sup> No author, “No. 723: Weekly Summary Report on Revolutionary Organizations and Agitators in Canada, 12<sup>th</sup> September 1934,” in *R.C.M.P. Security Bulletins: The Depression Years, Part I, 1933-1934*, eds. Gregory S. Kealey and Reg Whitaker (St. John’s, Newfoundland: Athabasca University Press, 1993), 272.

<sup>191</sup> John McLaren, “The Canadian State, Ethnicity, and Religious Non-Conformism: The Trials of Peter Petrovich Verigin,” in *Canadian State Trials, Volume IV: Security, Dissent, and the Limits of Toleration in War and Peace, 1914–1939*, eds. Barry Wright, Eric Tucker, and Susan Binnie (Toronto: University of Toronto Press, 2015), 364-401.

committee for the Regina Riot trials to step in as defence counsel.<sup>192</sup> Makaroff took the job. The trial, which began on 21 April 1935, was a strategic challenge for the defence team from the beginning. As Bill Waiser explained, the legal defence strategy at the pre-trial stage began with an attempt to avert the focus of the judge from the rioters and protester and instead make the case that the RCMP were to blame for the riots. This attempt to shift the narrative of the trial gained some traction, but while Justice MacDonald listened to the argument, he rejected it and sent the case to trial.<sup>193</sup> The tenor of the trial, and most relevantly the animated exchanges between Justice MacDonald and Makaroff, resonate with the later heated debates over process and substance of the law between Justice Ouimet and Michel Chartrand throughout his seditious conspiracy prosecution and contempt of court appeals.

J.L. Cohen was another defence lawyer assigned many political cases on behalf of the CLDL and CPC. MacDowell, Cohen's biographer, writes of his representation of communists, workers, farmers, the poor, wartime internees, but here I focus on the challenges of representing suspected spies. The 1946 legal defence of suspected spy and Canadian Information Service official David Gordon Lunan was problematic and ultimately unsuccessful. The substantive challenge rested with the statutory and evidentiary barriers faced by defence counsel who had to navigate the post-war national security complex and the Gouzenko Affair and subsequent Taschereau-Kellock Royal Commission.<sup>194</sup> In early September 1945, Igor Gouzenko, a cipher clerk at the Soviet

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<sup>192</sup> For further context, relative to policing of perceived dissidents, see Reg Whitaker, Gregory S. Kealey, and Andrew Parnaby, *Secret Service: Political Policing in Canada from the Fenians to Fortress America* (Toronto: University of Toronto Press, 2012), 117-144.

<sup>193</sup> Waiser, "Wiping out the Stain," 422-424.

<sup>194</sup> MacDowell, *Renegade Lawyer*, 211-220.

Embassy in Ottawa, provided the Canadian government and RCMP with information regarding a secret Soviet Spy network operating in Canada. Prime Minister King passed order-in-council PC 6444 authorizing the indefinite detention of those involved. On 5 February 1946, King, through the authority of PC 411, established what came to be known as the Espionage Commission.<sup>195</sup> Empowered by the WMA, the *Public Inquiries Act*, and the *Official Secrets Act*, 1939, prosecutor E.K. Williams, and presiding Justices Taschereau and Kellock compelled self-incriminating testimony under duress and threat of imprisonment, and then turned around and charged the suspects based on that testimony. For Cohen, the spy cases represented serious civil liberties issues. The charges, statutes, and unusual procedures undermined any semblance of a fair trial. Due to evidence emerging within closed and near-inquisitorial proceedings where suspects were denied access to legal counsel, the political nature and disregard for the rule of law in the subsequent trials was apparent. Marginalized in the media, Cohen and fellow defence lawyers fought for the suspects' families with procedural attempts to interrupt secret interrogations with appeals for *habeas corpus*. Despite attempts, this strategy was rejected because the petitions for the writ tend not to be granted in cases involving breaches of the *Official Secrets Act*. Nonetheless, the in-camera proceedings of the Espionage Commission stymied the efficacy of defence counsel.<sup>196</sup>

Many of the lawyers involved in pre-war labour cases and those who navigated the post-war chilling effects of the espionage measures associated with the onset of the cold war, influenced a subsequent generation of progressive lawyers. Frank R. Scott, for example, was involved with the CLDL during the pre-war years and would go on to teach

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<sup>195</sup> Amy Knight, *How the Cold War Began* (Toronto: McClelland & Stewart Ltd., 2006), 11-12.

<sup>196</sup> Whitaker, Kealey and Parnaby, *Secret Service*, 179-217.

FLQ lawyer Robert Lemieux and Jerome Choquette (Québec Minister of Justice during the October 1970) at McGill law school in the mid-sixties. Further research, beyond the scope of this project, could explore these professional networks in more detail. Nonetheless, in historically situating the legal counsel associated with the CAGVG and broader FLQ membership and sympathizers, the previous generation of radical lawyers provide an example of courageous stands against the state, sensitivity to the fragility of civil liberties, and principled arguments based on formal claims about the rule of law.<sup>197</sup>

In what follows, I situate lawyers who participated in movements of dissent or aligned themselves with radical political organizations and broader popular social movements integrated this activity with their profession. However, these types of stories, like Robert Lemieux's involvement with the FLQ, are often relegated to the margins of professional narratives, their experiences deemed unrepresentative of the professional lawyering experience, especially when such lawyers have been disciplined or are themselves implicated in illegal activities while representing their clients.<sup>198</sup> While litigation strategies in adversarial context may differ between jurisdictions, the adversarial contexts offer possibilities for political contestation to show what happens when a legal system fails to account for its assurances.<sup>199</sup> In these trials, it is the court's obligation to formal claims to the rule of law that are called to account.<sup>200</sup>

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<sup>197</sup> Further research, beyond the scope of this project, could further explore these professional networks.

<sup>198</sup> For example, Lemieux was sanctioned by the Barreau du Québec, and convicted on numerous contempt of court charges, for his roles in defending the FLQ. More recently, Lynn Stewart, who defended Sheik Omar Abdel Rahman, was convicted of crossing professional and criminal line by passing messages between her client and his supporters. In response, the defence counsel community criticized the conviction stating that she was fulfilling her duties as defence counsel. For more, see Avi Brisman, "Reframing the Portrait of Lynn F. Stewart," *Journal of Law and Society* 12 (2010-2011): 1-41.

<sup>199</sup> Some may have constitutionally entrenched bill of rights while others do not. The example here being Canada before 1982 and the UK as compared to the United States.

<sup>200</sup> Here, general principles of the rule of law guide how I use the term. Namely, that the rule of law is understood in opposition to arbitrary and discretionary power. One may not be punished unless in accordance

### 3.3 Towards a Typology of *Felquistes* Defendants' Legal Strategies

Among the most notable lawyers to defend the *felquistes* were Bernard Mergler, Robert Lemieux and Pierre Cloutier, all of whom were involved in the Vallières and Gagnon manslaughter trial and appeal cases before October 1970. Other lawyers, however, including Robert Burns, Gaétan Robert and their colleagues played a range of roles at the trial court level in Montréal.<sup>201</sup> Only Lemieux, however, self-identified and was consequently charged with being a member of the FLQ. While some defence lawyers defended only a single FLQ client leaving little or no record (especially if the representation did not lead to the Québec Court of Appeal, formerly *la Cour du Banc de la Rein*), others including Mergler, Proulx and Cloutier were engaged in the defence of several FLQ members, but defended them all at a distance from the much more politicized engagement of Lemieux.

Determining the appropriateness of legal defence strategies was a challenging task. As circumstances varied, the individual motivations of *felquistes* defendants shifted (e.g., acquittal, minimized prison time, or appear to be convicted as a martyr), and different strategies were employed (e.g., deference rather than confrontation of the law).<sup>202</sup> How defendants' political and legal goals translated into their legal defence strategies also

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with a specific breach of ordinary law through the ordinary courts—the rule of law is a constraint on political power.

<sup>201</sup> Notes uncovered in a Michel Chartrand court file dossier revealed an extended list of lawyers representing FLQ clients on a range of charges including François Folot, Michel Lamarre, Michel Proulx, Denis Lanctôt, Robert Sacchitelle, J.P. Lussier, and Claude Filion. Very few records for these cases are available for public access for survived the decades. In October 2014, in a conversation with Warren, he echoed this finding, noting that unless the trial was appealed, very few records from the trial courts still existed, and if they do, they are held with the Court of the Sessions of the Peace. Lawyers list, Michel Chartrand Files (Court Documents), *Bibliothèque et Archives nationales du Québec* (BAnQ), Old Montréal, P839 S2 D13, 70-72.

<sup>202</sup> Aileen Kavanagh, "Deference or Defiance? The Limits of the Judicial Role in Constitutional Adjudication," in *Expounding the Constitution: Essays in Constitutional Theory*, ed. by G. Huscroft (New York: Cambridge University Press, 2008), 184-215.

varied. For example, for defendants who viewed the law as illegitimate, it was common for them to reject the indictment and not enter a plea at the arraignment stage. In other instances, disruption punctuated legal encounters. Disruptive defendants, who aimed to confront the state in court, strategically plead not guilty to orchestrate a political defence. Such disruptions, however, frequently resulted in contempt of court charges laid by the bench against legal counsel or defendants.<sup>203</sup> As goals varied, so too did defendants' strategies. For example, self-censoring or refusing to participate as a lawyer or as a client,<sup>204</sup> acceptance of the status quo through compliance and neutrality,<sup>205</sup> and collective mobilization with or without the support of a professional association (e.g., Barreau du Québec),<sup>206</sup> emerged as legal strategies in the FLQ trials. Directing this consideration of legal strategies, I ask: how were political defendants represented in court? And, how do such legal representation strategies run the risk of eroding the blurred line between law and politics—exploding law's and the trial's claim to neutrality or objectivity—to the political and material interests of counsel or defendant?<sup>207</sup> Specifically, how, relative to the individual motivations of the defendants, did these legal strategies interrupt the processes of the FLQ criminal trials?

### 3.3.1 Situating the *Felquistes'* Legal Strategies in Broader Context

My broader argument—that *la guérilla judiciaire* (used to describe the legal

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<sup>203</sup> John Saywell, *Québec 70: A Documentary Narrative* (Toronto: University of Toronto Press, 1971), 69; Auf der Maur and Chodos, *Québec*, Ch. 4.

<sup>204</sup> Alexandra D. Lahav, "Portraits of resistance: Lawyers responses to unjust proceedings," *University of California Los Angeles Law Review* 57 (2010): 725-87.

<sup>205</sup> Kieran McEvoy, "What Did the Lawyers Do During the War?" *Modern Law Review* 74, no. 3 (2011): 350-384.

<sup>206</sup> Rene Laurent, "Bar association suspends Lemieux," *The Montréal Gazette*, December 13, 1973.

<sup>207</sup> Tanina Rostain, "Professional Power: Lawyers and the Constitution of Professional Authority," in *The Blackwell Companion to Law and Society*, ed. Austin Sarat (Oxford: Blackwell Publishing Ltd, 2004), 162.

strategies of the FLQ), which functioned as a performative legal strategy that had a destabilizing effect on the FLQ criminal trials, was a melding of a variety of legal approaches to the defend militant political defendants—urges further consideration of the relationship between the *felquistes* defendants, the legal system and the broader political movement.<sup>208</sup> More to the point, this section briefly situates defence counsel relative to the legal profession and established political institutions and systems lawyers navigate. As a starting point, I consider Kieran McEvoy’s analysis of political lawyers’ experiences in Northern Ireland. McEvoy employs a three-point analytical framework to assess how lawyers passively and actively navigated politicized criminal trials:

1. Relationships between lawyers and the state;
2. experiences of cause lawyering wherein lawyers abandon the traditional position that law and lawyers can be divorced from politics; and
3. the questions of how well or otherwise lawyers perform in the context of political violence and state repression.<sup>209</sup>

Point two—the abandonment of thinking law is distinct from politics—is a central tension for the lawyer engaged in the representation of political defendants. Such situations, Shklar contended, are instances in which political expediency has replaced the rule of law.<sup>210</sup> Again and again, the historical record reflects this expedience.<sup>211</sup> Put another way, legal strategies in such contexts are also political strategies. Steven Barkan is wary of how effective defence counsel can be for the political defendant. The mere presence of a lawyer may, in effect, depoliticize the way a defendant engages the court.<sup>212</sup> Nonetheless, the

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<sup>208</sup> On the legal professions, he concluded that strategic political litigation is often contingent on the organization of the profession. See Marc Galanter, “Why the ‘Haves’ Come out Ahead: Speculations on the Limits of Legal Change,” *Law and Society Review* 9 (1974): 151.

<sup>209</sup> McEvoy, “What Did the Lawyers Do During the War?” 352.

<sup>210</sup> Shklar, *Legalism*, 216-7.

<sup>211</sup> Christenson, “A political theory of political trials,” 547-77.

<sup>212</sup> Steven E. Barkan, “Political Trials and the ‘Pro Se’ Defendant in the Adversarial System,” *Social Problems* 24, no. 3 (1977): 326-8.

question of how defence counsel for militant political organizations straddles professional responsibilities and political commitments guides this broader situation of the legal strategies of the *felquistes* lawyer or self-represented defendant.

Austin Sarat and Stuart Scheingold, who together have edited three scholarly collections on the relationships between lawyers' political and professional responsibilities, offered many regional case studies of these tensions.<sup>213</sup> In rule-of-law states, for example, the law is a contested space and cause lawyers assist with exposing the contradictions and "instabilities built into liberal legalism."<sup>214</sup> Further to the point, in *Cause Lawyering* (1998), Richard Abel's chapter 'Speaking Law to Power' examined the political situations that give rise to political lawyering, reactively, through political trials (e.g., wrongful convictions in Northern Ireland); and proactively, through law reform or test cases.<sup>215</sup> Building on the anthologies edited by Sarat and Scheingold, Thomas Hilbink developed a typology of cause lawyering that identifies three categories organized around the law, practice, and 'the cause': (1) proceduralist lawyering; (2) elite or vanguard lawyering; and (3) grassroots lawyering.<sup>216</sup> For Hilbink, proceduralist lawyers focus on sets of fundamental rights accounting for all their client's procedural rights. These lawyers believe that law and politics are separate. In contrast, elite or vanguard lawyers believe in

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<sup>213</sup> Austin Sarat and Stuart Scheingold, *Cause Lawyering: Political Commitments and Professional Responsibilities* (New York: Oxford University Press, 1998); Austin Sarat and Stuart Scheingold, *Cause Lawyering and the State in a Global Era* (New York: Oxford University Press, 2001) Austin Sarat and Stuart Scheingold, eds. *The World Cause Lawyers Make* (California: Stanford University Press, 2005).

<sup>214</sup> Austin Sarat and Stuart Scheingold, "Cause Lawyering and the Reproduction of Professional Authority: An Introduction," in *Cause Lawyering: Political Commitments and Professional Responsibilities*, eds. Austin Sarat and Stuart Scheingold (New York: Oxford University Press, 1998), 8-13.

<sup>215</sup> Richard Abel, "Speaking Law to Power: Occasions for cause lawyering," in *Cause Lawyering: Political Commitments and Professional Responsibilities*, eds. Austin Sarat and Stuart Scheingold (New York: Oxford University Press, 1998), 69-117.

<sup>216</sup> Thomas M. Hilbink, "You Know the Type...: Categories of Cause Lawyering," *Law and Social Inquiry* 29, no. 3 (2004): 665.

the efficacy of substantive legal change and treat law as a superior form of politics.<sup>217</sup> Most closely aligned with a social movement, grassroots lawyers regard law as another form of politics and as such dismiss the claim that law can generate social change.<sup>218</sup>

The legal professional occupies a political and a legal space. Using a ‘rule-of-law lawyering’ model, defence lawyers who defended Guantánamo detainees with *habeas corpus* petitions attempted to reconcile the relationship between lawyering and political liberalism<sup>219</sup> claiming that rule-of-law lawyering hinged on a belief in the rule of law as a “source of radical professional commitment,” but at the same time the rule of law also delimits the actions of the state puts limits on state action and radicalizes the idea of attorneys’ duties.<sup>220</sup> Radicalization, in this context, is the coming together of rule-of-law lawyers to advance values of political liberalism rather than remain neutral. Thus, their practices are set on “strengthening the institutional structure and its guarantees.”<sup>221</sup>

Finally, Wes Pue’s “Lawyering for a Fragmented World” addresses what he calls the fragmentation of the legal profession suggesting that the critical lawyer seems to act on political instinct, which results in the sense of social fragmentation.<sup>222</sup> For the critical lawyer or legal representative politicization of legal processes are client-centered, case-oriented, and encouraged resistance at the “micro-sites” of institutional or organizational

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<sup>217</sup> *Ibid.*, 673.

<sup>218</sup> Hilbink, “You Know the Type,” 681. Meanwhile for Steven Barkan, social and political movement litigation primarily focuses on changing legal rules, political trials and the lawyering strategies in the wake of expanding state security powers may engage the legal proceedings as a means mobilizing political and social resources and influence. Steven E. Barkan, “Political trials and resource mobilization: Towards an understanding of social movement litigation,” *Social Forces* 58, no. 3 (1980): 944-961.

<sup>219</sup> Laurel E. Fletcher, Alexis Kelly, and Zulaikha Aziz, “Defending the Rule of Law: Reconceptualizing Guantanamo Habeas Attorney,” *Connecticut Law Review* 44, no. 3 (2012): 617-674.

<sup>220</sup> Lucien Karpik, “Political Lawyering,” in *Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Liberalism*, eds. Terence C. Halliday, Lucien Karpik, and Malcolm M. Feeley (London: Hart Publishing Limited, 2007), 489.

<sup>221</sup> Fletcher, “Defending the Rule of Law,” 647.

<sup>222</sup> Wes Pue, “Lawyering for a Fragmented World: Professionalism after God,” *International Journal of the Legal Profession* 5, no. 2-3 (1998): 133.

power.<sup>223</sup> Further, Allo argues that some political trials have the potential to transform and reformulate law. They are events that extract the micro-politics of competing narratives (e.g., federalism, nationalism, and separatism) in the political community and present passersby with a ‘nation-shaking’ event that impacts how society thinks and acts in relation to another political community.<sup>224</sup> Building on this roadmap, the next section considers the spectrum of legal strategies that compose what those writing about the FLQ trials have called judicial guerrilla warfare.

### 3.3.2 *La Guérilla Judiciare: A Typology of the Felquistes’ Legal Strategies*

Described by Jean-Philippe Warren as a tactic employed by the defendants in the Trial of the Montréal Five, *la guérilla judiciare* was a tactical translation of what the FLQ viewed as urban guerrilla warfare to the courtroom.<sup>225</sup> This defendant courtroom strategy included refusals to testify, anti-capitalist and anti-imperialist rhetoric, and venomous insults directed towards the bench.<sup>226</sup> As he explained, and what I develop further in chapter six, the bench responded with escalation tactics of their own: expanded consideration of

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<sup>223</sup> Peter Fitzpatrick, “Law as Resistance,” in *The Critical Lawyers’ Handbook*, eds. Ian Grigg-Spall and Paddy Ireland (London: Pluto Press, 1992), 46; Paddy Ireland and Per Laleng, eds., *The Critical Lawyers’ Handbook Two* (Chicago: Pluto Press, 1997); Gerald Lopez, *Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice* (Chicago: Westview Press, 1992); Stuart Scheingold, “Radical Lawyers and Socialist Ideals: The Boundary of Rights,” *Bulletin of Australian Sociolegal Philosophy* 11 (1987): 232-53; Klaus Ziegert, “Socialist Lawyers and Radical Ideas or, Schizophrenia as a Profession,” *Bulletin of Australian Sociolegal Philosophy* 11 (1987): 254-63; Raymond Challinor, *A Radical Lawyer in Victorian England: W.P. Roberts and the Struggle for Workers’ Rights* (London: Tauris, 1990); and Max Travers, “The Phenomenon of the ‘Radical Lawyer’,” *Sociology* 28, no. 1 (1994): 245-58.

<sup>224</sup> Allo, “Law and Resistance,” 84.

<sup>225</sup> Warren: “Convaincus donc qu’ils ne pouvaient rien attendre de la justice québécoise, les Cinq tentaient de mettre sur pied des tactiques de harcèlement du régime. À la guérilla urbaine succédait ainsi la guérilla judiciaire, faite en partie de refus de témoigner, de vitupérations, d’insultes lancées à la face des juges et de dénonciations globales de la société capitaliste et impérialiste. Pour mater cette guérilla, les magistrats faisaient eux-mêmes flèche de tout bois, usant et abusant entre autres de la condamnation pour outrage au tribunal.” Warren, “‘Outrage au peuple!’” 129.

<sup>226</sup> *Ibid.*

the summary power of contempt of court. The questions that emerge include how were those approaches (e.g., the refusals and the denunciations) performed in court and to what impact? While FLQ defence counsel Mergler and Lemieux offered legal advice and counsel to many FLQ members both inside of and outside the courtroom, what happened when FLQ defendants opted for the strategic choice of self-representation? How did this approach unfold as an alternative legal defence strategy? As a launch point into these questions, Vallières penned a letter to Larue-Langlois (president of the CAGVG) on his choice and that of others to self-represent in court. The law and therefore trials, to paraphrase Vallières, was an opportunity to confront the ‘hypocritical courts of class struggle.’ As self-represented litigants, the bench is forced to directly confront us without the intermediary or filter of a lawyer, who consciously or not, will look for common ground with the court.<sup>227</sup> To that end, even a defendant’s motion to acquit provides an opportunity to make the case against the indictments.

Pivoting away from further definition of *la guérilla judiciaire* and instead reading it as performative legal strategy (the objective of which was to undermine the FLQ trials and advance the *felquistes* narrative of law and justice), I argue that the *guérilla judiciaire* takes its form through multi-leveled negotiations with the power and process of legal mechanisms and political speech. As politicized defence strategies bend to fit structured legal form (e.g., motions, appeals, defence argument, and summations), the content of many FLQ legal defences was often deemed contemptuous or irreconcilable with the court.

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<sup>227</sup> Vallières to Larue-Langlois: “Les procès sont pour nous, avant tout, des occasions d’introduire ouvertement dans le «sanctuaire» hypocrite des tribunaux la lutte des classes. En nous défendant nous-mêmes, nous forçons le juge et la poursuite à nous affronter directement, sans l’intermédiaire ou plutôt l’écran d’un avocat bourgeois qui, consciemment ou inconsciemment, recherche toujours un terrain d’entente avec l’arbitraire institutionnalisé qu’on appelle l’administration de la justice.” Rico, “Les événements,” 38.

Operationally, defence strategies emerged in many forms with little in the way of a coherent overarching strategy. In what follows, I group defence strategies under broader categories that reflect defendant's general courtroom objectives and how they attempted to accomplish them:

- (1) Disrupt, bait, or goad the courts to react disproportionately to make the court appear repressive:
  - a. Self-representation;
  - b. Disruptive and recalcitrant behaviour;
  - c. Use, misuse and manipulation of procedural motions; and
  - d. Engage in *ad hominem* argumentation with the bench or Crown.
  
- (2) Leverage trials as arenas to grieve historical injustice:
  - a. Oscillate between legal and political arguments; and
  - b. Draw on the 1759 Conquest of Québec or *patriotes* rebellions of 1837-1838 to legitimate legal argumentation.
  
- (3) Articulate *felquistes* claims and views about the law and justice:
  - a. Appeal to rule-of-law claims and substantive fair trial principles;
  - b. Construct the defendants as the victims;
  - c. Legitimize or delegitimize the authority of the court;
  - e. Claim the law is unfair or that its application is unfair; and
  - f. Rejection of the jurisdiction of the court (e.g., foreign imposition).

With this framework as a referent point, the FLQ trials emerge as a tenuous site of performative legal resistance for the FLQ defendants to the extent that the trials are a site of the convergence of state power and *felquistes* resistance.<sup>228</sup> Marshalling historical characterization of political trials as relative to Québec legal system's response to FLQ political violence, I put to work the above framework to assess how *felquistes* defendants navigated, acquiesced and resisted their legal encounters. Concerning language usage, the content of motions and trial transcripts, the case studies that follow expand on how defendants used certain political, legal strategies over others depending on context.

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<sup>228</sup> Awol K. Allo, "The Courtroom as a Site of Epistemic Resistance: Mandela at Rivonia," *Law, Culture, and the Humanities* (2016): 16; de Graff, "Introduction," 17.

How do certain defendant practices disrupt? How do historical narratives of a ‘victimized nation’ permeate the Québécois political sphere? What value is there in the rejection of the court’s legitimacy? As Josiah Ober argued, even as a legal strategy, rejecting the legitimacy of the court fails because the defendant is complicit in the very legitimacy of the trial via their subversive participation in the trial itself.<sup>229</sup> The following outlines the general influence of Allo and Steven Barkan, among others, in consideration of this typology of *felquistes* defendants’ legal strategies.

In Fernand Foisy’s description of the first day of the Trial of the Montréal Five (the seditious conspiracy prosecution developed in chapter five), he illustrated the scene in front of the bench as Michel Chartrand prepared his opening remarks. Perhaps, one of the strongest accounts of the spatiality of the trials, Foisy captured the body language and non-verbal demeanor of the defendants. For example, as an unshaven Chartrand had just strewn boxes of documents about the table of the accused, he began:

CHARTRAND: I am an Indian with a white face.

THE COURT: Come on, you’re not an Indian.

CHARTRAND: You don’t know what my mother did.<sup>230</sup>

As Chartrand continued, he referenced the then-recent case of *Drybones* (1969) to make a broader point about the importance of an impartial judiciary. His argument, rooted in the fundamental rule of law-based principle of the separation of powers, made the case that through the current proceedings distinguishing between the executive and the judiciary has not been an easy task. In other words, an apolitical judiciary was, at best, nothing but a

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<sup>229</sup> Josiah Ober, “The Trial of Socrates as a Political Trial,” in *Political Trials in Theory and History*, eds. Jens Meierhenich and Devin O. Pendas (Cambridge: Cambridge University Press, 2016), 79.

<sup>230</sup> Fernand Foisy, *Michel Chartrand: La colère du juste* (Montréal: Lanctôt Editions, 2003), 182.



[*pointing to the investigators*] . . . of . . .

[*pointing to the Crown counsels*] terrorist acts in themselves!

And these actions are depredations, frustrations, it's taking from people the possibility of explaining themselves and this even though we put in doubt the possibility of expressing oneself.

For I say—and I verified it during this trial—that your democracy [*pointing to the Crown counsels*] is a paper democracy.<sup>234</sup>

While Chartrand jested and harnessed a racialized history of injustice that was not his, Rose argued that the FLQ (as representative of the working-class Québécois people) were the victims of terrorist violence perpetrated by the state. Each strategy attempted to broaden the national and class identity of the defendants by fashioning a counter-condemnation of state actions. In doing so, FLQ defendants tried to re-center marginalized historical narratives in alignment with the FLQ's politicized legal strategy in the courtroom.

If the law continues to interiorize 'hegemonic norms' and legitimize relationships of exploitation and oppression, then, Allo reasoned, political contestation through legal strategies was "most meaningful before the law [in court]."<sup>235</sup> Politically engaged defence lawyers are put in a reflexive position as they and their clients orient themselves relative to state authority and the legal rules. In this example, Gagnon eschewed political argumentation and fixed his argument to a view of fair trial principles, he challenged what he viewed as the politicization of criminal justice with appeals to the rule of law in the lead-up to his trial for his alleged role in the LaGrenade Affair:

GAGNON:                    *A fair and equitable trial*, in this case, is the only way

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<sup>234</sup> Comeau, Cooper, and Vallières, *FLQ*, 248.

<sup>235</sup> Allo, "Law and Resistance," 108.

to establish clearly, completely and legally what my role and activities within the FLQ were, in other words, my innocence in all charges which have been brought against me to this day.

. . . It is impossible for me to prepare a full defence in this case or any other case, as long as it has not been heard . . . Especially since the Attorney General has decided to make each of his charges overlap over very long periods of time for the obvious purpose of making a ‘political trial’ where ideological debates will take precedence over facts that may be relevant.<sup>236</sup>

Here, Gagnon argued that his rights to a fair trial are being overlooked to stymie the broader perceived threat of the FLQ’s political agenda. More to the point, while some of the performative strategies used in the FLQ trials were preoccupied with calling out the legitimacy of the state’s claim to authority and offering a subversive historical account to counter the dominant narrative of the state, other strategies appealed to the rule of law for its protective power.<sup>237</sup>

In 2006, Steven Barkan, who researched defence strategies used in political trials (or what he called protest prosecutions), offered a series of hypotheses that considered the likelihood of advancing certain defence strategies over others. Differentiating between a traditional defence approach, which included a lawyer who abided by the conventions and decorum of the courtroom, and a political defence, which offered the option of self-representation, these hypotheses outline non-conventional legal defence options. As such, they emphasize the tension inherent to the advancement of the political defence. As FLQ

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<sup>236</sup> Charles Gagnon, “Letter from Charles Gagnon to Justice Maurice Archambault (Cour du Banc de la Reine),” *Dossier d’information de Charles Gagnon* (F-10), Montréal, February 10, 1969, 46. William Ready Archive, McMaster University, Stanley-Gray Files. Emphasis my own.

<sup>237</sup> One of Bilsky’s protagonist defence lawyers in the Kastner trial planned to turn the libel trial into a subversive political trial as a means of delegitimizing the ruling party. Bilsky, *Transformative Justice*, 22; and Liora Bilsky, “In a Different Voice: Nathan Alterman and Hannah Arendt on the Kastner and Eichmann Trials.” *Theoretical Inquiries in Law* 1, no. 2 (2000): 1-39.

defendants used the same rules they claimed were no good, they pointed to other rules they deemed as unfairly applied. These inconsistencies, however, are central to FLQ political defence.

Barkan's first hypothesis reads: "defendants with stronger beliefs about their cause and greater commitment to their movement are more likely to attempt a political defence."<sup>238</sup> While determining the depth of held beliefs of younger FLQ members who plead guilty to minor offences is difficult, *felquistes* who plead not guilty (the majority of the accused studied in this project) were much more likely to articulate their political views in court. Next, and rooted in the defendant's perception of the risk within which they have put themselves, is the consideration of punishment if convicted. Barkan hypothesizes that defendants facing a charge with a minimal sentence will be more inclined to attempt a political defence.<sup>239</sup> However, in the manslaughter cases of Vallières and Gagnon, where life imprisonment was at stake, the pair made a direct challenge of the judiciary as the Crown attempted to put their political beliefs on trial. Such challenges of the impartiality of the bench were rooted in a belief that the judge could not effectively conduct a fair trial. Similarly, Paul Rose spent more time in jail than in court during his murder trial because of multiple contempt of court charges. When the punitive stakes were high, well-known FLQ members continued to advocate for their ideals. For example, upon release on parole in July 1978 after serving fourteen years for multiple counts of armed robbery, François Schirm echoed what he had said at his trial: "As a revolutionary, I was prepared to sacrifice my life, and I am still prepared to do so for the liberation of the people of Québec."<sup>240</sup>

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<sup>238</sup> Steven E. Barkan, "Criminal Prosecution and the Legal Control of Protest," *Mobilization: An International Journal* 11, no. 1 (2006): 188.

<sup>239</sup> Barkan, "Criminal Prosecution," 188.

<sup>240</sup> Fournier, *FLQ*, 67.

While Barkan considers perceived sympathies that the defendants may garner inside the courtroom and outside of the courtroom as propagated by the news media, this is a well-studied area relative to the FLQ.<sup>241</sup> In his most interesting hypotheses, he first suggests “a political defence that is respectful of courtroom decorum and personnel will be more likely than one that is disrespectful to achieve more of the goals that political defendants and their movement may have.”<sup>242</sup> For the FLQ, however, the opposite was the case. For example, the political orations delivered by Chartrand, Gagnon, and Vallières during their trials were displays of contempt for the specific judge and the court the judge represented. Furthermore, this hypothesis also presumes that the defendants are inherently interested in minimizing the punishment against them, which was not the case in some of the FLQ trials. He continues, “*pro se* defence increases the likelihood that political defence will achieve more of the goals that political defendants and their movement may have.” I add that many of the high-profile defendants chose self-representation as a performative strategy, and therefore the FLQ trials emerge as a particularly salient set of cases to examine the efficacy of such a politicized defence strategy.

Using the typology developed in this section to contextualize how FLQ defendants approached their legal defence strategies, the following section gives background to who was involved in developing these legal responses. The very presence as self-represented defendant added an unaccustomed element to the political trial.<sup>243</sup> For the FLQ, self-representation offered an opportunity to directly and personally challenge the court and

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<sup>241</sup> The political identity marshalled by the FLQ drew particularly sympathies from certain communities. For example, in Paul Rose’s critique of his ‘jury of peers’, he stated that these businessmen and engineers from Westmount were not his peers, and that *his* peers were the dock and factory workers of St. Henri. To that end, the FLQ distanced themselves, purposefully, from certain publics and centred themselves in others. Cohen-Almagor, “The Terrorists’ Best Ally,” 251-84.

<sup>242</sup> Barkan, “Criminal Prosecution,” 189.

<sup>243</sup> Barkan, “Political Trials,” 328.

deploy a strategic legal approach with greater leeway than defence counsel. Often those who opted for this approach would face further sanction through contempt of court charges as they deviated, near constantly, from the traditional juridical decorum. Because these political defences were not used only in one type of criminal case, but many (despite the stakes), examining how the FLQ defended themselves offers a unique insight into this moment in Québec legal history.<sup>244</sup>

### **3.4 Representing Political Defendants in Québec: The Emergence of the *Comité d'aide au groupe Vallières-Gagnon* (CAGVG)**

By March 1965 the first in an ongoing series of FLQ-related arrests led to the formation of the CAGVG, a defence fund committee dedicated to aiding detained activists. The activities of the committee included the gathering of funds, the denouncement of political prisonerhood, and supporting the prisoners while in jail. As a response to the arrests without warrant of Pierre Vallières and Charles Gagnon in fall of 1966, Michèle Saulnier formed and named himself president of the CAGVG.<sup>245</sup> Jacques Larue-Langlois, a film director and journalist, was appointed secretary. Many Québécois celebrities also declared support as the Committee made its first public announcement: Young Québécois are in jail because they believed in an ideal.<sup>246</sup> As *felquistes* sympathizers, the CAGVG mobilized resources to raise money and sustain a legal defence for detained FLQ members.<sup>247</sup> Similarly, in November 1966, René Bataille, José Leroux, Walter P. O'Leary,

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<sup>244</sup> Note that not all FLQ defendants engaged in *la guérilla judiciaire*.

<sup>245</sup> Fournier, *FLQ*, 104-5.

<sup>246</sup> Warren, "À la défense des prisonniers politiques québécois," 56.

<sup>247</sup> In Brian Palmer's account, the CAGVG raised funds to pay for lawyers and books, organized protests in solidarity, orchestrated demonstrations, defended the FLQ in the mainstream media, and drew within its ranks many vocal labour and intellectual organizers. Bryan Palmer, *Canada's 1960s: The Ironies of Identity in a Rebellious Era* (Toronto: University of Toronto Press, 2009), 311-66.

and Jacques Guay formed *le Mouvement populaire québécois droits de l'homme* (Québec Popular Movement for Human Rights) in an effort to disseminate awareness about the politics of justice, the imprisonment of the *indépendantistes*, the arbitrary and arguably unconstitutional interrogations and arrests of FLQ members and supporters, and the broader infringement of civil liberties and human rights in Québec at the hands of the police.<sup>248</sup> Viewed by Larue-Langlois as “the FLQ’s mouthpiece,” the CAGVG also disseminated the *felquistes* revolutionary ideology.<sup>249</sup> David Charters is critical as he suggested that the politicization of the FLQ criminal trials through the CAGVG functioned to turn the trials into forums for propaganda.<sup>250</sup>

To defend the accused *felquistes*, the CAGVG recruited lawyers Mergler and Lemieux. Mergler, a former Marxist activist, and had experience defending draft dodgers who made it to Montréal as refugees. For him, advising the FLQ aligned with his penchant of rattling the foundations of capitalist and imperialist systems. The work conducted by the CAGVG is notable as it shows that the Committee was multi-faceted, and not only a mouthpiece for the release of political prisoners. At the Conference of 10 May 1970, the CAGVG reported its intent to campaign with and support organizing at the concrete (or grassroots) level stressing an importance on housing, hospitals, parks, nurseries, and the improvement of working conditions. Strategically, when mobilizing people in ethnic minority communities in Montréal (e.g., Greek, Italian, Portuguese),<sup>251</sup> the Committee sought to politicize the plight of the immigrant worker in Québec and relate that struggle

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<sup>248</sup> Warren, “À la défense des prisonniers politiques québécois,” 55.

<sup>249</sup> Charters, “Amateur Revolutionaries,” 150-1.

<sup>250</sup> *Ibid.*, 151.

<sup>251</sup> Comité d'aide au groupe Vallières-Gagnon (CAGVG), “A week of discussions and demonstrations, 5-12 May 1970, organized by the CAGVG,” *Dossier d'information: Pierre Vallières* (F-14), Montréal, May 10, 1970, 2. William Ready Archive, McMaster University, Stanley-Gray Files. Accessed via: <http://library.mcmaster.ca/archives/q/queflq.htm>

to labour conditions with the aim of unionization to sustain that pressure.

In a June 1975 speech, recorded a few months before his death, Mergler (1915-1975), a preeminent postwar civil rights advocate and criminal defence lawyer in Canada, reflected on how he practiced law. Mergler engaged with and defended militant activities because he claimed he knew the pain caused by the capitalist system and its inevitable consequences, which included the economic crisis, colonialism, imperialist war, exploitation, hunger, fascism, racism, corruption, and dehumanization.<sup>252</sup> While little is written about Mergler, what is known about his career, which spanned thirty-eight years, is that by many he was considered one of Canada's preeminent postwar civil rights lawyers. In the 1950s, Mergler was North Korea's diplomatic representative in Ottawa. Through the 1960s he liaised with the Cuban Embassy, and in 1970 he gained significant notoriety when he offered himself as a hostage in place of James Cross. Because of this offer, Mergler ended up in Cuba as part of an exchange. For Mergler, wrote Charles Gagnon, "the right to self-determination of the Québec nation, oppressed by the Canadian and US imperialist bourgeoisie, the struggle for the independence of Québec was a struggle that could [spur] the process of socialist revolution in Québec and even in the world."<sup>253</sup> He also drafted many notes about his opposition to the WMA arguing that the law should not have been used because there was no insurgency in Québec, and thus no apprehended insurrection. In the end, while Mergler did not identify as an active FLQ member and was not arrested in

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<sup>252</sup> Mergler: "Je me suis engagé dans des activités militantes parce que je connais les maux que provoque le système capitaliste et les conséquences inévitables de ce système: la crise économique, le colonialisme, la guerre impérialiste, la surexploitation, la faim, le fascisme, le racisme, la corruption, la deshumanisation." Simon Richard, "Un avocat progressiste et défenseur des opprimés: Bernard Mergler," (unpublished paper at Université du Québec à Montréal, 1988), 8. UQAM Archive, Bernard Mergler Files (25P – 650/13). Finding aid accessed via: <https://archives.uqam.ca/fonds-archives/archives-privées/11-gestion-archives-historiques/46-fonds-archives.html?varcote=25P>

<sup>253</sup> Richard, "Un avocat progressiste," 8.

any of the police raids, he remained a stark supporter of Québec independence, a union leader, and sympathizer at-arms-length of the broader political aims of FLQ actions.

Robert Lemieux, a former RIN activist and dedicated independent counsel to the FLQ for much of his young adult life, occupied a similar position to Mergler. In January 1968, Robert Lemieux was fired from the large civil law firm whom he worked for in Montréal) for bringing negative publicity to the firm stemming from his representation of FLQ-related clients. Soon after, he joined Mergler's small politically active Montréal firm. Of the few defence lawyers who defended or provided legal advice to accused FLQ members, all *allied* with Mergler's Montréal firm. Lemieux, however, was the only one who self-identified as an FLQ member.<sup>254</sup> In what I suggest was a formative experience, Lemieux was representing suspected FLQ activist Robert Lévesque. The case, which lasted nearly twenty-four months, contributed to his frustration and catalyzed his political activity.

Concerning the Levesque trial, Crown attorney Louis Paradis commented that Lemieux had “lost his senses and married his client’s cause . . . Once, in court, he started talking about Louis Riel and a lot of big principles. It wasn’t law. It was pure emotion. I really can’t take him too seriously.”<sup>255</sup> Allen Frank, who shared an office with Lemieux after he was fired, shared a similar sentiment. To Frank, Lemieux was being influenced by Vallières and influenced for the worst. In a 1971 *MacLean’s* article on the radicalization of Lemieux, journalist Erna Paris, after spending a series of days with the controversial lawyer, concluded, “Lemieux sees the terrorism of the FLQ as self-defence against violent

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<sup>254</sup> Mark Behrend, “The Sixties: Our Back Pages: Conversations with the Sixties Out of the Blue: an airman’s unlikely journey through the Vietnam War, the Pentagon and the radical left,” *The Sixties: A Journal of History, Politics and Culture* (2013): 14-15.

<sup>255</sup> Paris, “The radicalization of Robert Lemieux,” 58.

capitalism.”<sup>256</sup> Tensions between those who foregrounded nationalist liberation strategies instead of anti-capitalist perspectives were apparent. Charles Gagnon, for example, suggested that petty-bourgeois nationalists held some of the most destructive ideological positions. For them, in his view, formal independence was impossible because they could not separate their class position from capitalist exploitation and foreign domination. Nationalist struggle, Gagnon articulated, must be directed by the working class, which alone, through class struggle, can establish socialism in Québec.<sup>257</sup> From this perspective, the national question becomes a secondary contradiction.<sup>258</sup> Lemieux did not deny this statement, as it rang true for the young political lawyer. In the end, his career suffered. Soon after the FLQ saga subsided, he left practice in Montréal for Sept-Iles, Québec.

### 3.5 Conclusion

While the previous section situated the emergence of a mobilized legal network within which *felquistes* legal strategies crystallized, the typology presented in this chapter attempted to organize the approaches used by *felquistes* defendants in the courtroom. Through disruptive tactics, historically-steeped legal and political argumentation, and centering their own normative claims concerning law and politics, the multi-layered development and deployment of FLQ legal strategies were also differentiated from how each individual defendant marshals them relative to their own ideas about law and politics, their aims and goals for the usage of those strategies, and the situation within which they found themselves. Key was how FLQ defendants shifted their responses to legal encounters

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<sup>256</sup> Ibid., 59.

<sup>257</sup> Charles Gagnon. *Pour le parti prolétarien* (Montréal: L'équipe du journal, 1972), 9.

<sup>258</sup> Monière, *Le développement des idéologies*, 279.

from when they first appeared in Québec courts with little regard for the law to their final days in court where some reverted to earlier legal tactics, but others made use of all the resources at their disposal to resist criminal and emergency measures-related charges. Here, I situate the emergence of the FLQ's legal strategies relative to Anglo-American political and cause lawyering scholarship and debates concerned with politicized self-representation approaches.

Notwithstanding the robust literature that theorizes and interrogates notions of political lawyering, consideration of strategic lawyering practices relative to political trials has received less attention in the context of Québec legal history. Through the development of analytical frame that examines the legal defence strategies used by the FLQ, notably the use of self-representation, I shed light on how defendants contested charges and refused to acquiesce to the power of the criminal justice system. Whether successful or not, analysis of the work of legal representative and the CAGVG contribute to debates on how political defendants mobilized legal resources as the state attempted to exploit the trial to further stymy political dissent. Chapter four puts this framework to work to examine legal defences used during the LaGrenade Affair.

Finally, for Mergler, Lemieux, and especially those FLQ members who self-represented, their legal defence was a defence of the broader political movement. For Vallières and Gagnon, who held the court in disrepute before their trials even began, their legal defences attempted to call out the politics of the judiciary. In the context of the Trial of the Montréal Five, Gagnon summed up his thoughts about the process during his 5 November 1970 arraignment for a seditious conspiracy charge: "I don't see why I'd plead

guilty to a joke.”<sup>259</sup> For the FLQ defendants, a political trial required a political defence. Warren writes that for the Vallières, Gagnon, and the others on trial, the *indépendantistes* activist does not have a choice other than to continue working, despite the challenges, legal or otherwise, to achieve national liberation.<sup>260</sup> Convictions determine action. The CAGVG argued that it was impossible to comprehend the offences levelled against their clients without accounting for the direct reason behind his actions. The court, of course, resisted the inclusion of such accounts.

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<sup>259</sup> Vallières responds to the charge of seditious conspiracy. *Queen v. Chartrand, Vallières, Gagnon, Lemieux and Larue-Langlois*. Pre-trial arraignment, Case #70-6700, November 5, 1970.

<sup>260</sup> Warren, “À la défense des prisonniers politiques québécois,” 57.

## Chapter Four: The LaGrenade Affair

We are dealing in this instance with a case that is of a public interest unique in our legal annals. This trial will have serious consequences, and the Court has a heavy responsibility; it is important that both Justice and Peace reign in our tormented society.

—Justice Leduc on the first LaGrenade trial.<sup>261</sup>

### 4.1 Background to the Vallières-Gagnon Network Manslaughter Trials

This chapter offers an interpretation of the legal aftermath of the fatal 5 May 1966 bombing at H.B. LaGrenade Ltd. shoe factory. The resulting trials, which began their preliminary hearings in Spring 1967, offer the first formative account of the Vallières-Gagnon Network's legal entanglement and anchor central themes of the FLQ's political-legal narratives. These cases, which include the Crown's initial attempt to try Vallières and Gagnon together, their separate trials, and Vallières' appeal trial (which quashed his original conviction and ordered a new trial),<sup>262</sup> provide insight into the Crown's developing legal responses to political dissidents in the late 1960s and 1970s Québec.<sup>263</sup> Situated in the context of their expulsion from the United States, the trials also present the first rigorous

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<sup>261</sup> *Vallières v. The Queen* (1969) Québec Queen's Bench [Appeal Side], at 41-42.

<sup>262</sup> After a six-week trial presided over by Justice Paul Miquelon (who had come from Québec City) and five hours of jury deliberation, Vallières was found guilty for a second time in the LaGrenade Affair. This trial was different than the first trial as Vallières did not offer a defense. Justice Miquelon sentence Vallières to six years less the 40 months he had already spent in custody, which equated to 30 months remaining in the sentence. Vallières, however, was released on bail in the Spring of 1970 as he awaited an appeal. For more, see Maurice Morin, "Vallières: coupable d'homicide involontaire," *La Presse*, 18 December 1969. Further, for a critical view of the liberal government's perceived involvement in the release of Pierre Vallières out on bail after his conviction was overturned and a new trial ordered, see Léandre Bergeron, *The History of Québec: A Patriote's Handbook* (Toronto: NC Press, 1971), 216-235.

<sup>263</sup> For context on the emerging the political and social movements emerging through this period, which, inevitably, had run-ins with the courts, see David Austin, *Fear of a Black Nation: Race, Sex, and Security in Sixties Montréal* (Toronto: Between the Lines, 2013); and Sean Mills, *The Empire Within: Post-Colonial Thought and Political Activism in Sixties Montréal* (Montréal: McGill-Queen's University Press, 2010).

attempt by Vallières and Gagnon at self-representation as a legal defence strategy by prominent FLQ defendants. To that end, the Vallières-Gagnon manslaughter proceedings should not be read as individual criminal prosecutions, but rather as an indictment and prosecution of the FLQ as an organization.

Various FLQ cells through 1965 and early 1966 had increased their support through political and clandestine actions for fellow activists and leaders in the labour movement. The focus of many involved in labour and *indépendantistes* communities had turned to H.B. LaGrenade Ltd. shoe factory. In Spring 1965, the factory fired five workers for attempting to form a trade union. In the wake of the five terminations, the factory workers organized a strike.<sup>264</sup> The *Confédération des syndicats nationaux* (National Confederation of Unions) assisted in the organization of a strike.<sup>265</sup> The strike lasted for over a year. Viewed as an opportunity in the struggle against social and economic oppression in Québec, *felquistes* activists capitalized on the somewhat symbolic moment. At a mid-April 1966 meeting between seven FLQ members, with Pierre Vallières and Charles Gagnon in attendance (it was later argued that the two men were not in attendance at the crucial decision-making moment), a group of young *felquistes* activists formed the FLQ Central Committee and agreed to plant a bomb at the factory.<sup>266</sup> Despite Vallières and Gagnon's limited participation, the group that formed was known as the Vallières-Gagnon Network. Prosecutors would later argue that the two thinkers were instrumental in the decision to plant the fatal bomb, but would struggle to put forth credible, probative evidence at trial.

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<sup>264</sup> Jean-Philippe Warren, *Les Prisonniers Politiques au Québec* (Montréal: VLB Éditeur, 2013), 127.

<sup>265</sup> Fournier, *FLQ*, 97.

<sup>266</sup> Aubrey E. Golden and Ron Haggart, *Rumors of War* (Toronto: New Press, 1971), 127-128.

On 5 May 1966, Serge Demers called in a bomb threat to the factory advising that it be evacuated. Shortly after that Gaétan Désrosiers, a 17-year-old high-school student and FLQ cell member, delivered a package containing a bomb to the office of the director of the factory. No evacuation occurred. The package soon exploded and instantly killed an office administrator, Thérèse Morin. The five young FLQ members involved in the LaGrenade shoe factory bombing, including Demers and Désrosiers, were quickly arrested and convicted.<sup>267</sup> However, two members of the network remained free: Vallières and Gagnon. As Haggart and Golden explained, Québec prosecutors were anxious to convict a “big fish,” and this eagerness resulted in a complicated and extended period of expulsion, detention and trial.<sup>268</sup> While several younger *felquistes* were part of the Vallières-Gagnon Network, I focus on Vallières and Gagnon instead of the rank and file members because of their roles in shaping the FLQ’s ideological trajectory. Through their writing, despite incarceration, the pair remained influential on the praxis of social revolution and the defence of workers in Québec. Also, Vallières and Gagnon pleaded not guilty in relation to the bombing death of Morin. In doing so, they magnified their general involvement with FLQ organizing, but also contested the charges laid against them, the facts purported by the Crown, and how the FLQ was being implicated by the state for their actions. As such, this chapter examines the politicized criminal trials of the two prominent members of the 1966 FLQ central committee (also known as the Vallières-Gagnon Network).

While standing trial in the Spring of 1968 for the LaGrenade bombing death, Pierre Vallières published his influential book *Nègres blancs d'Amérique: Autobiographie*

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<sup>267</sup> Fournier, *FLQ*, 105.

<sup>268</sup> Golden and Haggart, *Rumors of War*, 129.

*précoce d'un 'Terroriste' Québécois* was published.<sup>269</sup> The book was a lightning rod for political controversy and received much attention in Québec throughout the trials and afterward.<sup>270</sup> In it, Vallières outlined a comparison and conflation of the struggles of French Canadians and African Americans, arguing that French Canadians, similar to Black slaves in the United States, faced racial discrimination, cultural oppression, and socioeconomic dominance stemming from exploitative labour practices that benefitted Anglo-Canadians.<sup>271</sup>

In such a context, Justice's Leduc's words, as noted in the epigraph at the beginning of this chapter, set the tone for what was to come. As we shall see, Justice Leduc would later return to the subject of politics relative to the trial in the attempt to limit the politicization of the legal proceedings. He did so by prefacing a session with an unusual request of the jury:

I beg you not to allow yourselves to be diverted by the political or extremist aspects of the offence. Please be realistic and deal with relevancies. Always keep in your mind the thought that the end never justifies the direct or indirect use of illogical means, and that the law must not sanction chaos, violence, destruction, and death, but life, order, discipline, peace and the well-being of all the citizens.<sup>272</sup>

With the courtroom as his audience, Justice Leduc took notice of the public interest in these trials in modern Québec. Through his act of acknowledgement of the political stakes of the

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<sup>269</sup> While the first edition was published as Pierre Vallières, *Nègres blancs d'Amérique: Autobiographie précoce d'un 'Terroriste' Québécois* (Montréal: Editions Parti Pris, 1968), I rely on a translated edition published three years later, Pierre Vallières, *White Niggers of America*. Translated by Joan Pinkham (Toronto: McClelland and Stewart Limited, 1971).

<sup>270</sup> Vallières even asked, reported Ronald Lebel of the *Globe and Mail*, if he could be temporarily excused from the ongoing legal proceedings to attend its book launch (he was not granted such a permission). Ronald Lebel, "On trial for murder, Vallières announces publication of book," *Globe and Mail*, March 14, 1968.

<sup>271</sup> Problematically, the characterization of French Canadians as Canada's *nègres* further marginalized people of colour and other oppressed minority groups in Québec, including its large Indigenous population, which went unmentioned at the time of writing. David Austin, "Narratives of Power: Historical Mythologies in Contemporary Québec and Canada," *Race & Class* 52, no. 1 (2010): 24.

<sup>272</sup> *Vallières v. The Queen* (1969) at 43.

trial through a traditional normative view of the law that sought to maintain the status quo, he stepped away from conventional judicial decorum and unwittingly exposed the performative aspects of the political trial. Justice Leduc, concerned with the potential outcome of the trial, seemed nervous about how the trial would unfold and wanted to get it right, especially on his watch. In his view, a depoliticized understanding of law must order the everyday. He maintained that citizens must not be concerned with how people in positions of power wield the law for their economic benefit. However, Justice Leduc's very premise was exactly what that the FLQ attempted to draw attention to and resist.

Vallières' first manslaughter trial concluded with his conviction and a sentence of life imprisonment. On appeal, in 1969, Québec Court of Appeal Justice Montgomery reasoned that the language used by the trial court judge—his warning to the jury that “this was not a political trial”—had arguably the opposite effect. Montgomery explained that the words chosen were viewed as partisan and unfavourable to the accused.<sup>273</sup> Unknowingly or not, Justice Leduc contributed to the politicization of the proceeding reproducing the very climate he spoke out against. In saying that trial was not political, the judge magnified attention to the political character of both the arguments of the Crown and defendants. In that vein, to what extent did the use and manipulation of legal processes, for example, instruction to the jury, the Crown's responsibility to present an objective case and rules of evidence, lead to the politicization of the LaGrenade Affair criminal trials? This chapter explores those processes and emphasizes their impacts on the strategies used by the Crown and defendants through the trials and their outcomes.

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<sup>273</sup> Ibid.

Among the key implications of the trials were how they articulated the deep-rooted connection between the political and legal spheres of the period. Through analysis of political and legal first-hand accounts of the proceedings, the final chapter of *Nègres blanc d'Amérique*,<sup>274</sup> communication made on behalf of the defendants through the CAGVG, and a diversity of second-hand accounts, I make the case that the prosecution of Vallières and Gagnon mark a shift in FLQ defence strategy from mere ridicule and mockery of the court to well-informed legal self-representation. This change made a significant impact on the trial proceedings. To that end, the *felquistes* trials can be read, in part, as developing the FLQ's militant socialist *independentiste* vision of Québec in the pre-October Crisis context.

This chapter explores the historical narrative of the LaGrenade Affair by examining how Gagnon and Vallières navigated their respective trials with legal representatives and through strategies of self-representation. Each strategy offered different opportunities for the defendants to contest the authority of the state and advance their vision for Québec. In the broadest of context, the LaGrenade Affair served as a lengthy mobilization opportunity for the FLQ. The CAGVG was vocal throughout the trials releasing numerous communications from those involved to the FLQ's broader membership and the public. However, relative to the trials, the LaGrenade Affair offers a useful launching point for a legal history of the *felquistes* defendant legal strategies. In contrast to the trials after October 1970, which find defendants navigating new emergency measures and war powers,

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<sup>274</sup> Vallières wrote the book in The Manhattan Detention Center for Men, known as The Tombs, as an *addendum* to the original manuscript while he was awaiting appeal and had smuggled out unknowingly by his Anglophone New York prison guards under the title of 'Notes for my lawyers.' Julie McDonough Dolmaya, "1971: Pierre Vallières Comes to English via the United States," in *Translation Effects: The Shaping of Modern Canadian Culture*, eds. Kathy Mazei, Sherry Simon, and Louis von Flotow (Montréal: McGill-Queen's University Press, 2014), 119.

the LaGrenade Affair trials required defendants to respond to ordinary criminal law and the initiatives of ambitious Montréal prosecutors. This examination, informed by speeches delivered by the defendants, court records, stenographic transcripts, letters to comrades, communications released by their defence committee, and supplementary accounts, outlines the story of the LaGrenade Affair in two parts.

First, I consider the January 1967 expulsions of Charles Gagnon and Pierre Vallières from New York to Montréal. The expulsions, which have received somewhat varied treatment by those who write about the FLQ, compose the first part of the LaGrenade Affair proceedings. Second, as I read the criminal trials that follow as performative political trials, I take cues from the works of Allo and Marianne Constable to examine the manslaughter conviction of Pierre Vallières (as well as Vallières's successful appeal, which was won on 23 September 1969 and resulted in a new trial) and the acquittal of Charles Gagnon. In the interim, Vallières was released, but was charged with *Public Order (Temporary Measures) Act, 1970* offences related to the 1970 October Crisis (see chapter five).<sup>275</sup> Finally, on 28 February 1973, Vallières was fully acquitted of the manslaughter charge.<sup>276</sup> In summary, as political trials, which aimed to curb and quash *felquistes* organization, the LaGrenade Affair did not deter others from political action.

#### 4.2 A Legal Expulsion? The Return of Vallières and Gagnon to Québec

Viewed as a footnote in the story of the FLQ's legal encounters, the expulsions of Vallières and Gagnon from New York in the early winter of 1967 were important

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<sup>275</sup> Bill C-181, 19 Eliz. II, third sess., 28<sup>th</sup> Parl. (1 Dec. 1970).

<sup>276</sup> In the end, the Québec Court of Appeal ruled that the Crown's evidence in Vallières's retrial (in Paul Miquelon's courtroom) was declared void, the appeal was allowed, and an acquittal was entered. *Vallières v. The Queen* (1973) 201, 15 C.C.C. (2d) 241 at 137-138.

components to the legal timeline (i.e., post-bombing, but pre-trial) and tenor of the LaGrenade Affair. Vallières and Gagnon fled Canada in the immediate aftermath of the shoe factory bombing to champion the struggles of the FLQ and Québécois peoples in front of the United Nations offices in New York, but were arrested and detained for minor protesting-related infractions by American authorities. The subsequent involvement of the Canadian immigration and Québec Department of Justice authorities set the stage for the Crown's prosecutorial strategy against the two men.

Their pre-trial incarceration in New York slowed the attempt to expedite the expulsion of these high-profile accused. Québec authorities seemed less interested in actual prosecutions than in a show of force, signaling to the provincial and federal governments that the situation was under control. Again, to borrow and extend Haggart and Golden's "big fish" metaphor, the Québec Crown had whom they viewed as the FLQ leaders on the hook and proceeded to reel them in through an extended cross-border collaboration with New York immigration authorities (despite the *felquistes'* legal efforts in New York courts).<sup>277</sup>

Few texts make more than a passing reference to the events of 13 January 1967, resulting in the return of Vallières and Gagnon to Québec from New York. However, a debate exists in the literature as to which legal mechanism facilitated their return to Canada. Were Vallières and Gagnon illegally expelled, deported, or extradited?<sup>278</sup> In instances of

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<sup>277</sup> Golden and Haggart, *Rumors of War*, 103-117.

<sup>278</sup> Despite the confusion of the Vallières-Gagnon situation, historical consideration of political deportations (and expulsion) in Canada is rich. For example, see Barbara Roberts, "Shovelling Out the 'Mutinous': Political Deportation from Canada Before 1936," *Labour/Le Travail* 18 (1986): 77-110; Barbara Roberts, *Whence They Came: Deportation from Canada, 1900-35* (Ottawa: Ottawa University Press, 1988). Also, the *Canadian State Trials* series regularly takes up this concept. In the first volume (1996), Barry Cahill and Thomas Garden Barnes examine the Acadian expulsions; in the second volume (2002), Cassandra Pybus looks at the banishment and transportation of *patriotes* to Van Diemen's Land; and, in the fourth volume

expulsion, of which deportation is a method, the State removes an alien person from its jurisdiction either voluntarily (under threat of removal) or forcibly.<sup>279</sup> In the instance of extradition, a foreign government expels or delivers a person upon the request of another jurisdiction through a legal process under an international agreement.<sup>280</sup> Was their return to Canada legally orchestrated or back-channeled for the sake of (political) expediency? If so, which state authorities were involved in the process? I offer a reading of archival evidence supplemented with a range of secondary accounts to suggest that once extradition proceedings were successfully appealed, the defendants were summarily expelled despite formal ongoing deportation proceedings.<sup>281</sup>

Nicholas Regush, a Montréal-based sociologist, described the events leading up to the return of the two men to Canada in the introduction of his extended interview with Vallières as a moment of collusion between Canadian and American authorities. Vallières and Gagnon were arrested by New York police at the “request of the Canadian government”<sup>282</sup> while protesting in front of the United Nation’s headquarters in Manhattan, N.Y. and charged with “illegally entering” the country, but only after, he suggests, their protests were televised in Canada.<sup>283</sup> Regush states that the men were *deported* back to Québec on 13 January 1967 because of their attempts to draw attention to the plight of the

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(2015), accounts are offered of political deportation relative to foreign-born CPC members, Doukhobor, and a variety of immigrant groups.

<sup>279</sup> William Walters, “Deportation, Expulsion, and the International Police of Aliens,” *Citizenship Studies* 6, no. 3 (2002): 268.

<sup>280</sup> *Ibid.*

<sup>281</sup> Jerome Choquette (then-Minister of Justice in Québec) “expressed support in early November for the creation of a Canadian identity card (he also asked the federal government to revoke the citizenship of any FLQ prisoners released and deported during the crisis).” Clément, “October Crisis of 1970,” 170.

<sup>282</sup> Herb Colling, *Turning Points: The Detroit Riot of 1967, A Canadian Perspective* (Toronto: Natural Heritage Books, 2003), 213.

<sup>283</sup> Nicholas M. Regush, *Pierre Vallières: The Revolutionary Process in Québec* (New York: The Dial Press, 1973), 4.

working class and the liberation of Québec. Similarly, Anthony DePalma, who wrote the 1998 Boxing Day obituary for Vallières in the *New York Times*, noted that Vallières was held in the Manhattan Tombs while ‘awaiting deportation.’<sup>284</sup> Vallières, skeptical of how the American and Canadian authorities followed procedure, claims that he and Gagnon were illegally deported.<sup>285</sup> Echoing this characterization, and likely drawing on Vallières’s account, Janis L. Pallister is critical of an illegal deportation.<sup>286</sup> Richard Vipond and Alexis Lachaine, however, write that the pair ‘awaited extradition’ and were extradited, suggesting that the process came to fruition with little issue.<sup>287</sup> Moreover, only in the account of Louis Fournier were the RCMP mentioned as playing a role: they met Vallières and Gagnon as they were deplaned at Dorval Airport in Montréal.<sup>288</sup> Perhaps, the question of whether the two FLQ thinkers were deported or expelled is merely one of legal nuance. However, extradition does involve removal upon the formal request of a foreign government, whereas deportation and expulsion fall within the murky realm of wide executive discretion exercised by federal immigration officials. The decision to expel may have been on the order of local police working with foreign police and various security forces. I contend that the way Québec authorities involved themselves and attempted to exercise influence over the proceedings shows not only the tenacity of the Department of

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<sup>284</sup> Anthony DePalma, “Pierre Vallieres, 60, Angry Voice of Québec Separatism, Dies.” *New York Times*, December 26, 1998. <http://www.nytimes.com/1998/12/26/world/pierre-vallieres-60-angry-voice-of-quebec-separatism-dies.html>. Mitch Abidor reiterates this language in an online FLQ archive, no doubt drawing on similar sources. See <https://www.marxists.org/history/canada/quebec/flq/introduction>.

<sup>285</sup> Vallières. *White Niggers of America*, 261.

<sup>286</sup> Janis L. Pallister, *The Cinema of Québec: Masters in Their Own House*, (Mississauga: Associated University Presses, 1995), 311.

<sup>287</sup> Alexis Lachaine, “A Nightmare to Awaken from: The Conquest in the Thinking of *Québécois* Nationalists of the 1960s and After,” in *Remembering 1759: The Conquest of Canada in Historical Memory*, eds. Philip Bruckner and John Reid (Toronto: University of Toronto Press, 2012), 218; and Robert Vipond, “The Civil Rights Movement Comes to Winnipeg: American Influence on ‘Rights Talk’ in Canada, 1968-71,” in *Constitutional Politics in Canada and the United States*, ed. Stephen L. Newman (New York: SUNY Press, 2004), 96.

<sup>288</sup> Fournier, *FLQ*, 103-104.

Justice in Québec and policing officials, but the extent they were willing to go to silence and imprison FLQ dissidents.

That said, it is the accounts of Haggart and Golden in *Rumors of War* (1971) that provide the seeds of confusion for those writing afterward. They write that Vallières and Gagnon were returned to Canada “by a curious manoeuvre: released from jail on January 13, 1967, they stepped onto the sidewalk and were immediately picked up by the U.S. Immigration service,” who put them on a plane bound for Montréal.<sup>289</sup> In Fournier’s account, after being charged with ‘illegally entering’ and ‘disturbing the peace’ in New York, they were offered the option of voluntary deportation. With knowledge of pending extradition proceedings, they chose to stay (to remain detained) and fight the American charges and appeal the extradition application.<sup>290</sup> Malcolm Reid supports this theory noting that a New York lawyer assisted the pair with this effort on their deportation file by demanding Vallières and Gagnon be classified as political prisoners instead of criminal offenders.<sup>291</sup> Brian Palmer adds that Vallières and Gagnon had initially succeeded in their appeal of the extradition application filed against them, which temporarily blocked the Québec authorities’ attempt to extradite them to face legal charges in Montréal.<sup>292</sup>

In addition to these accounts, letters of correspondence between some of the involved institutions including the Department of Justice of Canada, the Department of Justice of Québec, the Canadian Consulate in New York, and the American Immigration Department were uncovered through the archival work of this project. The found

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<sup>289</sup> Golden and Haggart, *Rumors of War*, 130.

<sup>290</sup> Fournier, *FLQ*, 104; Jeffrey Ian Ross, “The Rise and Fall of Québécois Separatist Terrorism: A Qualitative Application of Two Factors from Two Models,” *Studies in Conflict and Terrorism* 18 (1995): 290.

<sup>291</sup> Malcolm Reid, *The Shouting Signpainters: A Literary and Political Account of Québec Revolutionary Nationalism* (New York: Monthly Review Press, 1972), 279.

<sup>292</sup> Palmer. *Canada’s 1960s*, 346.

correspondence shed light on a conversation between Québec and American authorities and show how Québec Justice Department officials attempted to persuade the Canadian Consulate officials into returning Vallières and Gagnon as expeditiously as possible to Montréal—they did not intend the process to take 107 days. The correspondence indicated that two days after the arrests of the men in New York, Andre Chaloux (associate deputy minister for Québec’s Department of Justice) and Justice Marcel Gaboury conducted four depositions at the Court of the Sessions of the Peace. They aimed to build a dossier, which included an arrest warrant, to submit along with extradition paperwork to the Department of Justice of Canada, in Ottawa. In an undated letter between Chaloux and Fred B. Rogers, chief diplomat at the Canadian Consulate in New York, Chaloux writes that the deponents included Dr. Jean-Paul Valcourt (the pathologist who conducted the autopsy on the body of Thérèse Morin), Ronald Morin (her brother), Henri LaGrenade (vice-president at LaGrenade shoe factory), and Serge Demers (one of two FLQ members involved in transporting and assembling the bomb that exploded at LaGrenade).<sup>293</sup> It was clear that Québec authorities had begun to build their case and instructed the Americans that unless deportation proceedings were halted or Vallières and Gagnon posted bail in Montréal, the pair were to be arrested on a provisional warrant of extradition.<sup>294</sup>

On 14 November 1966, Wilber P. Chase, principal Consular Officer for the United States at the Canadian Consulate in New York, acknowledged the Canadian extradition application with a brief letter of response confirming his Office’s knowledge that the two

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<sup>293</sup> *Queen v. Vallières and Gagnon*. Deposition, September 30, 1966. Court of the Sessions of the Peace, District of Montréal, *Bibliothèque et Archives nationales du Québec* (BAnQ), Old Montréal, TP 12 S2 SS1 SSS2, Continent 91, Document 18303, 50-176.

<sup>294</sup> Correspondence between Andre Chaloux and Wilber P. Chase. October/November 1966, *Bibliothèque et Archives nationales du Québec* (BAnQ), Old Montréal, TP 12 S2 SS1 SSS2, Continent 91, Document 18303, 2.

men were wanted in connection with a bombing and the death of Thérèse Morin, a LaGrenade employee, and were charged with non-qualified murder. The correspondence between Chaloux and Chase showed that Québec authorities initiated formal extradition proceedings against the two wanted men after hearing about their arrests. While Chaloux discussed both the deportation or extradition of Vallières and Gagnon, he favoured the former arguing that deportation is the least costly and most expeditious option.<sup>295</sup> He also noted that Québec authorities were “very much interested” in proceeding with charges, confidently stating that “needless to say that we feel we have a strong case against them.”<sup>296</sup> The letter also suggested that Québec authorities, who were aware of the United States Immigration Department’s deportation proceedings, remained confident in their extradition applications (one for each accused) until the application was defeated in a New York court.

After multiple attempts to have the case thrown out, Vallières and Gagnon were convicted of ‘illegal entry’ to the United States in what Vallières called a “closed session” of the court.<sup>297</sup> On Friday afternoon, 13 January 1967, their appeal of the ‘illegal entry’ conviction was rejected (and the ‘disturbing the peace’ charge was dropped), but through their legal representatives, they were advised that no new filings relative to their deportation case could be filed until Monday (16 January 1967).<sup>298</sup> At this point, despite an allegedly pending deportation case with New York Immigration authorities (and a defeated extradition attempt), Vallières and Gagnon were illegally expelled from New York. The fact that Immigration authorities already had deportation proceedings underway

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<sup>295</sup> Chaloux’s letter to Chase, approx. late October/early November 1966, 2-3.

<sup>296</sup> Chase’s letter to Chaloux, November 14, 1966, 4-5.

<sup>297</sup> Vallières, *White Niggers of America*, 273.

<sup>298</sup> *Ibid.*, 273-4.

as indicated by the correspondence between Chaloux and Chase, and in Vallières's account, shows that the deportation had tenuous legal grounds.

However, New York legal officials may have strategically circumvented legal processes to release Vallières and Gagnon from detention so that immigration officials could then immediately re-arrest the pair. Deportation proceedings carried out to completion would not have resulted in a 'release and re-arrest on the sidewalk' scenario. With the immigration authorities standing in for the legal system and exercising a great breadth of discretion over processes of expulsion, it could complete the months-long objective of all the institutional parties involved: return Vallières and Gagnon to Québec. As background to the LaGrenade Affair trials, the expulsion of Vallières and Gagnon from New York is important as it shows that the Crown and authorities in Québec were prepared to exercise authority to the greatest extent—even if it meant circumvention of the rule of law or ordinary processes—to neutralize the growing perceived threat of the FLQ.<sup>299</sup> In a climate of heightened public pressure, the Québec Crown was eager to put Vallières and Gagnon on trial in Montréal. Perhaps surprising was the extent to which the *felquistes* defendants would resist.

### 4.3 The Vallières and Gagnon Trials

In Vallières's *Impossible Québec* (1980), its translator wrote a detailed preface that offers some insight into the mindsets of Vallières and those close to him through his prosecution. Moore wrote that Vallières described the entire process of the LaGrenade Affair as a 'political Tartufferie' (a grand hypocrisy) and that the trials were 'kangaroo

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<sup>299</sup> Those who carried out the bombing at the shoe factory that killed one were already in custody. Putting Vallières and Gagnon on trial was part of a broader initiative to snuff out dissent in Montréal, Québec.

courts,' which would look more at home "in a Costa Gavras scenario."<sup>300</sup> With Vallières's reflection at the fore, the following is an account of the legal aftermath of the shoe factory bombing. After numerous false starts and an attempt by the Québec Crown to prosecute Vallières and Gagnon together, the two defendants were tried separately, and Vallières was convicted on 5 April 1968 of manslaughter in the May 1966 death of Thérèse Morin. Vallières was sentenced to life imprisonment. Meanwhile, Charles Gagnon, after forty-one months in prison, was released on bail on 20 February 1970 and subsequently acquitted. While Morin was not the first casualty of the FLQ's bombing campaigns, The LaGrenade Affair represented the first time the Crown had attempted to compel those who delivered a fatal bomb to testify as witnesses for the Crown targeting the organization and ideology of the FLQ, namely the intellectuals influencing the young *felquistes* committing crimes in the name of the FLQ.<sup>301</sup>

On this point, evaluation of how the Crown's legal responses to the FLQ activity changed over time is important. For example, in the 1963 trials that resulted from the first FLQ-related death (security guard Wilfred O'Neill was killed by an explosion at the Canadian Armed Forces Recruitment Centre in Montréal), the Crown's strategy was simple. Georges Schoeters was a foreigner, a Belgian immigrant, who corrupted the young minds of his followers. In that case, guilty plea deals were the order of the day with the caveat that Schoeters would avoid the death penalty. However, this strategy of playing FLQ members off one another would inevitably fail as accused *felquistes* refused to acquiesce

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<sup>300</sup> Gavras, the French-Greek filmmaker, is known for his overtly political thrillers. Pierre Vallières. *The Impossible Québec*. Translated by Jeffrey Moore. (Montréal, Québec: Black Rose Books Ltd., 1980), p. 8-9.

<sup>301</sup> Allo argues that the 'distinctive intensity' manifested within the political trial is predicated upon "the direct participation of the judicial apparatus in the struggle for political power." Awol K. Allo, "The Courtroom as a Space of Resistance: Reflections on the Legacy of the Rivonia Trial," in *The Courtroom as a Space of Resistance: Reflections on the Legacy of the Rivonia Trial*, ed. Awol K. Allo (Surrey: Ashgate Publishing Ltd, 2015), 14.

to plea deals and fought charges in open court, often together. In contrast with defendants, it is very difficult to find first-hand evidence of the strategies and considerations of Crown counsel because the Crown is not permitted to waive privilege and publicly discuss their legal strategies upon the conclusion of a trial. Nonetheless, the Québec Crown appeared increasingly frustrated with the prosecution of Vallières and Gagnon as the Crown had to engage with the politics of the recalcitrant defendants.

The following outlines the legal experiences Vallières and Gagnon as they faced serious criminal charges in relation to the LaGrenade Affair. Starting with the Vallières trials, I then turn to Gagnon because his trial was shorter and resulted in an acquittal. Focusing on the Crown's attempts to politicize the proceedings through its use of circumstantial evidence to connect the FLQ thinkers to the LaGrenade bombing and the FLQ defendants' responses to that approach, for example, by reading many examples of the FLQ's political writings about revolutionary violence into evidence, the LaGrenade Affair trials were the first of many proceedings in which self-represented defendants inevitably repelled overzealous prosecutors.

Why the shift in the Québec Crown's approach to prosecuting the FLQ? This shift was necessary, I suggest, because the case against the *felquistes* defendants for manslaughter was weakened by a lack of probative evidence. Fellow Central Committee Members Serge Demers and Marcel Faulkner (whom both pleaded guilty to manslaughter in the death of Morin) testified that Vallières and Gagnon were not in the house during the time the decision was made by the Network to plant the bomb at the shoe factory.<sup>302</sup> The

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<sup>302</sup> Serge Demers: "[Vallières and Gagnon] were informed of our decision to form a central committee. They were asked whether wished to continue working with us. They were asked to deal with propaganda, to analyze the economic and social situation in Québec, to advise the Front in matters involving the formulation of

trials of Demers and Faulkner, however, were not the Crown's main objective. Instead, Vallières and Gagnon were viewed as the criminal masterminds of the movement. At trial, however, the inclusion of FLQ writings as evidence of the offence would be used to advantage by the defendants, who would speak to and defend their positions without moving beyond the materials presented by the Crown. In short, the defendants were invited to speak about their political views as the Crown was likely more interested in the views of the intellectual leadership than the rank and file. For the Crown, reference to the abstract political influence of the two thinkers proved effective in the short term (if efficacy is measured in convictions), but the prosecutors faced significant criticism of their approach in the 1969 Vallières appeal case where the trial court verdict was overturned.

#### **4.3.1 Pierre Vallières on Trial: The Experience of a Self-Represented Defendant**

This section begins with an examination of Vallières six-week manslaughter trial and focuses on Vallières as a self-represented FLQ defendant. While Vallières and Gagnon were initially supposed to be tried as self-represented co-defendants, the Crown changed its plan a few weeks before the Vallières trial was scheduled to begin. At the onset of the pre-trial proceedings, Vallières and Gagnon, who were still co-defendants, voiced concern over the length of their extended detentions. On the one hand, the defendants claimed preliminary hearings rescheduling was being used by the Crown to deliberately draw out the proceedings effectively suspending *habeas corpus* by covert means. For example, during a 4 December 1967 preliminary hearing, which again postponed an already drawn out trial start-date, the court also used the hearing to clamp down on Vallières'

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policy, to see to the political organization of the members. They then accepted." Golden and Haggart, *Rumors of War*, 130-131.

interventions to set a tone for the proceedings to come. In dismissing his motion for release on bail and evidentiary disclosure, the court was uninterested in giving the defendants a political forum nor in their duty to disclose the scope of the case against the defendants. On the other hand, however, once the proceedings were underway, the defendants used motions and disruptions to extend the length of hearings maximizing their courtroom time to speak out against the state. While he complained about the actions of the Crown, for Vallières each postponement offered a new opportunity to file a motion to have the charges against them dropped.

Frustrated by the continued delays and with no trial date in sight, the defendants began to get creative with the motion that they filed. For example, as an obstruction to any momentum picked up by the Crown, the FLQ defendant harnessed the procedural power of the court to stall, but also in the hope that a decision would be returned in their favour. Creatively, the *felquistes* defendants used a motion to accuse the Crown of breaching witness intimidation provisions of the Penal Code arguing it was an especially grave offence since Vallières was his own witness.<sup>303</sup> The defendants, who often performed long-winded motions, interrupted the Crown, and bantered with the various judicial figures of the hearings, sought to “persuade their target audience(s)” of the righteousness or justice of their plight and the injustices orchestrated by the Crown and the State.<sup>304</sup> For example, when asked to limit his motion to the current proceedings, Vallières responded:

VALLIÈRES:           Your Honor, I am reaching my conclusion anyway.

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<sup>303</sup> *Queen v. Vallières and Gagnon*. Pre-trial sessions, Case #10303/66, December 4, 1967. Court of Queen’s Bench Criminal Jurisdiction, Records to procès d’appel, 13. *Bibliothèque et Archives nationales du Québec* (BAnQ), Old Montréal, TP 12, S2, SS1, SSS2.

<sup>304</sup> de Graff, “Introduction,” 14.

THE COURT: I think you are very intelligent, and I hope that you understand what I am telling you, and what I am telling you, I am telling in your interest.<sup>305</sup>

Vallières ignored the judicial instruction and continued:

VALLIÈRES: Everybody knows that a full and complete defence can be difficult to conduct when the defence does not have time to study the notes from the preliminary investigations and from the Coroner . . . Yet Counsellor Brunet [The Crown] categorically refused, three weeks ago, to grant request saying that the case had already been slowed down too much.

Vallières continued to argue in favour of his motion to move to trial and evidentiary disclosure, but now called out the Crown for being procedurally repetitious and purposefully delaying the commencement of the trial. Here, instead of rejecting the jurisdiction of the legal system or the legitimacy of the court, he appealed to substantive fair trial principles that protect defendants' rights to conduct a full and fair defence.

Through the articulation of his legal defence, Vallières sheds light on how he understood the law. Deeming the Crown's actions illegal, he based his argument on principles of law (e.g., the right to a fair trial). Strategically, Vallières shifted back and forth between eschewing the law and embracing it on his terms. In ignoring judicial instruction to continue his speech, Vallières attempted to sustain the rhythm of his criticisms of the legal proceeding. By trying to appear as a dominant and competent as a self-represented defendant in the space of the courtroom—as a legitimate juridical actor—Vallières, in his first LaGrenade Affair trial, harnessed his emotive tendencies (rather than

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<sup>305</sup> *Queen v. Vallières and Gagnon*, Pre-trial sessions, 11.

launch into personalized attacks directed at the bench or Crown) and pressed back against the dominance of the Crown's political agenda.<sup>306</sup>

Through his use of motions to reiterate his view of the Crown's illegal operations and lecture the bench on the rule of law, he claimed:

VALLIÈRES: The Crown knows very well that they do not have a case against us, and this is why they have acted illegally, your Honor, and postponed the trial. How did the Crown do so?

[...]

The administration of justice must not be used to favour one side only. The prosecutor of the Crown obviously abused the powers given to him by his function in order to prevent the normal unfolding of justice.<sup>307</sup>

For Vallières, self-representation as a legal strategy seemed to afford him additional latitude to speak his mind throughout the trial. This additional leeway was possible because the bar for censuring and expelling defendants was much higher than it was for defence counsel who also faced professional scrutiny from bar their respective associations. Relative to defence counsel, self-represented FLQ defendants would push the boundaries of acceptable courtroom behaviour (e.g., rude gestures and speech, and disruptive actions) in the hopes that the bench may overstep with their usage of summary contempt powers. With the goal of goading the court into appearing repressive in front of the live audience and the media, disruptive actions succeeded more often in contexts of multiple defendants (as discussed in the next chapter). Moreover, it is only in instances in which Vallières

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<sup>306</sup> Marco Jacquemet, "Anger, Honor, and Truth: The Political Prosecution of Neapolitan Organized Crime," in *Political Trials in Theory and History*, eds. Jens Meierhenich and Devin O. Pendas (Cambridge: Cambridge University Press, 2016), 298-300.

<sup>307</sup> *Queen v. Vallières and Gagnon*, Pre-trial sessions, 4-7.

claimed the Crown acted unlawfully that he returns to formal claims about the rule of law. In doing so—in claiming, for example, in appealing to the right to a fair trial—was Vallières attempting to show the illusionary character of such rights in the context of the *felquistes* political trials? In making appeals to the rule of law, was Vallières and other defendants charged under emergency laws attempting to reveal the arbitrariness of the legal encounters? In appealing to the rule of law, was the objective of the *felquistes* defendants to reveal that their trials—in their view—were unjust proceedings—already outside of the law?<sup>308</sup>

In a closer look at the pre-trial hearings through 1967, the posturing of the Crown—the setting of dates, then postponing, then setting again only to postpone—functioned as the day-to-day process. However, it had an impact on the FLQ defendants. In this instance, the defendant attempted to leverage the narrative of the rule of law arguing that the Crown was not being fair in its management of legal processes. In one reading, the conventional operations of the court were deployed as a tactic of disruption of the FLQ’s legal preparations.

When the first day of the Vallières trial arrived, on 26 February 1968, it was clear that the Crown was set on criminalizing the intellectual backbone of the FLQ by attempting to connect ideas to the actions of others. The charge, which had been changed multiple times, now read much more inclusive to capture the broadest behaviour: “[Vallières had] unlawfully counselled, or incited, or encouraged through his attitudes, actions, writings, or otherwise, the intent to explode a bomb [...] and without colour of right, caused the death

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<sup>308</sup> Frédéric Audren and Dominique Linhardt, “Un procès hors du commun? Histoire d’une violence terroriste et de ses agents,” *Annales: Histoire, Sciences Sociales* 5 (2008): 1025.

of Thérèse Morin, thereby committing murder.”<sup>309</sup> Without hesitation, the Crown filed excerpts from the various issues of *La Cognée* (edited by Vallières) and *L’Avant Garde* into the record of evidence.<sup>310</sup> In January 1966, a special edition of *L’Avant Garde*, which had been disseminated to Québécois workers, happened to involve the same workers involved in job action disputes with the LaGrenade shoe company that was targeted by FLQ bombs.<sup>311</sup> This connection was emphasized.<sup>312</sup> This line of argumentation advanced by the Crown is echoed in a 1991 report by the National Security Coordination Centre indicated that FLQ bombing campaigns shifted focus after the defeat of the Liberal government at the hands of the *Union Nationale* to labour-related disturbances. The Crown connected the ideological impact of the entrance of Vallières and Gagnon into vocal positions in the FLQ to *felquistes* participation in labour activism and violence.<sup>313</sup> Moreover, the FLQ’s involvement in labour politics—while interconnected with nationalist aspects of their struggle—was a period of defence of the workers.<sup>314</sup> Once submitted as evidence, the political writings of the defendants dominated the trial proceedings, and as Vallières argued, to the defendant’s benefit.<sup>315</sup>

Marshalling political and legal arguments, a self-represented Vallières amplified the political message of his *L’Avant Garde* writing:

VALLIÈRES: Propaganda alone is not sufficiently persuasive.

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<sup>309</sup> Vallières v. *The Queen* (1969) at 6.

<sup>310</sup> A list of the Crown’s evidence noted the specific issues of *La Cognée* (Feb., Apr., and Dec. 1965, Jan.-Jun. 1966) and *L’Avant Garde* (Jan., Mar., May and June 1966).

<sup>311</sup> National Security Coordination Centre, *Terrorism in Canada, 1960-1989* (Ottawa: Solicitor General Canada, 1991), 56.

<sup>312</sup> *L’Avant Garde* (Jan. 1966): “To take a current and extremely annoying example: are the scabs who have sold themselves to H.B. LaGrenade for a plate of beans entitled to withdraw from the game by contributing to the misery of the strikers who have had the courage to enter into open conflict with those who are exploiting them, in order to obtain recognition of certain elementary rights?” Vallières v. *The Queen* (1969) at 15.

<sup>313</sup> Ibid.

<sup>314</sup> Laurendeau, *Les Québécois Violents*, 141-60.

<sup>315</sup> Vallières, *White Niggers of America*, 266.

Bombs and other acts of sabotage play their role in assisting the F.L.Q. and the organized workers first of all to jolt the masses out of their apathy or fear; secondly to prove to other workers that they are not alone and defenceless against colonial and capitalistic oppression; thirdly to disseminate panic among the ruling classes and to force them to reveal publicly, without disguise, the type of people they are.<sup>316</sup>

Here, Vallières attempted to magnify the Crown's use of his political writing. In doing so, Vallières sought to bury the charge of manslaughter before the court in the broadest of philosophical engagements. For the jury, it was not enough just to think Vallières was a terrorist; they had to identify, beyond a reasonable doubt, his culpability in the death of Morin. As a legal supplement to his political defence, Vallières continued to file motions for the dismissal of the indictment due to lack of evidence related to the death of Morin. Using the record of evidence to politicize the trial countered the Crown's own attempt to wade through political texts—it attempted to turn the Crown's evidence back on itself to show how the Crown was orchestrating a political charade—Vallières continued: “Does the Crown prosecutor wish to put a political organization on trial? Does he wish to put colonialism on trial? ... Or does he wish simply to try the FLQ?”<sup>317</sup> Jean-Philippe Warren, however, offered an alternative perspective on how the FLQ operated in courtrooms pointing to the tension inherent in the FLQ defendants' legal strategies.

Warren argued that the FLQ membership, especially when facing legal challenges, rallied around their political ideals and actions, but as soon as the Crown put the same texts and ideas to work for the prosecution (e.g., quoting *La Cognée*), the prosecution was promptly accused of transforming the hearings into political trials. If the Crown did not

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<sup>316</sup> Vallières v. *The Queen* (1969) at 15.

<sup>317</sup> Golden and Haggart, *Rumors of War*, 131.

choose to use such texts or engage in political argumentation about ideals or motives of the FLQ, contended Warren, the political defendant asserted that the power of the institution, of the court, filtered out such possibilities through its very own rigid structures.<sup>318</sup> Vallières embraced the Crown's introduction of his writing as evidence. However, his bravado may have got the better of him as he and many other FLQ members made conflicting statements to the Crown concerning how they wished their trials to proceed.

As Warren takes a wider perspective of political prisonerhood in Québec (from the 1960s to the 1980s), his contention about the FLQ trials is that political trials operated as tools of state domination by the state and that once FLQ prisoners realized they could not produce the shift in ideology they hoped for, they were forced to follow the rules of law and privilege the impartiality of the court.<sup>319</sup> Building on this argument, I contend that the emergence of Vallières and Gagnon (and the formation of the CAGVG) in the FLQ marked a departure from previous legal responses to criminal charges. Appeals to the rule of law and legal rights claim functioned as a part of a renewed legal strategy that had moved on from denouncing the court as a foreign imposition. That is not to say that later defendants depoliticized their legal defences, rather due to a shifting political and legal climate law and legal procedure was disruptively used to impede the flow of proceedings, oscillation between historically-steeped legal argumentation was used to galvanize sympathizers, and appeals to law and rights-based claims were used to challenge the Crown and articulate defendants' views of law and the politicization of the criminal justice system.

Moreover, consider that the legal processes to which political defendants are subject must be legitimated through the state's perception as a fair trial. For the accused,

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<sup>318</sup> Warren, "“Outrage au peuple!”" 136-7.

<sup>319</sup> *Ibid.*, 138.

substantive and procedural rights in politicized criminal trials (of politically radical defendants) are viewed as artificial and hold the singular purpose of concealing the politicization of the administration of justice at the will of the Crown.<sup>320</sup> More to the point, the decision of Vallières to proceed without formal legal representation was based on a concern that the professional responsibilities of his legal advisors, mandated by the Barreau du Québec, limited his lawyers' abilities to engage in political arguments in the courtroom running the risk of professional discipline or disbarment (as the Barreau du Québec was dominated by the Anglo-Québec elite). As such, Vallières concluded that the most effective manner to articulate a political defence was through self-representation. In contrast to the self-represented defence approach leveraged by Charles Gagnon, Vallières defiantly acknowledged that it is the duty of every revolutionary to commandeer the court for his or her ends through a forceful indictment of the established order.<sup>321</sup> For Vallières the courtroom was a political opportunity, while Gagnon maintained that the revolution would not happen before the courts.<sup>322</sup>

Vallières understood his role as advocate and as a defendant. As a legal strategy, self-representation served to disrupt the flow of the criminal trial. Leeway not usually afforded to defence counsel was afforded to Vallières to ensure what the bench viewed as the fair administration of justice. In a project that focused on the self-representation of political defendants in the international criminal justice courts, Maya Steinitz offers the useful concept of the 'role-disruption' to work through what self-representation means in

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<sup>320</sup> Frédéric Audren and Dominique Linhardt, "Un procès hors du commun?" 1025; Éric Agrikoliansky, "Les usages protestataires du droit," in *Penser les mouvements sociaux: Conflits sociaux et contestations dans les sociétés contemporaines*, Olivier Fillieule, Éric Agrikoliansky, and Isabella Sommier, eds. (Paris: Éditions La Découverte, 2010), 236-239.

<sup>321</sup> Vallières, *White Niggers of America*, 263.

<sup>322</sup> Gagnon, "Letter to the Front de Libération du Québec," 18.

such circumstances. For her, role-disruption is “a behaviour that threatens the reality sponsored by a performer by interrupting the definition of the situation as projected by the other participants”—through one’s disruption, the political defendant enjoys the potential to “create[s] opportunities to manipulate time, space and story—to construct his own authority.”<sup>323</sup> I suggest that there is utility in the idea in domestic legal setting too. However, what does this look like for Vallières or Gagnon? Through extended arraignments, the presiding judge was often preoccupied through preliminary hearings distinguishing who was representing whom. Self-representation as strategy afforded the FLQ defendants a leniency relative to processes of the court that the defendants exploited through a variety of juridical strategies.

Vallières was sharp, but he was also arrogant. He pointed to how the jury had difficulty following along with the debates and was ushered out when points of law arose for the judge to decide on. As for examination and cross-examination, he thought they were relatively easy. Vallières was emboldened by conducting his defence despite watching each one of his “irrefutably sound” legal arguments being systematically rejected.<sup>324</sup> As Malcolm Reid put it, and I think tongue-in-cheek while using the jury as a foil, “of course Vallières was the one who could make young men plant bombs, his assumption of his own defence only further emphasized this fact.”<sup>325</sup> For Vallières, at times, the roles of the self-represented defendant and his legal representative personae blended into one. The personal was as political as the history from which it emerged, and the political was personal irrespective of context.

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<sup>323</sup> Maya Steinitz, “‘The Milošević Trial—Live!’ An Iconical Analysis of International Law’s Claim of Legitimate Authority,” *Journal of International Criminal Justice* 3 (2005): 113.

<sup>324</sup> Vallières, *White Niggers of America*, 265-6.

<sup>325</sup> Reid, *Shouting Sign painters*, 285.

Having worked in a bookstore and then as a journalist, Vallières lacked a refined knowledge of the courtroom and legal procedure. Now, on trial for manslaughter with the possibility of life imprisonment, he soon recognized that conducting his own legal defence was a significant undertaking. Between presenting legal arguments, advancing motions, examining and cross-examining witnesses, interviewing witnesses, and digesting the Criminal Code and appropriate case law, opting for self-representation proved to be a ‘profoundly instructive’ experience.<sup>326</sup> Flanked by Mergler and Lemieux, Vallières confronted a zealous Québec Crown, a judiciary he viewed as hostile, and the active collusion of the police force. For Vallières, the trial was a political action amid a revolution. Legal arguments offered an opportunity to carry the debates to the political level—appealing the sensibilities or processes of the court did not matter. For Vallières, his trial was a call to arms: he urged mobilization and action on the part of disenfranchised Québécois society.

To supplement the political writings of the FLQ as evidence, the Crown had Serge Demers, who called in the bomb threat to LaGrenade shoe factory. Demers testified against Vallières in exchange for protection from the court and a reduced sentence (he served eight years).<sup>327</sup> Demers, while declared a hostile witness by the Court (a witness who is antagonistic toward the party who called them), was the prosecution’s star witness. He testified to have housed Vallières and Gagnon in the home of his mother in Saint-Philippe of Laprairie through April of 1966. While they were living there, Demers had met with Vallières and Gagnon, and five other FLQ members about the planning and execution of the bombing of LaGrenade Ltd. shoe factory. The Demers testimony connected an account

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<sup>326</sup> Vallières, *White Niggers of America*, 265.

<sup>327</sup> Tetley, *The October Crisis, 1970*, 229.

of the planning with a reference to the factory (how it had hired non-unionized labourers during a strike) in a January 1966 *L'Avant Garde* article (noted above) written under Vallières' *nom de guerre*—Mathieu Hébert.<sup>328</sup> Again, the Crown attempted to make the direct connection between the influence of Vallières' writings and the bombing. The Crown aimed to criminalize the thinking behind the movement and connect it to the action in question—that Vallières had ordered the bombing.<sup>329</sup> While Serge Demers and Gaétan Dérosiers assembled and delivered the bomb to the shoe factory, the two youths were not the targets—the Crown was after Vallières and Gagnon and wanted them behind bars.

While this analysis is centred on the defendant, as the trial proceeded, it was the words of Crown counsel Louis Paradis that were ruled as most problematic by the Québec Court of Appeal as a new trial was ordered. Paradis used lengthy excerpts from “*Qu'est ce que le f.l.q.?*” (What is the FLQ?) and *Nègres blanc d'Amérique* to anchor his closing summation. Using the FLQ text as an indication of the FLQ's propensity to commit violence and advocate for a politic that engaged in violent action and terrorism in Québec, Paradis was steadfast in his charge to the jury:

CROWN: Gentlemen, let me quote to you a final passage constituting a universal exhortation to violence, and appearing in this book which certain sociologists have just said that they had recommended to their students:

And George, what's keeping you from deciding? And you others: Arthur, Louis, Gilles, Ernest, stand up boys and let's all work together. We'll drink another glass of beer when we have done something more than to carry on discussion and always to place the blame on others. Each one of us has his small bit of responsibility to

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<sup>328</sup> It is worth noting that the admissibility of the testimony of Mr. Demers was challenged later in court. Demers was represented by Bernard Mergler. *Demers v. The Queen* (1970) 10, 13 C.R.N.S. 338

<sup>329</sup> While it was clear that Vallières advocated for violence to be committed as political actions, the Crown attempted to conflate non-specific advocacy to this specific set of circumstances and facts with little evidence of connection (aside from political beliefs).

assume, and to transform into action.

The sooner we unite, fellows, the sooner we will be victorious. We have already lost too much time in useless protests; we must now move on to action.

Now gentlemen, *free Vallières and you know what to expect.*<sup>330</sup>

Here, Paradis is quoting Vallières, who was encouraging the people of Québec to follow him down the path of clandestine action. To paraphrase Paradis' final sentence, not only the jurors, but Québec society as a whole will be complicit when the next attack happens. For context, Beatrice de Graff wrote that political trials unfold when their actors employ a multitude of strategies to convince those inside and outside of the courtroom of their 'narrative of (in)justice.'<sup>331</sup> For the Crown and the people of Québec, this statement held many implications. The statement was intended as a broad and ominous preventative warning. The final statement diverted the attention of the jury away from determinations of facts about the case, away from whether the Crown had developed the case beyond a reasonable doubt, and away from the complicity of the defendant in the death of Thérèse Morin. The Crown had politicized the case in a way that the FLQ could not.

Concerning the Crown's closing statement in the trial, Justice Hyde of the Québec Court of Appeal wrote, "Crown counsel's remark was objectionable in that it suggested to the jury that the problem before them was the need to protect society from people with ideas such as those held by the accused rather than whether he was guilty as charged."<sup>332</sup> Vallières, who presented the appeal case himself, was critical of both the trial court judge Justice Leduc and the Crown. Justice Hyde of the court of appeal accepted the grounds that

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<sup>330</sup> *R. v. Vallières* (1969), Québec Queen's Bench [Appeal Side] at 19 and 21. Que. 20, 9 CRNS 24 [1970] 4 CCC 69. Emphasis my own.

<sup>331</sup> Beatrice de Graff, "Terrorists on Trial: A Performative Perspective," The Hague: ICCT (International Centre for Counter-Terrorism), Expert Meeting Paper, 2011, 2.

<sup>332</sup> *R. v. Vallières* (1969) at 2.

called the conviction into question due to the jury being misguided by the Crown about the charge at hand and the trial judge inappropriately answered a juror's question about an evidentiary issue. Justice Hyde ordered a new trial.<sup>333</sup> The Crown for their part had turned attention away from any objective consideration of the case and instead volleyed the importance of a conviction back to the juror's constructed sense of responsibility or need to protect society from people with ideas like Vallières. Justice Hyde also stated that no evidentiary submission or witness testimony directly connected or even indicated that Vallières was aware of or condoned the plan to bomb to the LaGrenade shoe factory.<sup>334</sup> It is incumbent on the Crown counsel to go to further than the evidence of general association. Despite mounting tensions over FLQ violence, the appeal hearing and order for a new trial attempted to depoliticize the proceedings through an emphasis on the importance of maintaining the regular administration of criminal justice and adhering to due process.<sup>335</sup>

In that vein, in the phrase, “free Vallières and *you* know what to expect,” the ‘you’ in this case is the jury, but I also suggest that the Crown was speaking beyond the trial and to the Québec public. As a legal speech act, the closing summation to a jury is not an exchange, but a monologue with a public audience. Later, the words are often revived through appeals and new trials. Looking to the broader impact of Vallières’ trial, Gagnon wrote (in the midst of his trial) that Vallières’ trial was a great victory—the established

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<sup>333</sup> In his second LaGrenade trial, Justice Miquelon sentence Vallières to six years less the 40 months he had already spent in custody. He was released on bail in June 1970 with an appeal pending. In February 1973, Vallières appeal was grant and an acquittal ordered. Maurice Morin, “Vallières: coupable d’homicide involontaire,” *La Presse*, 18 December 1969.

<sup>334</sup> Pierre Vallières. Defence submission for *Queen v. Vallières. Dossier d’information: Pierre Vallières* (F-13, Files #7412, 7367, 7368, 7369, and 7371), Assize Court of Montréal, January 19, 1970, 6. William Ready Archive, McMaster University, Stanley-Gray Files.

<sup>335</sup> Pacione, “The FLQ Trials, 1969-1971,” 105-7.

order had demonstrated their fear of revolutionaries.<sup>336</sup> Had Vallières been that effective? He had failed to defend himself in the court of first instant, but he had bolstered public support through the proceedings. Gagnon, who argued that his trial served as a rallying point for revolutionary solidarity, pressed *felquistes* supporters to view the FLQ trials as trials of past and future revolutionary action in Québec. He concluded: “It is your trial, it is our trial.”<sup>337</sup> Through eschewing the individuality of the criminal defendants, Gagnon depersonalized the LaGrenade trials perhaps to diffuse personal criminal responsibility, but he spoke beyond the trial to *felquistes* supporters who could perhaps view themselves in the place of the two defendants.

In sum, Vallières and Gagnon were among the first *felquistes* defendants to engage with the courts through both legal and political mechanisms. As an act of political resistance to the power exerted by the state through the criminal justice system, the LaGrenade Affair defendants, despite their trials and consequent incarcerations, emerged and remained active and vocal members of the FLQ. The same cannot be said in the aftermath of the October Crisis.

#### 4.3.2 The Charles Gagnon Acquittal

While awaiting trial for his alleged role in the LaGrenade shoe factory bombing, a frustrated Charles Gagnon issued this assessment of the Québec legal system through the

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<sup>336</sup> Gagnon: “Comme le procès de Pierre a été une victoire, une grande victoire même, en ce que l’Ordre établi a clairement dévoilé ses motifs politiques et sa crainte, sa peur des révolutionnaires, en ce que Pierre et les autres partisans du F.L.Q. qui ont témoigné, ont expliqué le sens de la Révolution Québécoise, en ce que plusieurs Québécois ont pu découvrir l’hypocrisie de nos institutions bourgeoises.” Charles Gagnon, “Letter from Charles Gagnon” *Dossier d’information: Charles Gagnon* (F-10), undated, but prepared by the CAGVG (Mar. 1967 – Nov. 1969), 13, William Ready Archive, McMaster University, Stanley-Gray Files.

<sup>337</sup> Gagnon: “Je vous le demande, non pas parce que c’est mon procès, mais surtout parce que c’est aussi le procès de l’action révolutionnaire passé et plus encore peut-être, future, au Québec. C’est votre procès, c’est notre procès.” Gagnon, “Letter from Charles Gagnon,” 13.

CAGVG. The letter, which was his most clear articulation of his view of law relative to his trial, began:

We do not believe in the justice of the court, not at all. And we know why we do not believe in it. The law itself is unfair, it is the law of one class. The law is, however, not respected before the courts, especially before the lower courts. Therefore, no more illusions, no more naivety: *we will not obtain justice from the courts*, no more than the people Québec obtained justice since it has been around, even though the courts have always been around. The Revolution will not happen before the courts; this is for sure.<sup>338</sup>

Instead, Gagnon, who was less interested in courtroom confrontation, viewed the courts as an obstacle and the law as an extension of state power—a tool of the dominant class. What was it that Gagnon believed was impossible to get from the courts? In maintaining that the law was unfair, he too fell into a contradictory trap as he also attempted to marshal it to his benefit. Unlike Vallières, Gagnon did not use the courtroom to advance the politics of the broader struggle, instead impatiently waiting for his inevitable acquittal. Despite the keen interest of Québec authorities in the immediate detention and transit of Vallières and Gagnon back to Montréal, several extended delays added more than an additional year of pre-trial imprisonment for the two *felquistes*. Viewed by the public as a political trial, even presiding Justice Yves Leduc deemed it necessary to speak to the public interest of the first trial. It had become clear that Montréal prosecutors leveraged the shoe factory bombing as an opportunity (to the extent that they offered protection to the teenage bombers in exchange for truthful testimony) to strike against the FLQ intellectual leadership and stymy FLQ mobilization.

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<sup>338</sup> Gagnon: “La justice des tribunaux, nous n’y croyons pas, pas du tout. Et nous savons pourquoi nous n’y croyons pas. La loi elle-même n’est pas juste, c’est la loi d’une classe. Or, la loi n’est même pas respectée devant les tribunaux, particulièrement devant les tribunaux de première instance. Alors, finies les illusions, finie la naïveté: *la justice, nous ne l’obtiendrons pas devant les tribunaux*, pas plus que le peuple québécois n’a obtenu la justice depuis qu’il existe, même si des tribunaux ont toujours existé. La Révolution ne se fera pas devant les tribunaux, cela est certain.” Gagnon, “Letter to the Front de Libération du Québec,” 18; Igor Webb, “The Quebec Liberation Struggle—interview with Charles Gagnon,” *New Left Review* (1970): 62-68.

In court, Charles Gagnon was the antithesis of Pierre Vallières. Representing himself, Gagnon was soft-spoken, witty, and elegant. When Vallières and other FLQ members addressed the Crown, they always said “my comrades,” but Gagnon addressed the Crown as “the representatives of Her Majesty.” While a minor difference, the language employed to address the court reflected how each of the men opted to resist the juridical structures that processed them. While Vallières addressed judges as he addressed his colleagues and rejected the hegemony of the court, Gagnon was more deferential and employed the formalities of the court. In another letter reflecting on his choice to self-represent, Gagnon suggested that defending oneself represented a revolutionary move that refuted the bourgeois colonialist order.<sup>339</sup> However, none of this could be achieved, the letter concluded, by lawyers following the rules of the Bar.<sup>340</sup>

Gagnon added that lawyer Robert Lemieux knows, and we are all aware, that one cannot defend revolutionaries with impunity. Lemieux would, in the end, face severe sanctions at the hands of the Barreau du Québec, which disapproved of his behaviour throughout his time representing various FLQ members.<sup>341</sup> Nonetheless, Gagnon’s resolve was strong: “Our revolution is too young to begin to indulge in compromise; it will never do it, today less than ever.”<sup>342</sup>

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<sup>339</sup> Charles Gagnon, *Feu sur L’Amérique: Écrits politiques, Vol. 1 (1966-1972)* (Montréal, QC: Lux Éditeur, 2006), 101-158.

<sup>340</sup> Gagnon, “Letter to the Front de Libération du Québec,” 18-19.

<sup>341</sup> Gagnon referred to the legal struggles faced by Lemieux. The FLQ lawyer faced suspension and near disbarment by Barreau du Québec. See Eddie Collister, “Barreau du Québec to intervene in jailing of lawyer Robert Lemieux,” *The Montréal Gazette*, May 25, 1972; Leon Levinson, “Robert Lemieux released on promise to keep quiet,” *The Montréal Gazette*, July 21, 1973. Also, James Mabbut, who cites an editorial in *Barreau ’71*, notes: “During the War Measures crisis, the Bar took no steps to secure the release of attorney Robert Lemieux or to enable him to prepare his client’s defence. Rather, it merely issued a bland statement declaring that it alone had the power to determine who could practice law.” James M. Mabbut, “The People of Québec vs. The Bar of Québec,” *Quaere* (a supplement to the Saskatchewan Law Review) 2 (1973): 22.

<sup>342</sup> “Notre révolution est trop jeune pour commencer à se complaire dans les compromise; elle ne dvra jamais le faire, aujourd’hui moins que jamais.” Gagnon, “Letter to the Front de Libération du Québec,” 18.

In a 16 April 1968 letter, sent after the conclusion of Vallières' first trial, Gagnon contended that the Crown's threatening yet effective (as Vallières was initially convicted in this trial) summative words—free Vallières and you know what to expect—had resonating significance. He suggested that these were the words of an oppressive government. The Crown's efforts are characterized as 'collaborationist lawyering' (a critique well addressed in the appeal judgement by Justice Hyde)<sup>343</sup> and the same efforts that abide the extended imprisonment of 'innocent Québec revolutionists' without even seeing the charges levied against them.<sup>344</sup>

However, as session after session of the Court of the Peace concluded without hearing (or even scheduling) Gagnon's manslaughter trial, he sat imprisoned and not able to be granted bail due to the nature of his indictment. He continued to write motions about his extended detention to the Crown and the Court. On 10 February 1969, Gagnon reflected on the process within which he was embroiled:

GAGNON: The Attorney General cannot agree to make an ordinary trial, a trial based on the relevant facts, for the facts of the case show that I am innocent. But for him, *for reactionary justice*, I cannot be innocent, since I was part of the F.L.Q. In spite of all the pretensions to the contrary, the Prosecutor General will prove only one thing: my adherence to the F.L.Q., my participation in the propaganda of F.L.Q. and the ideological influence of members. For there is the truth. I have not committed the crimes of which I am accused. The only crime I have ever committed is to proclaim the liberation of the people of Québec by a fierce and entire resistance to all the

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<sup>343</sup> With reference the Supreme Court of Canada case *Boucher v. The Queen* concerning the common-law responsibilities of a Crown prosecutor in criminal law proceedings, Justice Hyde pointed to the dissenting opinion of Justice Taschereau, who held that: "The task of counsel for the Crown is not the same as the one facing counsel in civil matters. His functions are quasi-judicial. He should not be so concerned with obtaining a conviction as he should be with assisting the judge and the jury to reach a most completely just result. Moderation and impartiality must always characterize his conduct before the Court." *Boucher v. The Queen*, (1955) S.C.R. 16, 20 C.R. 1, 110 C.C.C. 263, at 6.

<sup>344</sup> Gagnon, Charles. Untitled letter. *Dossier d'information: Charles Gagnon* (F-10), 16 April 1968. William Ready Archive, McMaster University, Stanley-Gray Files.

forces of domination, oppression, and exploitation which still impact the Québec people today.<sup>345</sup>

Here, Gagnon understands that what he is caught up within is less about the bombing death of Morin, but about the overall activity of the FLQ. In his view, the court had concluded that to be a vocal member of the organization was to be culpable in the fatal bombing. Gagnon continued without wavering in his belief that he would be acquitted of all charges:

GAGNON That is why I am taking my case today before the court of the public opinion in Québec and internationally, before the Court of the History. History will judge me and it will judge those who condemned me without judgment three years ago. I have no doubt for a moment of my acquittal . . . I have no doubt either of the condemnation of the present justice, even if it should occur only after the death of those who are its artificers today.<sup>346</sup>

While his belief in his acquittal was steadfast, Gagnon did not reject what he viewed as the legitimate use of political violence. Vallières and Gagnon would split ideologically on this topic as Vallières would go on to support electoral party politics while Gagnon would translate his praxis to labour radicalism in Montréal's Marxist-Leninist movement.<sup>347</sup>

Before the LaGrenade manslaughter trial, Gagnon had been tried and acquitted for a series of lesser charges through the duration of his imprisonment (as the Crown had left the manslaughter charge to the end).<sup>348</sup> When the day of Gagnon's LaGrenade manslaughter trial arrived, he found that in addition to being tried for the death of Morin,

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<sup>345</sup> Through inclusion of lengthy quotations, the voice of the defendant is foregrounded to glean insight into how their political motivations and ideological convictions are articulated through the period in which that defendant prepared for court. Gagnon, "Letter from Charles Gagnon to Justice Maurice Archambault," 48. Emphasis my own.

<sup>346</sup> Ibid.

<sup>347</sup> See generally, Ivan Carel, Robert Comeau, and Jean-Philippe Warren, eds. *Violences Politiques: Europe et Amériques, 1960-1979* (Montréal: Lux Éditeur, 2013).

<sup>348</sup> Daignault. "Les procès politiques," 39. For further context, see the BAnQ site:

<http://blogues.banq.qc.ca/instantanes/2015/05/05/la-fin-tragique-de-ladolescent-felquiste-jean-corbo/>

prosecutors also attempted to hold him responsible for the wrongful death of a young FLQ activist, Jean Corbo (who had died on 14 July 1966 when a bomb he was planting at the Dominion Textile Factory in Saint-Henri, Montréal, exploded before he completed the commission of the offence). On 2 April 1969, both Gagnon and Vallières were acquitted of all offences related to the death of the *felquistes* teenager.

On 2 June 1969, with the Corbo charge out of the way, the preliminary hearings for Gagnon's manslaughter trial began. Proceedings, however, were further delayed and the trial would not get underway until mid-November. Nonetheless, after spending over eighteen months in a Montréal prison, Gagnon and his legal advisor Robert Lemieux (who provided legal advice to Gagnon, who represented himself) were ready for the trial, having just watched Vallières be convicted of manslaughter. As Gagnon's trial got underway, Gagnon expressed his frustration with the prior delays to the court: "The behaviour of the administrators of justice in Québec," he began, "towards the supporters of the liberation of the Québec is more eloquent than all the criticisms that the FLQ has ever directed at the injustices that exist in our country."<sup>349</sup>

While filing motions for acquittal, dismissal of the indictment, and petitioning for the dismissal of the jury were among their first orders of business, the efforts of a self-represented Gagnon involved arguing that he had the right to be presumed innocent and that the Crown had not made the case that he had been involved in neither the planning nor the incitement of the fatal bombing. Gagnon, who relied more on his legal advisor, did not engage in self-representation in the same manner as Vallières. While Gagnon maintained his political opinions throughout, he pleaded not guilty and denied any form of

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<sup>349</sup> Gagnon, "Letter from Charles Gagnon to Justice Maurice Archambault," 45.

participation or involvement in the LaGrenade bombing from the preparation to execution.<sup>350</sup> Gagnon's defence, which was more akin to a common criminal defence than his counterpart, did not attempt to disrupt the proceeding or take the opportunity to make broader political claims. On a methodological note, the trials of Gagnon are more challenging to analyze than the Vallières trials because none of his trial verdicts were appealed and the trial court records are not maintained in the same manner as those of the Appeal Court.

The trial of Gagnon for manslaughter in LaGrenade Affair ended with the disagreement between the jurors. The evidence in support of the acquittal was that Gagnon had not met, aside from seconds in passing, the individuals the Crown claimed he incited to plant a bomb.<sup>351</sup> The central point of contention between the Vallières-Gagnon Network members, which would inevitably contribute to the acquittal, was not a dispute between Vallières and Gagnon about the use of violence, but instead a disagreement between the two men and Serge Demers about the timing of the action.<sup>352</sup> In the end, the evidence was simply too thin to hold and he was acquitted in December.<sup>353</sup> On 20 February 1970, he was further acquitted of all related charges. Gagnon was free for the first time since being arrested in New York in late September 1966.

#### 4.4 Conclusion

Throughout his trials, Vallières argued that the Crown undermined the

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<sup>350</sup> *Queen v. Gagnon* (1969), "Case #66-18303," Court of Queen's Bench (Criminal Jurisdiction) Montréal, 31 July 1969, *Bibliothèque et Archives nationales du Québec* (BAAnQ), Old Montréal, TP 12 S2 SS1 SSS2, Document 18303, 264-265.

<sup>351</sup> *Queen v. Gagnon* (1969), "Case #66-18303," 254-267.

<sup>352</sup> *R. v. Vallières* (1973) 201, 15 C.C.C. (2d) 241 at 92.

<sup>353</sup> Rico, "Les événements," 9.

administration of justice through the management of their extended detention and over-politicized the very organization it intended to quash. This chapter argued that the efforts to silence the FLQ, which began with strong-arming young *felquistes* into guilty pleas and convicting many of minor criminal activity, no longer worked. The Vallières-Gagnon Network set the stage for many more *felquistes* who engaged in political defences to contest the allegations against them. Capitalizing on extended detentions and fearful juries in 1968 to convict Vallières (and others like the FLQ members involved in the Montréal Stock Exchange bombing), the convictions that resulted were the pinnacle of the Crown's success. As the CAGVG mobilized resources inside and outside the courtroom, Vallières and Gagnon diverged in their use of self-representation and political argumentation.

Vallières, who engaged with the political writing-based evidence presented by the Crown, also maintained that he was innocent. To that end, Vallières' political convictions and claim to innocence came through so clear to supporters, Morf speculated, "that the great majority of the French-Canadian public actually came to believe that he was persecuted solely for his political beliefs, not for any leading role in the actions of the neo-FLQ."<sup>354</sup> In contrast, Gagnon, who also maintained his innocence, expressed frustration with the process, but did not use the court to articulate a broader view of the political climate. His communication to supporters and about the trials remained outside of the trial facilitated through the CAGVG. Key to this chapter's findings was how archival materials shed additional light on the distinct self-represented legal styles of Vallières and Gagnon. Importantly, Gagnon acted with informed deference. He knew the political stakes and

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<sup>354</sup> Morf, *Terror in Québec*, 109 as quoted in Tetley, *The October Crisis, 1970*, Appendix Y: The Roles of the Participants in Retrospect, 54-55. Accessed via: [https://historyofrights.ca/wp-content/uploads/documents/FLQ\\_appendixy.pdf](https://historyofrights.ca/wp-content/uploads/documents/FLQ_appendixy.pdf)

understood his position. In court, he acted with his best interests at heart and made an individualistic defence: deny the facts advanced by the Crown and no more. Much of his commentary about the trial was directed at his comrades and supporters. Vallières, on the other hand, seemed to view the usage of his political writing as somewhat of a personal attack and he attempted to leverage that to improve his legal position. The risk of such informed confrontation was high as he was initially handed a life sentence. Though he successfully fought the charges on appeal and through a second trial, the extended detention took a toll on his health.

Chapter five explores the shifting political-legal terrain of the post-October Crisis context. The declaration of emergency powers presented new legal challenges for lawyers, judges, and other legal officials, and in the Trial of the Montréal Five, the decisions of Michel Chartrand, Vallières, Gagnon, and Lemieux to represent themselves was not surprising. All four had done so in previous criminal trials. After the October Crisis, the proceedings took place in a state of exception; emergency powers that affected everything from police investigations, free speech, censorship, mobility, and permitted the indefinite detention of suspects without charge. Nonetheless, the seditious conspiracy charges were not novel in the context of political trials in Canadian history. The following chapter surveys the history of sedition prosecutions in Canada, in particular how the charge of seditious conspiracy has been widely used to suppress dissidents and neutralize opposition movements. Then, I turn my attention to the sweeping powers of war measures and the initial arraignments of prominent FLQ members. The Canadian government's use of wartime power in peacetime sets the context for the seditious conspiracy trial of the Montréal Five—a demonstration of how the legal performances of the self-represented

defendants tested the patience, legitimacy, and authority of the Montréal courts.

## Chapter Five: A Legal History of the FLQ Seditious Conspiracy Trial

We are accused of a type of crime; we are not accused of a specific crime.

—Robert Lemieux to Justice Ouimet in court on 8 February 1971.<sup>355</sup>

### 5.1 Introduction: The Legal Aftermath of the 1970 October Crisis

Arrested overnight in mass raids on 16 October 1970, The Montréal Five—Michel Chartrand, Pierre Vallières, Charles Gagnon, Robert Lemieux, and Jacques Larue-Langlois—sat imprisoned for three weeks before being brought before a judge, the maximum period of detention permitted under the peacetime invocation of the WMA.<sup>356</sup> Referred to as ‘Canada’s Winter Trials’ in *The Last Post* (a progressive magazine of the period), the charges laid against the five men marshalled a renewed commitment by the Crown to prosecute the intellectual leadership of the FLQ. By the end of December 1970, the members of the Chenier Cell, composed of Fred Rose, Jacques Rose, Bernard Lortie, and Francis Simard, were in custody and charged with the kidnapping and murder of Québec Minister of Labour Pierre Laporte and the kidnapping of British Trade Commissioner James Cross. The Five—who were not directly implicated in the kidnappings or death of Laporte—were charged with unlawful association in an outlawed organization and seditious conspiracy among other offences. Despite the ambition of the

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<sup>355</sup> Lemieux: “On est accusés d’un genre de crime, on n’est pas accusés d’un crime précis.” Chartrand, et. al., *Le Procès des Cinq*, 120.

<sup>356</sup> For further example and debate on peacetime invocations and application of the WMA and emergency powers, see Dominique Clément, “The Royal Commission on Espionage and the Spy Trials of 1946-9: A Case Study in Parliamentary Supremacy,” *Journal of the Canadian Historical Association* 11, no 1(2000): 154; Patricia Peppin, “Emergency Legislation and Rights in Canada: The *War Measures Act* and Civil Liberties,” *Queen’s Law Journal* 18 (1993): 156-189; and Robert Lemieux, “Imprisoned Without Rights,” *MacLean’s* 112, no. 52 (1 January 2000), 142.

Crown to connect the five men to a plot of government overthrow, the trials that followed in the Winter of 1971 were nothing short of chaotic.

The first part of this chapter maps the legal developments between the emergence and impact of the WMA and the resort to sedition-related prosecutions. Here, I situate the 1971 FLQ seditious conspiracy trials in historical and legal contexts. The second part of this chapter reads the Trial of the Montréal Five to examine the roles of the defendants in the Crown's failure to prosecute on the political charge of seditious conspiracy. Through analysis of the trial, this chapter examines self-defence as a legal strategy and how defendants did not reject the charge of seditious conspiracy forthright (as that would potentially involve an admission of their harmlessness) but instead challenged its logic and temporal delimitation. As the trial proceeded, Chartrand and Vallières requested that Justice Ouimet recuse himself for reasons of bias and partiality, Gagnon filed a motion detailing the inadmissibility of the indictment due to the ubiquitous and vague definition of seditious conspiracy. Finally, Robert Lemieux argued that the declaration of war powers—and apprehended insurrection—was *ultra vires* because there was no apprehended insurrection. Despite augmented state and police powers in the wake of the October Crisis, the legal strategies of the Five remained defiant.

Drawing on insights into how accused FLQ members organized their legal defences and the comparison between approaches used by Vallières and Gagnon presented in the previous chapters, I analyze how FLQ defendants oscillated between charismatic political monologues and technical legal assertions while simultaneously performing the roles of legal representative and political defendant. As self-represented defendants, they also undertook silent and voiced roles in each other's defence narratives. Often presenting

together, the Five would interrupt one another and the court. Unsurprisingly, Justice Ouimet became frustrated with the uncooperative defendants. While the courts expressed frustration with the defendants, they also afforded them procedural leeway not usually afforded to those with legal counsel. Still, to the surprise of all, the case was dismissed.

Fernand Foisy, Michel Chartrand's biographer, characterized the trials as juridical drama worthy of a Molière collection.<sup>357</sup> In late 2010, just after the 40<sup>th</sup> anniversary of the October Crisis, *Les Zapartistes*<sup>358</sup> premiered *Le Procès des Cinq Lu par Les Zapartistes* in Montréal.<sup>359</sup> Coinciding with an updated release of *Le Procès des Cinq* (2010), which was originally published in 1971 by Movement for the Defence of Political Prisoners of Québec (formerly the CAGVG), the show offered a dramatized reading of the trial. Despite just a few performances, the dramatized reading received critical acclaim and some scholastic attention. For example, Québec theatre scholars Louis Patrick Leroux and Hervé Guay take note of the *Les Zapartistes* performance and submit that the *felquiste* seditious conspiracy trial reads as absurdist theatre. Moreover, Leroux and Guay argue that the defendants and dramatization of the trial displayed a skillful reversal of the balance of power by the accused through their refusal to follow the rules and procedures of the court.<sup>360</sup> In short, the reading of court transcripts magnified the extent to which the FLQ criminal trials diverged from conventional norms.

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<sup>357</sup> Jean-Baptiste Poquelin (stage-name: Molière) was a 17<sup>th</sup> century satirist in France who drew the ire of the Catholic Church and other moralists. Foisy, *Michel Chartrand*, 180.

<sup>358</sup> Founded in 2001 as a Québec-based comedy group who specialize in political humour. Current members include: François Parenteau, François Patenaude, Gaétan Troutet, Christian Vanasse, and Nadine Vincent (past members included: Denis Trudel, Geneviève Rochette, and Frédéric Savard).

<sup>359</sup> A recording of *Les Zapartistes's* 28 May 2013 show at Club Soda, Montréal is available online: <https://www.youtube.com/watch?v=FPbczNxAM6Y>

<sup>360</sup> Leroux and Guay: "La pièce trace surtout l'habile inversion du rapport de force par les accusés lorsqu'ils ont refusé de suivre les règles et les définitions du système judiciaire." Hervé Guay and Louis Patrick Leroux, eds. *Le Jeu des positions: discours du théâtre québécois* (Montréal: Éditions Nota bene, 2014), 48.

Relying on Ertür and Allo's characterization of political trials as performative power struggles between those who resist state power and the state who enforces it, I argue that the Trial of the Montréal Five was an example of legal performances of the self-represented defendants (Chartrand, Vallières, Gagnon, and Lemieux), defence counsel Mergler (representing Larue-Langlois), Justice Ouimet, and Crown counsel. The defendants politicized the trial through articulations of their view of the justice and injustice of the proceedings. In one breath, they berated the judge and institution he represented, while in the next they asked legal questions and harnessed the rules of procedure. The defendants were quick to chastise the Crown for facilitating a political trial when the prosecutors described the political character of the accused's motives.<sup>361</sup> While not all legal defence strategies were performative acts (as some defendants emphasized certain approaches over others), the manipulation of procedural motions (e.g., the recusal of the judge), the use of historical reference to bolster legal argumentation (e.g., arguing the seditious indictment be amended back to 1838), and the employment of personal attacks of the bench came to form the defence strategy of the Montréal Five defendants.

This chapter shows that while the Crown seemed assured that the criminal seditious conspiracy charges would result in convictions, the Five staged somewhat of a final-stand of a defence that challenged the legitimacy and authority of the legal system in the wake of peacetime use of war powers. Though the political character of this trial is debatable, its outcome is not. Justice Ouimet found the Crown failed to present viable case.

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<sup>361</sup> On this point, what the Crown viewed as politicization by the defendants and what the defendants viewed as the politicization of the legal process held different thresholds. Similarly, what was viewed as legally relevant political material, claims or arguments by either side was often subject to dispute. More specifically, see Warren, "Outrage au peuple!" 136.

## 5.2 The Legal Terrain: The *War Measures Act* and Seditious Conspiracy

Before exploring the seditious conspiracy trials in further detail, further background on the legal measures and responses of the government is necessary. The WMA, passed at the beginning of the First World War became a permanent fixture of Canadian law, later resorted to in World War Two and of course the October Crisis. It was executive-enabling legislation in which Parliament, during declared emergencies, delegated to cabinet the legislative power to issue executive orders in council for a defence or security purpose through the duration of the war or related serious security crisis. These orders could include the suspension of *habeas corpus*, indefinite detention, broad powers of preventative arrest and exceptional police and military investigative powers, censorship, expropriation and summary deportation. In these exceptional circumstances of emergency powers invoked by the federal government, the Québec Crown deployed its legal response in the form of seditious prosecutions. Seditious conspiracy is one of the most malleable political offences found in the Criminal Code and was often directed at members of organized groups that aimed to undermine or overthrow the existing political or economic order. Although a controversial part of Canada's modern criminal laws, it had been widely used when the state claimed such groups posed a threat to public safety.

The 1970 WMA authorized exceptional state powers and evoked a sense of crisis in the broader public sphere. As such, resort to this emergency legislation set the stage for a series of controversial criminal proceedings. The day before the federal government turned to the WMA, the Québec government requested the military assistance of the federal

government. To this end, some have argued that the repressive responses to the events of October 1970 were orchestrated between the federal and provincial governments.<sup>362</sup>

### 5.2.1 The *War Measures Act*, *Public Order Act*, and the 1970 October Crisis

While the WMA was originally enacted in 1914 to deal with the security and mobilization challenges posed by modern world war, it was resorted to again in World War Two and invoked for the first time outside of war during the October crisis. While originally modelled after the British *Defence of the Realm Act, 1914* (DORA), the WMA allowed the government to “legislate statutorily against enemy aliens, suspend habeas corpus, tighten treason and sedition laws and ban] secret societies.”<sup>363</sup> Prior to the 20<sup>th</sup> century, domestic security threats were responded to with temporary emergency legislation, prerogative powers, or martial law and military justice (as was the case during the 1837-8 Rebellions).<sup>364</sup> The WMA represented a new approach to serious security crises, designed in the context of the perceived demands of modern ‘total’ war. However, unlike older legal responses, which were temporary in nature, as a permanent statute, the WMA simply required that Parliament ratify a declared emergency and then, having done so, delegate legislative authority to the executive to pass emergency regulations.<sup>365</sup>

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<sup>362</sup> Robert Demers, who worked close with Robert Bourassa, dispels the myth that Bourassa panicked in his response and decision-making relative the FLQ Crisis. Robert Demers, “Calme et Patient,” in *Robert Bourassa: un bâtisseur tranquille*, eds. Guy Lachapelle, Robert Comeau, and Valéry Colas (Saint-Nichols: Les Presses de l’Université Laval, 2003), 303-4.

<sup>363</sup> F. Murray Greenwood, “The Drafting and Passage of the War Measures Act in 1914 and 1927: Object Lessons in the Need for Vigilance,” in *Canadian Perspectives in Law and Society: Issues in Legal History*, eds. W. Wesley Pue and Barry Wright (Ottawa: Carleton University Press, 1988), 291-2.

<sup>364</sup> See generally, Barry Wright, Eric Tucker, and Susan Binnie, “Introduction: War Measures and the Repression of Radicalism,” in *Canadian State Trials, Volume IV: Security, Dissent, and the Limits of Toleration in War and Peace, 1914-1939*, eds. Barry Wright, Eric Tucker, and Susan Binnie (Toronto: University of Toronto Press, 2015).

<sup>365</sup> Wright, Tucker, Binnie, “Introduction,” 10.

The WMA went further than DORA in reach, and unlike the UK war-time measures, it was not passed as temporary legislation designed to expire at the end of hostilities. During the First World War, over 8,000 people were indefinitely detained as enemy aliens, over 6,000 of whom were Canadian residents of Ukrainian background.<sup>366</sup> Orders in Council passed during the war found their way into amendments to the Criminal Code and Immigration Act, in effect continuing exceptional wartime measures into the transition to peace and through the Winnipeg General Strike and subsequent labour unrest. Revised in 1927 to have potential peacetime application, a new category of security threat—apprehended insurrection—was added.<sup>367</sup> While the amendment faced little criticism at the time, Ramsey Cook summed up its core fallacy: “what a government apprehends as insurrection may look less threatening to others.”<sup>368</sup> In 1939, through a declaration of war, the WMA facilitated the indefinite detention of over 20,000 persons of Japanese ancestry after 1941. Then, at the end of the war and with armistice declared, Prime Minister Mackenzie King issued two Privy Council Orders to extend suspensions of due process under the authority of the WMA and then under the temporary authority of the *National Emergency Temporary Powers Act, 1946*, to address the impending challenges of the Gouzenko Affair and subsequent spy trials.<sup>369</sup> The extension of wartime powers into

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<sup>366</sup> Bohdan S. Kordan, “‘They Will Be Dangerous’: Security and the Control of Enemy Aliens in Canada, 1914,” in *Canadian State Trials, Volume IV: Security, Dissent, and the Limits of Toleration in War and Peace, 1914-1939*, eds. Barry Wright, Eric Tucker, and Susan Binnie (Toronto: University of Toronto Press, 2015), 42-70; and Peter McDermott, “Enemy Aliens in the First World War: Legal and Constitutional Issues,” in *Canadian State Trials, Volume IV: Security, Dissent, and the Limits of Toleration in War and Peace, 1914-1939*, eds. Barry Wright, Eric Tucker, and Susan Binnie (Toronto: University of Toronto Press, 2015), 71-96.

<sup>367</sup> *War Measures Act, 1914*. (Second session), c 2, s. 4, R.S. 1927. Available online at: [http://historyofrights.ca/wp-content/uploads/statutes/CN\\_War\\_Measures.pdf](http://historyofrights.ca/wp-content/uploads/statutes/CN_War_Measures.pdf)

<sup>368</sup> Guy Bouthillier and Edouard Cloutier, eds. *Trudeau's Darkest Hour: War Measures in Time of Peace, October 1970* (Montréal: Baraka Books, 2010), 192.

<sup>369</sup> Pacione, “The FLQ Trials,” 108.

peacetime temporarily expanded the search-and-seizure rights of the police, limit mobility, association, and speech of citizens, and permitted detention without charge and the suspension of *habeas corpus* rights.<sup>370</sup> And, of course, the WMA was directly invoked during the 1970 October Crisis, marking the first peacetime declaration of such exceptional state powers in Canadian history.

At 2pm on 15 October 1970, Québec Premier Robert Bourassa, his Minister of Justice Jérôme Choquette, and Montréal Mayor Jean Drapeau invoked section 277 of the *National Defence Act*,<sup>371</sup> which permitted the Attorney General to make a requisition of aid to the civil power in the instance of a riot or disturbance.<sup>372</sup> The next day, although with hesitation, Trudeau complied and instructed the Governor-in-Council to declare an apprehended insurrection in accordance with and as authorized by section 2 of the WMA:

The issue of a proclamation by Her Majesty, or under the authority of the Governor in Council shall be conclusive evidence that war, invasion, or *insurrection, real or apprehended*, exists and has existed for any period of time therein stated, and of its continuance, until by the issue of a further proclamation it is declared that the war, invasion or insurrection no longer exists.<sup>373</sup>

This declaration, which was presented by Minister of Justice John Turner in the House of Commons and then ratified by Parliament, delegated to the executive the legislative power

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<sup>370</sup> Clément, “October Crisis of 1970,” 167-70.

<sup>371</sup> R.S.C., 1985, c. N-5, s. 277.

<sup>372</sup> For a short history of military operations relative to use of the aid to the civil power clause in Canada, see Sean Maloney, “‘A Mere Rustle of Leaves:’ Canadian Strategy and the 1970 FLQ Crisis,” *Canadian Military Journal* 1, no. 2 (2000): 78-9; Sébastien Campeau, “L’Intervention militaire en octobre 1970 et la loi sur les mesures de guerre: Modalités et réactions,” (MA diss., Université de Québec à Montréal, 2009); Dan Loomis, *Not Much Glory: Quelling the FLQ* (Toronto: Deneau Publishers, 1984); and John Gellner, *Bayonets in the Streets: Urban Guerilla at Home and Abroad* (Don Mills, ON: Collier-Macmillan Canada, Ltd., 1974), 131-143. Also, the correspondences between Drapeau, Bourassa, police chief Saint-Aubin, and Trudeau can be found in Tetley’s appendices. Tetley, *The October Crisis, 1970*, Appendix K: “Letters of Jean Drapeau & Lucien Saulnier and Marcel Saint-Aubin of 15 October 1970 and letter of Robert Bourassa of 16 October 1970,” 6-10. Accessed via: [https://historyofrights.ca/wp-content/uploads/documents/FLQ\\_appendixk.pdf](https://historyofrights.ca/wp-content/uploads/documents/FLQ_appendixk.pdf)

<sup>373</sup> R.S.C., 1970, c. W-2, s. 2.

to expedite emergency measures as authorized by section 3(1) of the WMA.<sup>374</sup> The executive was empowered to act to preserve the security, defence, peace, order, and welfare of Canada. Executive orders widened police investigative and arrest powers (including searches without warrants), and suspended *habeas corpus*.<sup>375</sup> It is also worth noting that this suspension was applied not only in Québec and Ontario, but also throughout Canada.

At 4am on 16 October 1970, eleven days after the kidnapping of British Trade Commissioner James Cross and five after that of Québec Minister of Labour Pierre Laporte, 12,000 Québec provincial police officers with the support of the RCMP and approximately 1,000 members of the Royal 22<sup>nd</sup> Regiment of the Canadian Forces were deployed to Ottawa and Montréal. Premier Bourassa stated that such measures would “[ensure] the safety of the people and public buildings.”<sup>376</sup> Within twenty-four hours of the declaration, authorities had conducted 176 raids and arrested over 250 people in the Montréal area.<sup>377</sup>

Pursuant to this power, the executive then tabled the *Public Order Regulations, 1970*, in Parliament, which outlawed the FLQ (section 3) and criminalized those associated

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<sup>374</sup> Paul Litt. *Elusive Destiny: The Political Vocation of John Napier Turner*. (Vancouver: University of British Columbia Press, 2011), 127. For thorough consideration of the minutes and decision-making from the Cabinet Committee on Security about the use emergency powers consult the noted biography of John Turner. This archive is located at Library and Archives Canada in Ottawa.

<sup>375</sup> For further consideration of post-1970 October political policing in Québec (relative to the FLQ and beyond) see Louis Fournier, ed. *La Police Secrète au Québec: la tyrannie occulte de la police* (Montréal: Les Éditions Québec/Amérique, 1978); Jean-Paul Brodeur, “High Policing and Low Policing: Remarks about the Policing of Political Activities,” *Social Problems* 30, no. 5 (1983): 507-20; Reg Whitaker, “Keeping Up with the Neighbours: Canadian Responses to 9/11 in Historical and Comparative Context,” *Osgoode Hall Law Journal* 41, no. 2/3 (2003): 241-265; Reg Whitaker, Gregory Kealey, and Andrew Parnaby, *Secret Police: Political Policing in Canada from the Fenians to Fortress America* (Toronto: Toronto University Press, 2012), Part 4; and A. Alan Borovoy, *When Freedoms Collide: The Case for Our Civil Liberties* (Toronto: Lester & Orpen Dennys Ltd., 1988), 89-90.

<sup>376</sup> Claude Bélanger, “Chronology of the October Crisis, 1970, and its Aftermath: 15 October 1970.” Marianopolis College, Dept. of History. Online at: <http://faculty.marianopolis.edu/c.belanger/quebechistory/chronos/october.htm>

<sup>377</sup> Walter F. Murphy and Joseph Tanenhaus, *Comparative Constitutional Law: Cases and Commentaries* (New York: St. Martin’s Press, 1977), 687.

or advocated for anything related to the outlawed group (section 4):

3. The group of persons or association known as FLQ and any successor group or successor association of the FLQ or any group of persons or association that advocates the use of force or the commission of crime as a means of or as an aid in accomplishing governmental change within Canada is declared to be an unlawful association.
4. A person who
  - a. is or professes to be a member of the unlawful association;
  - b. acts or professes to act as an officer of the unlawful association;
  - c. communicates statements on behalf of or as a representative or professed representative of the unlawful association;
  - d. advocates or promotes the unlawful acts, aims, principles or policies of the unlawful association;
  - e. contributes anything as dues or otherwise to the unlawful association or to anyone for the benefit of the unlawful association;
  - f. solicits subscriptions or contributions for the unlawful association; or
  - g. advocates, promotes or engages in the use of force or the commission of criminal offences as a means of accomplishing a governmental change within Canada

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.<sup>378</sup>

By 1 December 1970, the *Public Order (Temporary Measures) Act, 1970* (POA) was law.

During the war-time invocations, the emergency measures supported by executive orders in council typically sufficed for registration of enemy aliens, property confiscations, internment and summary deportation. To that end, Wright, Tucker and Binnie write, “unfettered discretion also reduced the need for governments to launch legal actions or risky prosecutions for political offences after the fact.”<sup>379</sup> However, in peacetime contexts, such as October 1970, the state relied on criminal courts to enforce and prosecute expeditiously legislated temporary emergency measures.

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<sup>378</sup> J.N. Lyon, “Constitutional Validity of Section 3 and 4 of the Public Order Regulation, 1970,” *McGill Law Journal* 18 (1972): 138-9.

<sup>379</sup> Wright, Tucker, Binnie, “Introduction,” 11.

By charging whom the Crown viewed as the FLQ leadership, the Crown opened itself up to the full brunt of criticism of the war powers and indeterminate timeline of the apprehended insurrection. Perhaps, the Crown was using the seditious conspiracy accusation to bide time while the POA was still in effect (the act expired on 31 April 1971 pending renewal). Confident that emergency powers further empowered the police, the Crown marshalled the expanded of emergency powers as a tool to better conditions to better prosecute the FLQ leadership on vague charges that would drain the FLQ's already strapped financial resources on legal fees.

As political trials, the FLQ trials, not only for seditious conspiracy, but also for unlawful membership to an illegal organization, offered an opportunity for the Crown to prosecute the *felquistes*, but more broadly—as the Québec Ministry of Justice reported in the contested 1981 *Rapport sur les événements d'octobre 1970* (popularly known as the *Rapport Duchaine*)—to criminalize dissent and deter future criminal activity in a climate of enhanced police powers of arrest and detention without trial.<sup>380</sup> With broad public order emergency measures expedited through parliament in a climate of fear, accused *felquistes* challenged the charges against them, which intensified media attention and scrutiny of the politicization of the forthcoming criminal trials.<sup>381</sup> The powers of Parliament to invoke the legal conditions that justified these sweeping security measures reference the WMA's

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<sup>380</sup> See generally, Jean-François Duchaine, *Rapport sur les événements d'octobre 1970*. 2<sup>e</sup> éd. (Gouvernement du Québec, Ministère de justice, 1981). For detailed criticism of the limitations of the *Rapport Duchaine* and the curtailed power and resources of Commissioner Duchaine (who centred the report on the roles and operations of involved policing agencies and speculated about how the state framed responses and actions to October 1970) see Jean-Paul Brodeur, "La Crise d'octobre et les commissions d'enquête," *Criminologie* 13, no. 2 (1980): 79-98; Dominique Bernard, "La commission d'enquête sur des opérations policières en territoire québécois: Portée réelle et limites du Rapport Keable," (MA diss., Université du Québec à Montréal, 2008), 20-24; and Tetley, *The October Crisis, 1970*, 173-184.

<sup>381</sup> See generally, Barbara J. Falk. *Making Sense of Political Trials: Causes and Categories* (Toronto: University of Toronto, 2008).

appeal to national defence and security purposes and the addition of apprehended insurrection. Combined with the clear jurisdictional powers of the federal parliament over ‘peace, order and good government’ in the *British North America Act*, 1867, the federal government’s actions were rendered largely unchallengeable. In the meantime, and with emergency powers in hand, the Crown surmised additional probative evidence would emerge because added resources were being expended on police search efforts. In the next section, I will explore the Crown’s reliance on the charge of seditious conspiracy and the requisite *felquistes* defendants’ responses.

Notwithstanding the near unchallengeable law, Charles Gagnon and Pierre Vallières attempted to call the government to account in court. On this point, Herbert Marx, a Montréal lawyer and law professor, wrote that even a judicial evaluation of the apprehended insurrection would also prove problematic because the burden of proof to determine the end of an emergency would rest with those who challenged the law.<sup>382</sup> Marx, who was critical of Trudeau’s use of the WMA, referenced two JCPC cases that the Québec judiciary could have relied upon to challenge the government’s opaque justification of an apprehended insurrection. Instead, the court erred on the side of deference.<sup>383</sup> Commenting on a series of appeals filed by Gagnon and Vallières, Marx wrote that the Québec judiciary illustrated the deeply-rooted culture of judicial deference in the post-war period.

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<sup>382</sup> Such a burden would be rendered even more onerous because of official secrecy surrounding justifications for the security or defence purposes that authorized war measures, and the jurisdiction of the federal government to exercise emergency powers was upheld by Supreme Court of Canada and Judicial Committee of the Privy Council (JCPC) Appeals in the wake of the First and Second World Wars. Hebert Marx, “The Emergency Power and Civil Liberties in Canada,” *McGill Law Journal* 16 (1970): 65.

<sup>383</sup> For example, Marx argued, the opportunity to challenge executive authority presented itself in *Fort Frances* (1923), “[...] it has become clear that the crisis which arose is wholly at an end and that there is no justification for the continued exercise of an exceptional interference which becomes ultra vires when it is no longer called for,” and in *Re: Japanese Canadians* (1947), “[...] if it be clear that an emergency has not arisen, or no longer exists, there can be no justification for the exercise or continued exercise of the exceptional powers.” Marx, “Apprehended Insurrection,” 59.

He pointed to how Judge Brossard, who again focused on a case involving wartime relations with Japanese Canadians, reasoned “it is not pertinent to the judiciary to consider the wisdom or the propriety of the particular policy which is embodied in the emergency legislation.”<sup>384</sup> By refusing to question the WMA, and instead simply affirming the legal right of the Governor in Council to make a declaration, the presiding judges, in effect, sterilized the courts of their essential judicial review function.<sup>385</sup> In the wake of the First and Second World Wars, judicial review of the WMA by both the Supreme Court of Canada and the Judicial Committee of the Privy Council demonstrated judicial deference to executive powers.<sup>386</sup> In short, evidence related to the wide security and defence justifications of the Act would be protected by wide official secrecy. The prospects of effective challenge in the courts of the federal government’s declaration of emergency were dim indeed.

After the passage of the declaration of an apprehended insurrection through Parliament, to justify executive measures (many already enacted), enactment of the WMA began to spark opposition. The questions introduced by Douglas (see footnote) would be asked again and again as the WMA and POA quickly became a subject of discussion for lawyers critical of the law.<sup>387</sup> For example, Alan Borovoy, then general counsel to the

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<sup>384</sup> Pacione, “FLQ Trials,” 114-115.

<sup>385</sup> Marx, “Apprehended Insurrection,” 58.

<sup>386</sup> Re *George Edwin Gray* (1918) 57 S.C.R., 150; *Fort Frances Pulp and Power Co. v. Manitoba Free Press* [1923] A.C. 695; and Barry Wright, Eric Tucker, and Susan Binnie, “Editors’ Note: Judicial Review of the War Measures Act, 1914,” in *Canadian State Trials, Volume IV: Security, Dissent, and the Limits of Toleration in War and Peace, 1914-1939*, eds. Barry Wright, Eric Tucker, and Susan Binnie (Toronto: University of Toronto Press, 2015), 475-6.

<sup>387</sup> Member of Parliament and federal leader of the NDP, Tommy Douglas, asserted that invocation of the WMA was akin to using a sledgehammer to crack a peanut. Speaking with clear frustration with the Trudeau government’s approach after the bill passed: “I have no hesitation in saying that those of us who voted against that motion did so for two reasons: first, because we have not been given any evidence that there was a state of apprehended insurrection in this country and, second, because we could not approve the regulations enacted under the WMA because they deprive Canadian citizens so extensively of basic civil liberties.” Walter F. Murphy and Joseph Tanenhaus, *Comparative Constitutional Law: Cases and Commentaries*. (New

Canadian Civil Liberties Association, questioned the potential for this legislation to pave the way for future abuses—to what extent Canadians face further “permanent invasions of our traditional freedoms.”<sup>388</sup> Civil liberties, he argued, were traditionally protected as a matter of law in Canada. As Reg Whitaker points out, on 26 January 1981 the McDonald Commission, the inquest into RCMP-related security malfeasance, and among other topics, the 1970 October Crisis, heard the testimonies of senior RCMP officials and Don Jamieson, a Trudeau cabinet minister, which stated that Trudeau had no evidence of an apprehended insurrection nor any indication of a broader FLQ plot to justify the state’s response.<sup>389</sup> For Dorval Brunelle, however, the use of the WMA signaled to activists the federal government’s interest in quelling the radical political nationalist mobilization that ousted Duplessis ten years prior.<sup>390</sup> This position is affirmed by Reg Whitaker, Gregory Kealey and Andrew Parnaby, who argue two positions: first, that the use of the WMA was confirmation that the police required ‘special power’ to do their jobs; and second, that the moment was seized by police and authorities to undermine the independence movement including the PQ.<sup>391</sup>

In sum, the culture of judicial deference to executive authority resurfaced in moments of crises and with few checks on the delegation of legislative authority to the executive. While the 1927 revisions to the WMA prompted no official debate, the only

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York: St. Martin’s Press, 1977), 687; Christopher Hewitt, “The Dog that Didn’t Bark: The Political Consequences of Separatist Violence in Quebec, 1963-1970,” *Conflict Quarterly* Winter (1994): 9-29.

<sup>388</sup> Alfred Borovoy, “Rebuilding a Free Society,” in *Power Corrupted: The October Crisis and the Repression of Québec*, ed. Abraham Rotstein (Toronto: Canadian Forum Ltd., 1971), 99.

<sup>389</sup> Whitaker, “Apprehended Insurrection?” 240-241; Douglas Schmeiser, “Control of Apprehended Insurrection: Emergency Measures vs. The Criminal Code.” *Manitoba Law Journal* 4 (1971): 359-365.

<sup>390</sup> Dorval Brunelle, “De la ‘révolution tranquille’ à la chute Bourassa,” *Politique aujourd’hui* (Paris) 7-8 (1978): 14; also see generally, Duchaine, *Rapport sur les événements d’octobre 1970*.

<sup>391</sup> Whitaker, Kealey, and Parnaby, *Secret Police*, 287-92. The tenuous relationship between security forces and the state is mapped out in detail through their research.

check on the sweeping authority delegated to the executive was that the legislative branch remained in control of the powers outlined in the Act.<sup>392</sup> The remainder of this chapter turns to the law of seditious conspiracy, how the Crown deployed charges under this offence and examines the legal responses of the FLQ within the juridical framework of the trial and the political context of a temporary state of emergency.

## 5.2.2 The Law of Sedition and Seditious Conspiracy in Canada

The political offence of sedition accompanies treason as the traditional legal response to perceived threats to the security of the state. Sedition is defined as “verbal, written, or published attacks on the sovereign, his or her government, its institutions, or its officials, with the intent of bringing down the government by unlawful means.”<sup>393</sup> Associations that promote or support such acts are considered seditious conspiracies. Unlike the offence of treason, prosecutions for sedition did not need evidence or proof of clear actions to bring down the state. Defendants in such cases often function as proxy legal responses in the much more complex political turbulence of the time.<sup>394</sup>

As demonstrated in the *Canadian State Trials* series, the experienced treason and sedition trials in Canadian and British North American colonial history show patterns of judicial deference to executive interests, and at times successful resistance by way of robust defences and jury acquittals. In more extreme crises, such as war, invasion and insurrection, *habeas corpus* was suspended and military justice replaced regular criminal proceeding,

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<sup>392</sup> Wright, Tucker, Binnie, “Introduction,” 36n33; and Greenwood, “Drafting and Passage,” 305-6.

<sup>393</sup> Barry Wright and Desmond H. Brown, “Codification, Public Order, and the Security Provisions of the Canadian Criminal Code, 1892,” in *Canadian State Trials, Volume III: Political Trials and Security Measures, 1840-1914*, eds. Barry Wright and Susan Binnie (Toronto: Toronto University Press, 2009), 538.

<sup>394</sup> Falk, *Making Sense of Political Trials*, 28.

and as noted in the previous section, these more sweeping repressive interventions were displaced by the development of the WMA. The law of sedition narrowed in the 19<sup>th</sup> century due to effective legal defences, jury acquittals and the growth of popular political engagement. By the end of the nineteenth century there was even the possibility that sedition would disappear from the criminal law but concerns about organized labour, anti-colonial resistance and world war curbed the possibility of such a development.

*Burns* (1886) was the leading case at the turn of the century on the definition of sedition and offered a rather progressive interpretation for its time. It was an English labour unrest case in which John Burns and others were acquitted by a jury of conspiracy to incite riots and uttering seditious words. In his decision, Justice Cave wrote: “[To] make out the offence of speaking seditious words there must be a criminal intent on the part of the accused, they must be spoken with seditious intention.”<sup>395</sup> Unfortunately, this precedent, which limited the scope of the offence, was not adopted during the drafting the Canadian Criminal Code, 1892.<sup>396</sup> Seditious intent would remain unclear until its 1951 amendment.<sup>397</sup> Demonstrated by World War One and the ensuing labour unrest that followed, without a codified definition, sedition prosecutions continued under the much broader common law definition as a convenient repressive weapon for the state.<sup>398</sup>

To be determined was the threshold upon which criticism of the government surpasses and becomes actual seditious intent. As Barry Cahill writes, without clear

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<sup>395</sup> Wright and Brown, “Codification,” 542.

<sup>396</sup> Instead, the drafter of the Code, George Burbidge, relied upon an 1878 version of James Fitzjames Stephen’s draft English Code, which relied on an early statutory definition from an 1819 English statute on seditious libel. Wright and Brown, “Codification,” 539 and 544; and Desmond H. Brown, “The Craftsmanship of Bias: Sedition and the Winnipeg Strike Trial 1919,” *Manitoba Law Journal* 14 (1984): 30.

<sup>397</sup> Wright and Brown, “Codification,” 548.

<sup>398</sup> As sedition case law evolved, for example in *Aldred* (1909), which reshaped definitions of seditious words to require an “incitement to violence,” the *Criminal Code* remained steadfast in its adoption of the broad 1879 Stephen’s draft English Code language. Wright and Brown, “Codification,” 546-548.

codified language, legal precedents such as *Burns* and *Aldred* did nothing to slow conservative activist judges from interpreting seditious cases with oppressive breadth.<sup>399</sup> In *Russell* (1919), the charge read that the strikers intended: “To bring into hatred and contempt and to excite disaffection against the government and constitution of the Dominion of Canada.”<sup>400</sup> To that end, the question that emerged was did the actions of Russell and his colleagues constitute a conspiracy? Read as a serious impediment to labour organizing, Reinhold Kramer and Tom Mitchell note that a conspiracy required only two or more people to join with seditious intent.<sup>401</sup>

However, the *Russell* case faced criticism by the Law Commission of Great Britain, which indicated that while punishable acts were committed through the duration of the strike, the offence of seditious conspiracy functioned as a “weapon in the armoury of the criminal law.”<sup>402</sup> As the prosecutor in the *Russell* case, A.J. Andrews instructed the jury that Russell and his colleagues seditiously conspired to “bring about discontent and dissatisfaction and what would be the logical result someday—revolution.”<sup>403</sup> However, Justice Metcalfe was resolute in his belief of the conspiracy. The presiding judge was

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<sup>399</sup> In the absence of clear definition of seditious intent, the Winnipeg General Strike seditious conspiracy trial of Robert Boyd Russell emerged as a prominent politicized example of a conservative reading of the seditious conspiracy case law. While many of the strikes of the period were excepted under section 590 of the *Criminal Code* (a trade union exception), the Winnipeg General Strike was characterized as a “state of siege” that had exceeded the nature of a labour action. Barry Cahill, “*Howe* (1835), *Dixon* (1920), and *McLachlan* (1923): Comparative Perspectives on the Legal History of Sedition,” *University of New Brunswick Law Journal* 45 (1996): 303; Wes Wilson, “The Political Use of Criminal Conspiracy,” *University of Toronto Faculty Law Review* 42 (1984): 63-4.

<sup>400</sup> *R. v. Russell, et. al.* (1919), 29 M.R. 511 at 511.

<sup>401</sup> Under section 134, a seditious conspiracy was punishable with two-years imprisonment. Reinhold Kramer and Tom Mitchell, *When the State Trembled: How A.J. Andrews and the Citizens’ Committee Broke the Winnipeg General Strike* (Toronto: Toronto University Press, 2010), 239.

<sup>402</sup> Wilson, “Criminal Conspiracy,” 65.

<sup>403</sup> Andrews exploited the vague definition of the offence to argue the defendants sowed dissatisfaction between classes. Reinhold Kramer and Tom Mitchell, “‘Daniel de Leon Drew up the Diagram’: Winnipeg’s Seditious Conspiracy Trials of 1919-20,” in *Canadian State Trials, IV: Security, Dissent, and the Limits of Toleration in War and Peace, 1914-1939*, eds. Barry Wright, Eric Tucker, and Susan Binnie (Toronto: University of Toronto Press, 2015), 239.

resolute in his directive to the jury: "...if I were on a jury, there is much in that matter that I would find no difficulty in concluding was seditious."<sup>404</sup> Despite the difference in legal climate between the Winnipeg General Strike and the October Crisis, the usage of emergency power and seditious conspiracy offer a space for comparison. It is of note that the instructions of Justice Metcalfe and Crown counsel Andrews to the jury read similarly problematic to that of Crown counsel Paradis to the jury in the LaGrenade Affair.<sup>405</sup>

While the *Russell* trial was ongoing, a May 1919 amendment to section 97 (which would form section 98 after the 1927 revisions and consolidations of the *Code*) was tabled by a government committee tasked to review sedition laws. The amendment, supported by Order-in-Council 2384 passed under war powers, advanced language on unlawful association.<sup>406</sup> Framed by Arthur Meighen as measures pertaining to "amendments to the Code regarding sedition," the amendment normalized wartime powers designed to outlaw leftist groups during the war by adding them to the *Criminal Code*. The sweeping breadth of section 98 could capture even the most inadvertent of actions, making sharing an unlawful newspaper with another person as a punishable offence. At the same time, the protections against lawful criticism of the state in section 133 were also struck.<sup>407</sup>

As discussed in chapter three, in *Buck et. al.* (1931), the Crown used unlawful association and seditious conspiracy to target communist party members. MacDonald, who represented CPC members charged with unlawful association and seditious conspiracy,

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<sup>404</sup> Kramer and Mitchel, "Daniel de Leon," 240; and Tom Mitchell, "'Legal Gentlemen Appointed by the Federal Government': The Canadian State, the Citizens' Committee of 100, and Winnipeg's Seditious Conspiracy Trials of 1919-1920," *Labour / Le Travail* 53 (2004): 29.

<sup>405</sup> As a case study of a Québec seditious conspiracy proceedings, the Trial of the Montréal Five should be read in conjunction with and distinguished from other historical examples of seditious conspiracy trial in Canada.

<sup>406</sup> Wright and Brown, "Codification," 562n132.

<sup>407</sup> Desmond H. Brown, *Genesis of the Canadian Criminal Code of 1892* (Toronto: Toronto University Press, 1989), 153.

challenged the membership to an unlawful association section because no sufficient explanation of how such a membership was constituted as unlawful was available.<sup>408</sup> Concerning the seditious conspiracy charge, he asked a similar question: “What was the conspiracy?”<sup>409</sup> He argued that more was needed than the fact that the accused had been charged with the offence.<sup>410</sup> Paraphrasing *felquistes* counsel Lemieux’s characterization of the seditious conspiracy charge faced by the Montréal Five: “We are accused of a type of crime; we are not accused of a specific crime.”<sup>411</sup> While these comments are brief and speak only to the initial motions filed for the defence, at stake, argued MacDonald, in other words, was the power of law. In a broader view, at stake was the power of the criminal law in the day-to-day lives of citizens: “law was being used to influence an individual’s politics through the Criminal Code.”<sup>412</sup> Similar to MacDonald, self-represented *felquistes* defendants and their legal representative faced seditious conspiracy charges with little to no explanation of what, in fact, constituted their seditious conspiracy.

It was not until *Boucher* (1951), in which Justice Kellock, infamous for his participation in the Taschereau-Kellock Commission during the Gouzenko Affair, reasoned that “sedition intentions must be founded upon evidence on incitement to violence, public disorder or unlawful conduct direct against [the state.]”<sup>413</sup> The court had finally connected intention to its earlier interpretations of seditious case law, thus

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<sup>408</sup> Dennis Molinaro, “Section 98: The Trial of *Rex v. Buck et al.* and the ‘State of Exception’ in Canada, 1919-36,” in *Canadian State Trials, IV: Security, Dissent, and the Limits of Toleration in War and Peace, 1914-1939*, eds. Barry Wright, Eric Tucker and Susan Binnie (Toronto: University of Toronto Press, 2015), 334-341

<sup>409</sup> *Ibid.*, 335.

<sup>410</sup> Peter MacKinnon, “Conspiracy and Sedition as Canadian Political Crimes,” *McGill Law Journal* 23 (1977): 631.

<sup>411</sup> Lemieux: “On est accusés d’un genre de crime, on n’est pas accusés d’un crime précis.” Chartrand, et. al., *Le Procès des Cinq*, 120.

<sup>412</sup> Molinaro, “Section 98,” 346.

<sup>413</sup> *R. v. Boucher* (1951) S.C.R. 265 at 301.

precluding expressions of political dissent from being caught up in sedition offences.<sup>414</sup> Added clarity aside, prosecution on seditious charges would test the Québec legal system.

On 4 November 1970, Jérôme Choquette announced that he *may* charge the remaining suspects swept up in the WMA raids with treason and sedition-related offences. The next day only the Montréal Five were charged. The sedition-related sections of the *Code* read as follows:

60. (1) Seditious words are words that express a seditious intention.  
 (2) A seditious libel is a libel that expresses a seditious intention.  
 (3) A seditious conspiracy is an agreement between two or more persons to carry out a seditious intention.  
 (4) Without limiting the generality of the meaning of the expression “seditious intention,” everyone shall be presumed to have seditious intention who:
  - (a) teaches or advocates, or
  - (b) publishes or circulates any writing that advocates, the use, without the authority of law, of force as a means of accomplishing a governmental change within Canada.
  
62. Everyone who:
  - (a) speaks seditious words,
  - (b) publishes a seditious libel, or
  - (c) is a party to a seditious conspiracy is guilty of an indictable offence and is liable to imprisonment for fourteen years.<sup>415</sup>

While this section detailed the emergence of the law of sedition in Canada and the slow emergence of language that accounted for seditious intention, the next section is supplemental as it contextualizes the use of these criminal offences within the parameters of a declared security crisis. Of note, MacKinnon and Molinaro add that section 98 (formerly sections 97(a) and 97(b)), which was repealed in 1936, informed the basis of the *Public Order Regulations, 1970*, which employ very similar unlawful association

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<sup>414</sup> MacKinnon, “Conspiracy and Sedition,” 635n58.

<sup>415</sup> Lyon, “Section 3 and 4,” 139.

provisions to outlaw the FLQ.<sup>416</sup> With a similar focus on the how the measures emerged relative to their critics, this chapter concludes with the contentious nature of such charges and the controversial legal defence strategies advanced by the Crown and FLQ defendants.

### **5.3 A Seditious Conspiracy? Defendant Strategies and the Trial of the Montréal Five**

The Trial of the Montréal Five was different from other attempts to prosecute high-profile FLQ members. Jérôme Choquette, the Minister of Justice, involved himself in the case by hiring special Crown prosecutors, at \$300 per day, to face the Montréal Five. The involvement of the Minister was in response to the Crown's missteps in the Vallières and Gagnon manslaughter trials where Gagnon was acquitted, and Vallières was ordered a new trial.<sup>417</sup> Choquette considered that many of Montréal's Crown prosecutor had tried and convicted many FLQ members and he planned to assuage defendants' claims of prosecutorial bias by hiring private practice criminal law specialist as Crown prosecutors. With its special prosecutors in place, the Crown cast a broad net and laid seditious conspiracy charges against Vallières, Gagnon, Chartrand, Lemieux, and Larue-Langlois. Emboldened by new, broad emergency powers and a catch-all indictment, the Crown sat with confidence through the 5 November 1970 pretrial arraignments as the Montréal Five expressed their outrage to Justice Deslauriers, who all but ignored their concerns. For example, when Robert Burns, counsel to the FLQ, was asked if his clients would plead guilty or not guilty, he indicated that his client declined to recognize the jurisdiction of the

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<sup>416</sup> MacKinnon, "Conspiracy and Sedition," 623; and Molinaro, "Section 98," 363n133.

<sup>417</sup> This sum was significant considering that hospital workers were fighting to be paid \$100 per week in Montréal at the same time. Foisy, *La colère du juste*, 174n9.

court. An unfazed Justice Deslauriers followed standard procedure and instructed the clerk to record not guilty.<sup>418</sup>

Later that day, as the proceedings continued, Chartrand asked why the arraignment was being held in a Québec prison on Parthenais Street instead of a Montréal courthouse—he concluded the authorities intended to maintain the psychosis of war times.<sup>419</sup> Then, Pierre Vallières took issue with the time frame of the accusation. The indictments stated that the five had unlawfully taken part in a seditious conspiracy aimed at a change of government in Canada, primarily in the Province of Québec, through advocating the use of force without the authority of laws<sup>420</sup> and that this episode of the seditious conspiracy occurred between 1 January 1968 and 16 October 1970. He asked:

VALLIÈRES:           Why January 1968? Why not January 1967 or 1966?  
We could go back to 1838, not January 1968, it's  
completely absurd.<sup>421</sup>

Through invoking the history of the 1837-1838 rebellions, Vallières no doubt was aware that the *patriotes* were tried by special courts martial and Québec was governed by an appointed Special Council for an extended period after the crisis.<sup>422</sup> The symbol of the *patriotes* watermarked the pages of the FLQ Manifesto.

Gérard Pelletier wrote critically that conflating the *patriotes* and the FLQ is problematic. While Papineau and his colleagues were members of the established elite, a

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<sup>418</sup> *Queen v. Chartrand et. al.* Pre-trial Arraignment (Case #70-6700 and #70-6701) Court of Queen's Bench, Criminal Jurisdiction, November 5, 1970, *Bibliothèque et Archives nationales du Québec* (BAnQ), Old Montréal, P839, S2, D13, Localisation: 4 0 004 10-05-003B-01, Box: 2010-12-0042.

<sup>419</sup> *Ibid.*, 32.

<sup>420</sup> J.C.B.R., "Jugements Inédits," *R.J.T.* 6 (1971): 608.

<sup>421</sup> As Vallières stated it: "pu remonter en 1838, pas janvier 68, c'est complètement idiot et complètement absurde." *Queen v. Chartrand et. al.* Pre-trial Arraignment, Case #70-6700 at 9.

<sup>422</sup> Fecteau, "The Ultimate Resource," 216; Matty Wood, "Unresolved Issues: The Roots of the 1970 FLQ Crisis in the Rebellions of 1837-1838 in Lower Canada," in *Engaging Terror: A Critical and Interdisciplinary Approach*, eds. Marianne Vardalos, et. al., eds. (Boca Raton, FL: Brown Walker Press, 2009), 287-300.

groundswell of proletariat *patriotes* stood behind them. Not so for the FLQ, argued Gérard Pelletier. The labouring class, he contended, did not stand behind the FLQ in full force and the perceived FLQ leadership were Franco-Québécois intellectuals.<sup>423</sup> For Vallières and Gagnon, who wanted to act and look as if they had such support, this could not be further from the truth. Core to their ideological commitments was the belief that political and social agitation would coalesce and politicize existing movements and committed workers. By 1971, gone were the days of mobilizing three thousand people in the Jean Sauvé arena chanting “FLQ!” The October Crisis and the drawn-out criminal trials had shifted public perception away from the political messaging of the FLQ to holding the government accountable for its responses.

The most poignant challenger to the haphazardly delimited timeline of the seditious conspiracy indictment was Michel Chartrand. He proclaimed: “This accusation is ridiculous. In my case, I have been [committing] ‘sedition’ since 1938. Day and night, I have always struggled openly and systematically against the red bandits and the blue bandits.”<sup>424</sup> In short, the accusation was arbitrary. Given the political positions of the FLQ, sedition charges attempted to silence FLQ propaganda in court, yet this was not the outcome. In some instances, *felquistes* defendants emphasized their innocence to the judge, but in others, especially with the net cast wide, they rebuked the Crown’s timeframe as identified in the indictment arguing that it did not go far enough. Instead of logical and procedural argumentation, the performed legal defence, which sometimes included

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<sup>423</sup> Gérard Pelletier, *The October Crisis*. Translated by Joyce Marshall (Toronto: McClelland and Stewart Limited, 1971), 153-157.

<sup>424</sup> Chartrand: “Cette accusation est ridicule. Dans mon cas, je fais de la ‘sédition’ depuis 1938. J’ai toujours lutté ouvertement et systématiquement, jour et nuit, contre les bandits rouges et les bandits bleus.” Foisy, *La Colère du Juste*, 168.

absurdist claims, attempted to delegitimize the Crown's case.

In a *Last Post* article penned by his partner and entitled "Michel Chartrand's '30-year conspiracy,'" Simone Chartrand chronicled his life-long resistance to state oppression of labour radicalism. As context, Chartrand read his personal-political journey as formative to the hardening of his labour fanaticism against what he viewed as the follies of the French-Canadian government embodied by the *Union Nationale*. After working as a labourer building roads in Northwestern Québec, Chartrand returned to Montréal to organize the 'no campaign' during the 1942 conscription plebiscite. While Québec voted no, the rest of Canada voted yes and many Canadians were sent off to Europe. But, with the backdrop of the conscription crisis and an active war, old school friends Chartrand and Pierre Trudeau would unite to challenge the censorship of the WMA as it stymied debate on conscription. Simone Chartrand even remarks on how Trudeau expressed frustration with the state's use of police power to silence dissidents.<sup>425</sup> Both Vallières and Chartrand referred to Trudeau's writing to bolster their case and in an attempted to put the 'state' on trial they called on Trudeau to testify as a witness during the trial. Trudeau, of course, did not.<sup>426</sup>

As a critical reading in Québec legal history, this reading of the Trial of the

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<sup>425</sup> Simone Chartrand, "Michel Chartrand's 30-year conspiracy," *The Last Post* 1, no. 6 (January 1971), 19. Service des archives et de gestion des documents, UQÀM, Bernard Mergler Files, 25P-148:1-22.

<sup>426</sup> Through the 1950s, Chartrand encouraged Trudeau to take the lead in the Québec branch of the Co-operative Commonwealth Federation (CCF) to fight Duplessis, to no avail. Nonetheless, Chartrand's continued defiance of Duplessis' anti-union authoritarianism found him jailed in Asbestos, Québec, in 1949, and at the center of a heated strike in Murdochville, Québec, in 1957, where two Steelworkers Union members were killed by police. Of note, October 1970 was not the first time he faced jail time for sedition. Simone Chartrand and Bryan Palmer both offer accounts of the Bill 63 Affair, in which the *Union nationale* advanced language that permitted parents full rights to determine the language of education for their children, contributing to the assimilation of non-Francophone immigrants by the English minority. In response, Chartrand, while giving a speech on the issue threatened the bombings of English-language universities and found himself jailed on a charge of sedition. While this charge was dropped, it was evidence of the Crown's broad interpretation of the provisions relative to those who oppose state policies and spoke out against the government. Chartrand, "Michel Chartrand's 30-year conspiracy," 22; Palmer, *Canada's 1960s*, 354.

Montréal Five is an analysis of the performative character of a political trial. Here, I offer an examination of the legal defence strategies of the self-represented FLQ defendants who stand accused of seditious conspiracy in the wake of the October Crisis. The courtroom performances of the Five, which was a planned legal defence, was forced to test the vague boundaries of the indictment. Confrontation not deference was what led Justice Ouimet to his decision to withdraw the charges. The Trial of the Montréal Five was a success in the view of the FLQ not because they out-argued the Crown, but because they adopted a legal strategy that appealed to the rules and process of law. While interactions were heated and disrespectful to the bench, they operated within the boundaries of the juridical arena. The jurisdiction of the court (as it had been in earlier FLQ trials) was not debated. As such, I point to three moments in the trial: (1) when Chartrand and Vallières provoke Justice Ouimet by requesting that he recuse himself; (2) when the debate over a motion to dismiss the indictment boils over, Justice Ouimet proclaims the court will continue in closed sessions; and, (3) when Lemieux returns to legal arguments, only to be surprised by Justice Ouimet's decision to dismiss the indictment and order the accused released. While I contend that it was the ineffectiveness of the Crown that resulted in the dismissal of the charges, the FLQ's legal self-defence demands attention as its critique contributes to critical readings of political trials, dissident defendants, emergency measures in Canada, and histories of nationalist struggle in Québec through the late 1960s and early 1970s.

### **5.3.1 The Provocation of Justice Roger Ouimet: A Request for Recusal**

On 8 January 1971, the pre-trial proceedings began in a peculiar space. A sixth-floor room in the Québec Provincial Police Headquarters on Parthenais Street had been

designated the fourth division of the Court of Quarter Sessions. While irregular, this designated courtroom was where the pre-trial hearings proceeded.<sup>427</sup> Spatially, the hearings, which were housed in the same building as the defendants were imprisoned awaiting trial, signalled a stark power imbalance between the state and the defendants.<sup>428</sup> The defendants, however, were quick to point this out. The continued institutional confinement pushed Chartrand to ask: Why aren't we treated as ordinary criminals?<sup>429</sup> This question, which at its core, expressed Chartrand's frustration with his ongoing incarceration also emphasized a tacit desire for a depoliticized process. This logic reveals an internal tension within the FLQ defendants' legal strategies—who, in some instances, wanted to eschew the legal system for its maintenance of an oppressive socioeconomic order, but also command the legal system as a forum for their political message benefit from the rights afforded to defendants.<sup>430</sup>

As expected, Vallières, Gagnon, Lemieux, and Chartrand acted as their own legal representatives. Larue-Langlois employed the legal services of the FLQ-associated lawyer, Bernard Mergler. While self-representation was risky due to the serious and ubiquitous nature of the seditious conspiracy charge, the four self-represented defendants had all conducted their own defences in previous criminal trials. The Crown's decision to prosecute all five men together (they had petitioned to be separated) was never explained nor did the decision fit the prosecutorial pattern as the Crown had a history of separating FLQ defendants<sup>431</sup>

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<sup>427</sup> Foisy, *La colère du juste*, 167.

<sup>428</sup> de Graaf, "Terrorists on Trial," 8; Meierhenrich and Cole, "In the Theater of the Rule of Law," 245-248.

<sup>429</sup> *Queen v. Chartrand et. al.* Pre-trial sessions (Case #70-6700), 5 November 1970, 31.

<sup>430</sup> Warren, "'Outrage au peuples!'" 17-19.

<sup>431</sup> In the LaGrenade Affair trials, Vallières and Gagnon were initially set to be tried together, but then were separated.

The Crown, represented by five special prosecutors—Jacques Ducros, Gaby Lapointe, Jean-Guy Boilard, Fred Kaufman and Yves Fortiers—proceeded by way of direct indictment, which permitted them to only submit evidence at the time of the trial. This approach skipped the added rigor of a preliminary investigation. Justice Ouimet indicated that the direct indictment constituted an injustice to the accused and would take a significant stretch of the imagination to amend the indictment to include details sufficient to frame the accusation and inform the defendants of the evidence against them.<sup>432</sup> A few months earlier, in the unlawful association and possession of prohibited materials case of Como Leblanc (a young *felquiste* swept up in the 16 October mass arrests), the Crown had similarly struggled to collect sufficient evidence for an indictment and instead relied on a suggestive argumentation approach in lieu of stronger evidence-based claim. The speculative evidence relied on by the Crown included owning certain books, living on employment insurance, and having ‘unfavourable’ posters in the room he rented.<sup>433</sup> As the seditious conspiracy trial began, it became clear that the Crown was underprepared.

Imprisoned since 16 October 1970, Lemieux, Gagnon, Vallières, Chartrand and Larue-Langlois applied for bail on multiple occasions only to be denied. Ron Haggart and Aubrey Golden note that bail only began to be granted on 10 December 1970.<sup>434</sup> In an 8 January bail hearing, in which bail for the five defendants was denied, Chartrand was charged with five counts of contempt of court. The stage was set. In a final effort to be released before trial, on 14 January 1971, the four men (Larue-Langlois had been granted

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<sup>432</sup> Ouimet: “Dans la présente instance, il serait impossible au tribunal, même en faisant des efforts fébriles d’imagination, de tenter de réparer le vice de forme en ordonnant que l’on fournisse des particularités.” J.C.B.R., “Jugements Inédits,” 610; and Rico, “Les événements,” 31-3.

<sup>433</sup> Rico, “Les événements,” 31-2.

<sup>434</sup> Golden and Haggart, *Rumors of War*, 198.

bail) petitioned for *habeas corpus*, a remedy reserved for persons unlawfully detained. They did so on the grounds that detention under the POA was unconstitutional and therefore their detention illegal. Two weeks later, on 29 January, Justice Bergeron denied their application. While the courts responded to the FLQ defendants' administrative and procedural requests, the Crown raided the head offices of the CSN. Scrambling to collect incriminating evidence against Chartrand, his place of work was targeted.<sup>435</sup>

Finally, on Monday 1 February, the Trial of The Montréal Five began. Chartrand, who initiated the application for the recusal of the judge, opened with references to the *Canadian Bill of Rights, 1960*, and *Drybones (1969)*, referencing the parallel application of the right to a fair hearing afforded to Joseph Drybones noting that we should remember that these rights are enshrined in the *Canadian Bill of Rights*.<sup>436</sup> In an account of the recusal application hearing by Fernand Foisy, Chartrand, who had been sanctioned just weeks before for his aggressive argumentation, presented a new demeanor. As Chartrand opened, he was interrupted by Justice Ouimet, and while the body language of accused was undocumented in the transcripts, Foisy described the uncaptured moment as Chartrand feigning fear of further contempt of court sanctions.<sup>437</sup> Court records, of course, do not account for how defendants or other parties to the trial moved and physically interacted within the courtroom. Theatrically, Foisy's text added stage directions to his abridged transcript excerpts.<sup>438</sup> This play-acting, which also included moments of cross-talk to his

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<sup>435</sup> Leroux, *Les Silences D'Octobre*, 28-29.

<sup>436</sup> Chartrand: "...alors même si on est des Indiens à face blanche, il ne faut pas oublier que les droits sont consacrés dans la Déclaration canadienne des droits." Chartrand, et. al., *Le procès de Cinq*, 26-7.

<sup>437</sup> Foisy, *Le colère du juste*, 182.

<sup>438</sup> On this point, Elizabeth Sheehy writes court transcripts require context and surrounding documents to anchor analysis because without context transcript research becomes a representation of the transcription and not about the individual subjectivities that are a part of the studied cases. Elizabeth A. Sheehy, *Defending Battered Women on Trial: Lessons from Transcripts* (Vancouver: UBC Press, 2014), 92.

co-defendants, police officers, and the audience, shaped the hearings as the defendants spoke directly to a variety of audience members as they ignored the court, and for the most part Crown counsel.

After Chartrand's demand that the judge recused himself, Vallières attempted to reinforce the position. He directed attention to previous instances in which Ouimet sat in judgement on motions, rejected bail applications, and censured the FLQ defendants through the pre-trial proceedings. Unexpected by Justice Ouimet, Vallières declared that he wanted Justice Ouimet to testify in the proceedings of his own recusal. Pushed to the defensive, Justice Ouimet affirmed:

I'm not ashamed of what I said. For 40 years of my life I tried to explain to the English-speaking part of the country—I represented the French-speaking part [...] for 15 years I was in close relationship with the English-speaking part, at the time when, especially in Ontario, we had endless difficulties with language and even the religion, I still tried with my humble means to push for harmony in the country. I thought that even as a judge, I had the right to express some opinions on this.<sup>439</sup>

At this point, it was late in the afternoon on 1 February, and Vallières continued to dig into the political affiliation of Justice Ouimet. The testimony, perhaps unwittingly, of Justice Ouimet was on full display. This subtle inversion of process by Vallières made public the Justice Ouimet's familial history of political engagement. Frustrated with Vallières, Justice Ouimet emphasized that he had not been affiliated with a political party for fifteen years. To paraphrase Vallières' retort, he stated that he was not being judged by a court, but by a political party and that it was on those grounds that he asked that Justice Ouimet recuse himself.<sup>440</sup>

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<sup>439</sup> Chartrand, et. al., *Le procès de Cinq*, 60.

<sup>440</sup> Vallières: "Mais monsieur le juge Ouimet, l'impression que j'ai c'est que je me trouve pas devant une cour mais devant un parti politique et que ceux qui me jugent aujourd'hui, c'est les libéraux, les membres du

Finally, Charles Gagnon and Robert Lemieux lectured Justice Ouimet on his perceived partiality indicating the in times of crisis it is of particular importance for the judiciary to remain impartial.<sup>441</sup> By Thursday the same week, Justice Ouimet had returned with a decision on the motion.<sup>442</sup> While tasked to determine if he himself was guilty of bias against the accused, Justice Ouimet proclaimed his impartiality was intact and refused to recuse himself. He elaborated on this decision, indicating that if it took only one charge of contempt of court against a defendant who now finds themselves in front of the same judge, the legal system would slow to a halt. He concluded: the defendants have nothing to fear. They will quickly realize the extent of the impartiality of the judge presiding their trial.<sup>443</sup>

### 5.3.2 Justice Ouimet and the Move to Closed Sessions

On 4 February, Charles Gagnon filed a motion to dismiss the seditious conspiracy indictment. Due to the Crown's lack of probative evidence and not because the Crown was basing its case on secret or sealed evidence, Gagnon's argument was straightforward: the defendants have the right to know what they are being accused of so that they may present a full defence. Then, Vallières attacked the court. His methodical oration targeted the presiding judge, Justice Ouimet.<sup>444</sup> While anchored in a well-reasoned understanding of the law, I refer to the trial transcripts where Vallières set out to in his attempt to agitate the bench. Nonetheless, Justice Ouimet, in his later decision to dismiss the indictment, relied

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Parti libéral. C'est un parti et non pas un tribunal et c'est un des autres motifs que je demande...sur lequel j'appuie ma demande de récusation." Ibid., 64-5.

<sup>441</sup> Ibid., 70.

<sup>442</sup> Ibid., 75-6.

<sup>443</sup> Ouimet: "les accuses n'ont rien à craindre. Ils saront vite se rendre compte de l'étendue de l'impartialité du juge qui présidera leur procès." Ibid., 76.

<sup>444</sup> I have included below an extended translation of the transcript to capture the exchange between Vallières and the court.

upon the very legal principles introduced by the FLQ defendants. Rather than remain focused on refuting what constituted a seditious conspiracy, Vallières began to play the room—to embarrass the judge—to participate in the political theatre of his design. The exchange starts with Vallières echoing the comments of Gagnon:

VALLIÈRES:           So, what we ask is the rejection of the indictment because we want to be accused of something, or we are not interested to stand a trial, a ‘show,’ a circus, to allow the Queen...

THE COURT:           Be sure that there will be no circus in front of me.

Vallières, who called out the court for facilitating a political trial, states he is not interested in participating in one. In expressing his disinterest in participating in a political trial, Vallières attempted to politicize the proceedings to his benefit. Although the characterization of the trial as a circus is a popular refrain, a circus is a carefully choreographed event.<sup>445</sup> The FLQ trial defendants, however, were often unpredictable as they argued through spontaneous interactions and tangents. As a performative act, Vallières pushed up against the boundaries of contempt with spontaneous and absurdist characterizations of the proceeding in an attempt to goad the bench into a reaction that would be viewed as repressive and therefore undermine the legitimacy of the trial. The exchange continued:

VALLIÈRES:           To allow the Queen to pretend that a conspiracy existed, and to help Trudeau, Bourassa, Choquette and Drapeau to justify military intervention [. . .] So if you want to preside over a witch-hunt, go ahead. If you don't, then reject the accusation now, because otherwise it's a witch-hunt that you are running, and nothing else. [*Laughter in the Courtroom*]

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<sup>445</sup> Carolyn Strange and Tina Loo, “Spectacular Justice: The Circus on Trial, the Trial as Circus, Picton, 1903,” *Canadian Historical Review* 77, no. 2 (1996): 163-68; Paul Schervish, “Political Trials and the Social Construction of Deviance,” *Qualitative Sociology* 7, no. 3 (1984): 195.

- THE COURT: Please.
- VALLIÈRES: It is much vaguer than the charges against Angela Davis . . .
- THE COURT: That's not the point.
- VALLIÈRES: We try to specify the charges... [*Interrupted*]
- THE COURT: That's not the point.
- VALLIÈRES: But here we 'elasticize' them.
- THE COURT: That's not the point, all these... [*Interrupted*]

Vallières, who had been sanctioned with contempt of court charges during mid-January bail requests, remained steadfast in his indictment of proceedings that would not detail the charge against him and his colleagues. Using the proceedings to call out Canadian and Québec authorities for their use of war powers in peacetime, Vallières did not have to spend much time defending himself against the hollow indictment.

As the jokes and interruptions continued—the audience and Vallières had relaxed into a feedback loop that was riling up the emotions of the courtroom—Chartrand now takes notice of Justice Ouimet's second threat:

- VALLIÈRES: Trudeau received congratulations from the Colonel in Chief in Greece for sending the army in.
- [*Laughter in the Courtroom*]
- THE COURT: I warn for the second time the room that if there are applause, laughter or demonstrations, I will do a closed-door hearing.
- VALLIÈRES: Of course, the witch-hunt... [*Interrupted*]
- [...]
- CHARTRAND: But threatening everyone to do a closed hearing because there are some people applauding, when we don't even know if they are the police or not, that's a lot.

[*Laughter in the Courtroom*]

[...]

THE COURT: Mr. Vallières, I'm going to have to ask you to stop your speech—you exaggerate. You are in front of a court of justice, and you're going to stick to what the president of the court tells you.

VALLIÈRES: I am in front of a political court.

THE COURT: This is a justice court.

VALLIÈRES: Political.

THE COURT: Which is not political.

VALLIÈRES: Political.

THE COURT: Well, you are going to take back those words or I must find you guilty, you know for what.

[*Laughter in the Courtroom*]

VALLIÈRES: I am in front of a political court, Mr. President.

THE COURT: That's fine, I will note what you are saying...  
[*Interrupted*]

VALLIÈRES: Take notes.

THE COURT: I will do what's necessary

Marshalling the blurred representative space of the self-represented defendant—as both legal representative and accused—Vallières and his colleagues agitated and politicized the proceedings to a tipping point: on the afternoon of Friday 5 February, the trial moved into closed sessions. While the move to a closed session was an attempt by the judge to maintain the dignity and decorum of the court, it also spurred criticism and evoked historical comparison to secret trials used to orchestrate political justice. For Justice Ouimet, a closed session was used to assert authority from the bench and maintain the decorum of the proceedings. He used the closed session to deprive the FLQ defendants of exactly what

they craved: a public audience.

Nonetheless, an angered Chartrand pressed Justice Ouimet and asked him why the audience was being deprived a public trial and pleaded with the judge that he should instead charge the defendants with contempt of court or take an adjournment if the judge could not restrain himself.<sup>446</sup> As noted in the transcripts, audience participation in the interactive dialogue of the defendants was a part of the power of disruptive behaviour. The defendants would speak to parties not involved in the proceedings (e.g., the police) and often waited for the courtroom audience to finish laughing before continuing with their speeches. The Montréal Five, disenfranchised by the violence of the state exacted upon them by emergency law, employed techniques of provocation to capitalize on the political character of the criminal offences and reveal the fallibility, performative operations, and unconventional nature of this now ‘closed session’ seditious conspiracy trial. Again, while the defendants addressed the court, they spoke through the court with criticism of and contempt for the state.

### **5.3.3 Lemieux’s Summation and the Surprise Dismissal of Indictments**

Louis Hamelin, in his 2010 preface to *Le Procès des Cinq* (The Trial of the Five), an abridged version of the 619-page transcript of the seditious conspiracy proceeding, wrote that despite the colourful exchanges between the judiciary and the defendants, the Crown’s case boiled down to one problem: if words can overturn a government, the least the State can do is quote them. Such a misstep dealt the fatal blow to the seditious

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<sup>446</sup> Chartrand: “Envoyez-nous des mépris de cour, mais vengez-pas sur le public. Si vous êtes pas capable de vous retenir, donnez votre place. Prenez des ajournements.” Chartrand, et. al., *Le procès des Cinq*, 111.

conspiracy accusations.<sup>447</sup>

On Monday, 8 February 1971, the public was readmitted, and Robert Lemieux shifted to legal arguments challenging the admissibility of the indictment and the constitutionality of the temporary emergency measures. As the final week of the trial concluded, the arguments presented by Lemieux and Vallières echoed earlier comprehensive submissions arising out of a 25 November 1970 bail application (rejected by Justice MacKay)<sup>448</sup> and a 14 January 1971 application for a writ of *habeas corpus* (dismissed by Justice Bergeron).<sup>449</sup> While not framed as a provocation, Robert Lemieux restated the two key legal positions of the FLQ: (1) that the government nor the court could offer reason or provide evidence of an apprehended insurrection and that such a proclamation by the Governor in Council was unconstitutional and as such their arrests illegal; and (2) that there was no evidence that the accused defendants had participated in the alleged seditious conspiracy through the near two-year period identified in the indictment. These legal positions—motions that argued for the dismissal of the indictment and that the apprehended insurrection was unconstitutional—veered away from questions of guilt. By not entering into direct argumentation concerning culpability and instead using motions to attempt to quash the case, the FLQ defendants navigated the Crown's attempt to have the defendants declare their own harmlessness (e.g., we did not commit sedition). In fact, the defendants, as indicated above, rhetorically articulate the opposite, but over a much longer period.

Nonetheless, the constitutional questions latent in the case and present from the

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<sup>447</sup> Ibid., 5-18.

<sup>448</sup> *Queen v. Chartrand et. al.* Robert Lemieux's Bail Application (Case #70-6700) at 17-28.

<sup>449</sup> *Gagnon and Vallières v. The Queen* (1971), 14 CRNS 321. (Québec Court of Appeal) at 117.

proclamation of an apprehended insurrection would be adjudicated in *Vallières and Gagnon* (1971) on a 22 March appeal. In *Vallières and Gagnon*, in which Justice Brossard dismissed the appeal, the learned judge offered a comprehensive analysis of the context. Justice Brossard confirmed the earlier pre-trial judgements of his colleagues, Justices MacKay and Bergeron, and reasoned that the proclamation of an apprehended insurrection, the POA's retroactivity, and the legislative character of the POA articles were all indeed within the bounds of the constitution. However, he did concede that on the matter of the presumption of innocence, the POA posed a serious challenge although the impetus for the legislation concerned more with protecting the innocent rather than facilitating the acquittals of guilty parties.<sup>450</sup> Greenwood, however, remarked on the presumption of innocence matter that the POA, similar to section 98, reversed the presumption due to its retroactive possibilities. He added that even some Québec lawyers hesitated, in the early days of its passage through Parliament, to represent those accused under the regulations.<sup>451</sup>

By Tuesday 9 February, Lemieux had completed his submissions, and Justice Ouimet indicated that proceedings would be postponed until Friday so that he could rule on the motions and matter before the court. Much to everyone's surprise, on Friday 12 February, Justice Ouimet dismissed the indictments. In his written submission, he argued, that due to the lack of a preliminary investigation by the Crown it was unclear why they brought the seditious conspiracy charges against the defendants.<sup>452</sup> Relying on *Harrison and Burdeyney* (1965), a British Columbia case, Justice Ouimet reasoned that the Crown

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<sup>450</sup> Ibid., at 139-40.

<sup>451</sup> F. Murray Greenwood, "L'insurrection appréhendée et l'administration de la justice au Canada: le point de vue d'un historien," *Revue d'histoire de l'Amérique française* 34, no. 1 (1980): 90-1.

<sup>452</sup> Rico, "Les événements," 18; Chartrand, et. al., *Le procès des Cinq*, 18; and Lachapelle, "La Crise d'Octobre 1970." 380.

had failed to meet the requisite threshold of a conspiracy complaint as outlined in section 492(3) of the *Criminal Code*: “a charge must provide sufficient detail and reasonable information about the crime to which the conspiracy refers.”<sup>453</sup> He continued that the general charge of conspiracy over multiple years made pinning down moments of seditious intention, and especially the instances in which FLQ associates ‘advocated’ such an intention, next to impossible. How could they even prepare a defence to such an accusation?<sup>454</sup> How can it be said, asked the judge, that the charge did not contain, with respect to the circumstances of the alleged offense, sufficient evidence to reasonably inform the accused of the acts or omissions that were to be proved against them?<sup>455</sup> While the late William Tetley described the quashing of the seditious conspiracy indictment as being dismissed on a “technicality,”<sup>456</sup> I contend this makes light of the decision and that such a reductive characterization undermines efforts to write the history of the FLQ legal encounters. Tetley, who was Bourassa’s Minister of Financial Institutions, Companies, Cooperatives, and Consumer Protection during the October Crisis, has faced criticism by others for his reductive and partisan account of October 1970, although Tetley contends that his account was not meant to be historically decisive.<sup>457</sup>

After the October Crisis, immense political pressure to prosecute mounted. Even after Justice Ouimet’s dismissal of the first seditious conspiracy charges, all five were charged again with seditious conspiracy on 8 March 1971. With the second trial set to begin against Vallières, Gagnon and Larue-Langlois on 4 May, Gagnon quipped as he presented

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<sup>453</sup> J.C.B.R., “Jugements Inédits,” 610.

<sup>454</sup> MacKinnon, “Conspiracy and Sedition,” 35-6.

<sup>455</sup> J.C.B.R., “Jugements Inédits,” 611.

<sup>456</sup> Tetley, *The October Crisis, 1970*, Appendix Z: The Place of the Crisis in Québec and Canadian History, 35. Accessed via: [https://historyofrights.ca/wp-content/uploads/documents/FLQ\\_appendixz.pdf](https://historyofrights.ca/wp-content/uploads/documents/FLQ_appendixz.pdf)

<sup>457</sup> Lachapelle, “La crise d’Octobre 1970,” 387.

his motion to dismiss the indictment: “If the Crown purports to prove the absurd project by which Pierre, Jacques, and myself have agreed to overthrow the government, and while Ottawa and Montréal are full of well-armed soldiers, then I will immediately present a defence of insanity.”<sup>458</sup> While Vallières’ second trial for sedition and the added charge of counselling kidnapping and murder was delayed until 7 September 1971, Gagnon and Larue-Langlois were acquitted of the second round of charges. However, many of the *felquistes* still faced unlawful association charges pursuant to section 4 of the POA. After a jury acquitted Gagnon and Larue-Langlois of this charge on 15 June, a precedent was set that applied to many of those charged with the same offence under the emergency measures.<sup>459</sup> Vallières, however, did not show for his September trial. Two French-language Montréal newspapers reported that he had gone underground to attend to far more important matters than participate in his politicized criminal trials.<sup>460</sup>

In mid-August, *felquistes* who still had FLQ-related charges pending (but no set trial date) had their charges suspended by an order of *nolle prosequi* (a formal abandonment by the Crown on a charge). On this development, José Rico wrote that on while first viewed as an act of clemency by the Crown, the declaration was quickly understood as an indeterminate postponement. Rico points to J.C. Leclerc’s scathing editorial in *Le Devoir* to sum up the order: “It would be too easy for politicians to suspend proceedings against opponents, to hang a sword of Damocles over their heads and in defiance of the law, to substitute for the judgments of the courts the stigma of perpetual suspicion.”<sup>461</sup>

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<sup>458</sup> Gagnon: “Si la Couronne prétend prouver l’absurde projet par lequel [nous trois] nous sommes entendus pour renverser par la force le gouvernement [...] alors que [les capitales] fourmillent de soldats bien armés... je vais présenter immédiatement une défense d’aliénation mentale.” Leroux, *Les Silences D’Octobre*, 30.

<sup>459</sup> Fournier, *FLQ*, 405.

<sup>460</sup> Donald J. Riseborough, ed. *Canada and the French* (New York: Facts on File Inc., 1975), 226.

<sup>461</sup> Leclerc: “Il serait trop facile pour des politiciens de suspendre des procédures intentées contre des adversaires, d’accrocher au dessus de leur tête une épée de Damoclès et ainsi, au mépris des lois, de substituer

## 5.4 Conclusion

Through analysis of the Trial of the Montréal Five, I argued that the criminal trial proceedings often afforded political defendants the opportunity to oscillate between strategies of politicization. While this argument informed the presented analysis, de Graaf's typology of performative perspectives on terrorism trials, which contended that, while rare, trials in which the defendants and their legal representative attempt to 'take the lead' or dominate the trial narrative arise in contexts of politicized accusations (e.g., seditious conspiracy) and heightened media attention (e.g., the post-October Crisis context).<sup>462</sup> Adding to this, Beatrice de Graaf suggested that trials in which the political defendants 'take the lead' are read as performative because the defendants are more interested in calling the judicial system into disrepute than attending to accusations. And while the FLQ trials could fit into a reading of de Graaf's framework, I distinguished the trial of The Montréal Five, which had no direct involvement in the kidnappings (and death) of state officials, by examining their paradoxical relationship with the law: the FLQ defendants strategically undermined the legitimacy of their trials through their politicized use of legal arguments and procedures, and not a flat-out refusal of the legal system.<sup>463</sup> The defendants saturated the court with motions, applications, and requests. They manipulated the blunt procedural elements of law to stall, challenge, and open spaces of contestation to

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aux jugements des tribunaux un stigmate de soupçon perpétuel." J.C. Leclerc, *Le Devoir*, 30 Août 1971 as quoted in Rico, "Les événements," 33.

<sup>462</sup> As an example, de Graaf points to the Stammheim Trial of the Baader-Meinhoff Group. Beatrice de Graaf, "Terrorists on Trial: A Performative Perspective," The Hague: ICCT (International Centre for Counter-Terrorism), Expert Meeting Paper, 2011, 10-11. Also, see Frauke Brammer, "Legs d'automne: le terrorisme des années 1970 au Canada et en Allemagne de l'Ouest," in Ivan Carel, Robert Comeau, and Jean-Philippe Warren, eds., *Violences Politiques: Europe et Amériques, 1960-1979*. (Montréal: Lux Éditeur, 2013), 193-220.

<sup>463</sup> Such refusals of the legal system and its instruments was an early tactic of FLQ defendants during the first generation of FLQ trials in 1963.

‘indict the state’ and bait the judge into ‘testifying’.

In this vein, the work of a judge—to maintain decorum in the courtroom—is often challenged by defendants’ theatrics. While judges tend to bolster the “state’s authority as the protector of law and order,” judges may also become involved in the very overt theatrics they intend to spurn.<sup>464</sup> For example, and similar to the decision to use contempt powers (and become an active party to ongoing proceedings), the removal of the courtroom audience could be viewed as both an attempt to maintain courtroom decorum or an overreaction by the bench to defendants’ antics. In one reading, the provocation of Justice Ouimet, which resulted in the closed sessions on 5 February 1971, revealed to the defendants, the public audience, and the Crown just how quickly orderly justice may begin to unravel. In another reading, and with a consideration of the legal performance of the judge, the decision to move to closed sessions reiterated the power of the bench as it contended with unruly defendants jockeying for an opportunity to make the bench appear oppressive.

Finally, the controversial use of the WMA set the stage for the seditious conspiracy trials and arguably reflected the orchestration of repressive responses between the federal and provincial governments. While the sweeping executive emergency powers of the federal government had been experienced before, they had never been invoked during peacetime. To the credit of the Québec Justice Department, on 12 March 1971, Choquette made public that the department would compensate (up to a total of \$30, 000) people who were unjustly arrested as a result of the WMA.<sup>465</sup> By July, Louis Marceau, Québec’s

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<sup>464</sup> Grunwald, “Justice as ‘Performance’?” 57-8.

<sup>465</sup> Claude Bélanger, “Chronology of the October Crisis, 1970, and its aftermath,” Marianopolis College (last revised 23 August 2000). See: <http://faculty.marianopolis.edu/c.belanger/quebechistory/chronos/october.htm>

ombudsperson, reported to the National Assembly that he had found 103 of the 238 complaints arising from the application of the WMA to have been justified.<sup>466</sup>

While compensation of the unjustly detained was an important step in recognizing the dangers of broad emergency powers, the Québec Crown's ongoing prosecution strategy against the FLQ proceeded in this context of crisis as it marshalled the ubiquitous offence of seditious conspiracy—an approach familiar to earlier organized movements of resistance and other political dissidents who mobilized against the state through the 20<sup>th</sup> century. Despite the confidence of the Crown and a situation of proclaimed apprehended insurrection, the self-represented FLQ defendants pressed the trial court with motion after motion, with creative political and legal assertions, and with a tenacity that blurred the lines of what was understood as appropriate courtroom behaviour.

This insight into the *felquistes* political trials reflects the maturity of the strategies marshalled by the FLQ in the courts by the 1970s. Again, the focus here is an examination of how the FLQ trials were used as a space that afforded both political and legal contestation of the indictments faced by the defendants. The strategic use of self-representation through the earlier *felquistes* trials, LaGrenade Affair proceedings and the Trial of the Montréal Five illustrated how this tactic changed over time as legal encounters became a regular occurrence for active FLQ members. While the FLQ, in facing prosecution, attempted to fully exploit the platform of the courtroom as another front in their waning political struggle, the courts also had powerful tools to manage proceedings. The chapter that follows examines the most important of these tools, the summary power of contempt of court. Used by judges, contempt was a means to censure political

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<sup>466</sup> Tetley, *The October Crisis, 1970*, Appendix E: “The Aftermath of the Crisis, 3. Accessed via: [https://historyofrights.ca/wp-content/uploads/documents/FLQ\\_appendix.pdf](https://historyofrights.ca/wp-content/uploads/documents/FLQ_appendix.pdf)

defendants. The analysis that follows explores the double effect of this summary power, first as censure for misbehaving in court, disobeying a court order, or scandalizing the court; then, as a base for a separate charge where the court conducts its condemnation and sentencing for the charge the court initiated.

## Chapter Six: Contempt of Court and the FLQ Political Trials

In the coming weeks, the justice system will face cases of unusual complexity due to their inevitable political character. To minimize the problems that may arise, exceptional procedures have already been used in several cases, which accentuate this political character already exerted in the circles of power. An attempt will also be made to increase recourse to the offense of contempt of court. Yet this would place justice on a very slippery slope.

—Claude Ryan, editor of *Le Devoir*.<sup>467</sup>

### 6.1 Introduction: The Contemptuous *Felquistes* Defendants

In the legal aftermath of the 1970 October Crisis, twenty people were convicted a total of sixty times for contempt of court and sentenced to a total of twelve years in prison.<sup>468</sup> For Otto Kirchheimer, who reflected on the postwar American context, contempt of court was one of the key juridical tools used to manage uncooperative political defendants.<sup>469</sup> This chapter shows that Québec judges pushed the limits of the application of contempt offences, which aimed to manage the FLQ trials and force compliance from the defendants.

An examination of the usage of contempt offences by the judiciary and the defiant responses to them by the *felquistes* defendants reveals that increased reliance on the offence

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<sup>467</sup> Ryan: “La justice devra faire face, dans les semaines à venir, à des causes d’une complexité inusitée en raison du caractère politique qui s’y rattache inévitablement. Afin de réduire au maximum les problèmes pouvant découler de cette perspective, on a déjà recouru dans plusieurs cas à des procédures d’exception qui accentuent ce caractère politique qu’on s’évertue dans les milieux du pouvoir à nier. On sera, de même tenté de multiplier les recours au délit d’outrage au tribunal. Or, ce serait là engager la justice sur une pente très glissante.” Claude Ryan, *Le Devoir*, janvier 11, 1971 as quoted in Isabella Pelletier, “Le terrorisme au Canada: l’exemple de la crise d’octobre 1970” (MSc diss., Université de Montréal, 2002), 110-111.

<sup>468</sup> Warren, *Prisonniers Politiques*, 173; and Morf, *Terror in Québec*, 12 and 89.

<sup>469</sup> Described as a derivative political trial, Kirchheimer characterized contempt citations as a tool wielded for the benefit of the state. Kirchheimer, *Political Justice*, 45.

to maintain order in court had a paradoxical effect. As far as courtroom functionality and decorum was concerned, its usage temporarily interrupted the trial proceedings as the judge summarily handled the contemptuous behaviour. As Ertür argues, defendants who “act out” within politicized criminal trials reveal the trial as a form of theatre.<sup>470</sup> These are the moments when legal conventions, which typically delineate the trial, can no longer “bolster [a] sense of inevitability” or predictability.<sup>471</sup> Discussed with the help of Allo and Ertür in the previous two chapters, the politicized legal defence strategies of *pro se* defendants center the marginalized and silenced narratives of the accused. The defendants, whether successful or not, use the trial to advance a politics of resistance that attempted to destabilize the normative claims of law, which play a role in the silencing of socialist independence narratives. Despite instances when defendants were physically removed from the courtroom for ongoing defiant behaviour, self-represented FLQ defendants appeared emboldened by the jurists’ warnings and attempts to restore order to the court. The charge of contempt, at times, had the opposite impact on recalcitrant defendants who often mocked the judge or pantomimed fear of reproach.

While there are many different types of contempt of court (as outlined in the next section), only two types are relevant to the FLQ trials. First, the refusal of witnesses to testify. For example, Lisa Rose refused to give evidence in the inquest into the death of Laporte or how Jacques Rose, Bernard Lortie, Francis Simard and Linda Baker refused to testify against fellow Chenier Cell members. Second, insults made at the expense of the court in front of the judge and directed towards the bench or legal system. For example, the charge of contempt in the face of the court was used by the bench throughout the

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<sup>470</sup> Ertür, “Spectacles and Spectres,” 67-8; and Leader, “Trials, Truth-Telling and the Performing Body,” 175.

<sup>471</sup> Ertür, “Spectacles and Spectres,” 67-8.

LaGrenade Affair, Trial of the Montréal Five, and against women who stood up during the jury empanelment process and denounced the court for disallowing female jurors.<sup>472</sup>

For the judiciary, however, contempt of court was not an effective sanction against the FLQ defendants. The defendants simply did not see the threat of additional jail time as a deterrent. Moreover, initiated as an exercise of judicial discretion, disruptive or recalcitrant behaviour drew the court away from the legal issues before them and into the matters the judge believed to be contemptuous. The judge becomes a party in his or her own cause as well as judge of it instead of a neutral arbiter.<sup>473</sup> The independence of the court was undermined as it focused on peripheral matters. When faced with an unruly defendant, judges, for example, have the option to give stern warnings or call for a recess so that parties may compose themselves. Also, through these contemptuous disruptions, the FLQ defendants bolstered their internal group creditability between one another and aroused further interest from public audiences and supporters.

For some comparative context of how contempt of court operated during political trials, Sandra Kraft contrasts the legal strategies and judicial responses to the 1969 Chicago Eight trial in the United States with the 1967 legal proceedings against protesters in West Germany. In doing so, she pointed to an April 1968 issue of *Die Zeit*, which characterized the nature of contempt in those trials in a way that resonated with the Québec context: “The contempt charges are part of the court’s power base. Vis-à-vis a defendant who collects them *as if they were trophies*, they must fail.”<sup>474</sup> Relative to the January 1971 preliminary

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<sup>472</sup> Rico, “Les événements,” 40.

<sup>473</sup> Canadian Judicial Council. *Some Guidelines on the Use of Contempt Powers*. May 2001. [https://www.cjc-ccm.gc.ca/cmslib/general/Contempt\\_Powers\\_2001\\_with\\_Header.pdf](https://www.cjc-ccm.gc.ca/cmslib/general/Contempt_Powers_2001_with_Header.pdf)

<sup>474</sup> Sandra Kraft, “Contention in the Courtroom: The Legal Dimension of the 1960s Protests in the German and US Student Movement,” *Journal of Contemporary History* 50, no. 4 (2015): 828n106. Emphasis my own.

hearings of Michel Chartrand, the judicial confrontation devolved into Chartrand daring Justice Ouimet to convict him of multiple counts of contempt.<sup>475</sup> Remarking on the Chartrand exchanges with Justice Ouimet, Gérard Bergeron criticized the “odious character” of the law of contempt of court as it was being used in Québec during the FLQ trials. Judges who convicted and sentenced defendants for contempt could not, he argued, then impartially continue to adjudicate over the present legal proceedings within which the defendant was censured.<sup>476</sup> This double-act of censure was criticized by FLQ members who appealed their contempt of court judgements.

On the one hand, by turning attention to how the judiciary employed contempt through the FLQ political trials, this chapter reads declarations of contempt by the judiciary as a tool of domination that paradoxically opened space for contestation of the Crown’s prosecution of the FLQ and the court’s ability to maintain a fair trial. On the other hand, however, I suggest that the self-represented FLQ defendants subverted judicial reproach through their embrace and mockery of the charge to the extent that it opened space for narratives of resistance. The self-represented *felquistes* distinguished themselves from lawyers in their use of the courtroom space. To that end, I am not only interested in the content of the contemptuous statements, but also its performance in court. Through the use of self-representation, the defendants were extended somewhat broader procedural leeway, which often resulted in contempt of court convictions. In only the rarest of cases could the lawyer-less defendants be removed from the courtroom. For trial court judges, their use of the law of contempt achieved the short-term objective of appearing to maintain decorum

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<sup>475</sup> Chartrand, et. al., *Le procès des Cinq*, 98.

<sup>476</sup> Gérard Bergeron: “Le rapport voyait dans l’outrage au tribunal une disposition « odieuse », le magistrat étant juge dans sa propre cause.” See Gérard Bergeron, “L’appareil judiciaire,” in *L’État du Québec en devenir*, eds. Gérard Bergeron et Vincent Lemieux (Montréal: Les Éditions du Boréal Express, 1980), 160.

in the courtroom. That said, the Québec Court of Appeal overturned or quashed many of the contempt-related convictions and sentences.

Through consideration of translated historical accounts of the trials that featured censure for contempt, archived legal documents including defendant submissions to the courts, and the records of the Québec Court of Appeal (which often referenced the trial court context and judgement at length), this chapter grapples with a central question: how do juridical institutions respond to defiant political speech as uttered by political defendants, self-represented or otherwise, in contexts of politicized criminal trials? Here, Allo asks whether subversive political speech even registers in law.<sup>477</sup> While this question is also pertinent in the previous two chapters, the broader legal-historical context established in those chapters sets the stage for the focus of this chapter. As the LaGrenade Affair and trial of The Montréal Five chapters develop the legal contexts of the main criminal prosecutions of the FLQ intellectual leadership, this chapter hives off a part of those stories—politicized contempt convictions—and recasts how contempt of court was used as a tool marshalled by the judiciary and mocked by political defendants. I further contextualize the FLQ contempt proceedings by situating them relative to its roots in Canadian and British common law and within related debates about political trials and the self-represented defendants.

This chapter is composed of two parts. The first part situates the FLQ contempt cases within the history of the law of contempt of court in Canada. Here, I map out the common law of contempt of court that was at the disposal of Québec jurists and outline how it applied to legal counsel, witnesses, courtroom employees, journalists, and the

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<sup>477</sup> Allo, “Law and Resistance,” 242.

public. The second part examines three separate contempt-related FLQ legal encounters to show how defendants engaged, either purposely or not, in contemptuous speech, how the courts responded, and how contemptuous behaviour opened space for the FLQ defendants to politicize and depoliticize the legal proceedings. The three contempt-related FLQ legal encounters follow several key members through their criminal prosecutions. First, through examination of the numerous contempt convictions of Pierre Vallières in the LaGrenade Affair and the Trial of the Montréal Five, I argue that while contempt effectively silenced Vallières in the short-term, convictions were often overturned and sentenced quashed on appeal. Next, I analyze Warren's characterization of the often-cited January 1971 exchange between Justice Roger Ouimet and CSN president Michel Chartrand. On the one hand, and as Warren points out, Justice Ouimet overstepped through his extended politicization of the exchange; but, on the other hand, Chartrand's 'in-the-heat-of-the-moment' retort can be read in alignment with the broader strategic legal approaches of the self-represented FLQ defendants. In short, prison terms did not represent a significant deterrent variable.

Finally, I examine the performances in the Chenier Cell trials (which included the kidnapping and murder trials of Paul Rose, Jacques Rose, Francis Simard, and Bernard Lortie), and specifically the courtroom antics of Paul Rose. As the four men contested their prosecutions by the Crown, the murder trial of Paul Rose stands out as Justice Nichols made an example of Rose by expelling him from the courtroom for the duration of the trial for his ongoing unruly antics when contempt of court proved ineffective. The chapter concludes with a look at the Chenier Cell trials, the proceedings that came directly out of the kidnappings that prompted the invocation of the WMA.

## 6.2 Historical Background: The Law of Contempt of Court in Canada

Prior to substantive reforms to the law of contempt in Canada in the mid-1980s, critics described the summary power to punish for contempt as “antiquated and autocratic”<sup>478</sup> and “remedial and coercive.”<sup>479</sup> I situate the 1977 Law Reform Commission of Canada report on the law of contempt of court, which cited multiple examples of how contempt was used within the FLQ trials, in its historical context.<sup>480</sup> With a view to the political and performative aspects of contempt proceedings, I emphasize the importance of reading the legal encounters of the FLQ within understandings of the development of the law of contempt in Canada. As *felquistes* defence strategies were rooted in direct challenges in the face of the court, this section gives a historical background to the offence.<sup>481</sup>

Contempt, however, was not historically limited to the court as the common law also recognized contempt of the King, Parliament, and of clergy members.<sup>482</sup> Parliament itself could act as a court and discipline its members. The Speaker still has the authority to remove members for disruptive behaviour, but before the mid 19<sup>th</sup> century members could be suspended and punished, including imprisonment for the duration of the session.<sup>483</sup> By the mid 19<sup>th</sup> century, as the offence became understood primarily as a tool used to protect

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<sup>478</sup> Barry J. Cavanaugh, “Civil Liberties and the Criminal Contempt Power,” *Criminal Law Quarterly* 19 (1976): 361.

<sup>479</sup> C. Gaylord Watkins, “The Enforcement of Conformity to Law Through Contempt Proceedings,” *Osgoode Hall Law Journal* 5, no. 2 (1967): 125.

<sup>480</sup> Linda Fuerst, “Contempt of Court,” *Ottawa Law Review* 16 (1984): 324.

<sup>481</sup> Jessie Allen, “A Theory of Adjudication: Law as Magic,” *Suffolk University Law Review* 41, no. 4 (2008): 786.

<sup>482</sup> Shai J. Lavi and Galia Schneebaum. “The Riddle of *Sub-judice* and the Modern Law of Contempt.” *Critical Analysis of Law* 2, no. 1 (2015): 176.

<sup>483</sup> For early Canadian examples, see F. Murray Greenwood and Barry Wright, “Parliamentary Privilege and the Repression of Dissent in the Canadas” in *Canadian State Trials Volume 1: Law, Politics and Security Measures, 1608-1837*, eds. F.M. Greenwood and Barry Wright (Toronto: University of Toronto Press, 1996), 409.

judicial authority, its application came to include, public inquiries,<sup>484</sup> intoxication in the courtroom,<sup>485</sup> disobeying a court order,<sup>486</sup> journalists' criticisms,<sup>487</sup> the accountability of public officials to judicial proceedings,<sup>488</sup> prejudicial media reporting that could impact the outcome of a trial,<sup>489</sup> tampering with witnesses or the refusal of a witnesses to appear, testify or respond to questions,<sup>490</sup> and the disruption of court proceedings by audience members. A good example is the case of Lise Balcer,<sup>491</sup> a feminist organizer with the Front de libération des femmes (FLF), who on 1 March 1971, refused to testify at the trials of Paul Rose, reasoning that she would not participate because women were presently excluded from sitting as jurors in Québec. She was cited for contempt and imprisoned for six months (by June 1971, jury composition laws were amended to include women).<sup>492</sup>

While criminal contempt includes the use of words, actions, or writing to malign or obstruct the administration of justice,<sup>493</sup> civil contempt concerns private affronts to

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<sup>484</sup> Raymonde Crête investigates constraints of public inquiry investigators, who have been empowered by legislatures with the power of contempt. Raymonde Crête, "L'enquête publique et le pouvoir de condamnation pour outrage au tribunal," *Les Cahiers de droit* 19, no. 4 (1978): 859-79.

<sup>485</sup> Jeffrey Miller. *The Law of Contempt in Canada*. 2<sup>nd</sup> ed. (Toronto: Thomson Reuters, 2016), 135.

<sup>486</sup> Nadeau-Dubois was embroiled in a contempt of court action for breaching a court injunction related to the 2012 Montréal student strikes. Gabriel Nadeau-Dubois, *In Defiance*. Translated by Lazar Lederhendler (Toronto: Between the Lines, 2015).

<sup>487</sup> Goldsworthy, "The Claim to Secrecy of News Source," 157

<sup>488</sup> Lorne Sossin and Valerie Crystal, "A Comment on 'No Comment': The *Sub Judice* Rule and the Accountability of Public Officials in the 21st Century." *Dalhousie Law Journal* 36, no. 2 (2013): 535-580.

<sup>489</sup> For analyses of contempt relative to media reporting in the Australian context, see Leader, "Trial, Truth-Telling and the Performing Body," Ch. 5 & 6; and for Northern Ireland consider, John D. Jackson, Katie Quinn, and Tom O'Malley, "The Jury System in Contemporary Ireland: In the Shadow of a Troubled Past," *Law and Contemporary Problems* 62, no. 2 (1999): 217.

<sup>490</sup> Michael McLoughlin, *Last Stop, Paris: The Assassination of Mario Bachand and the Death of the FLQ* (Toronto: Penguin Books Canada, 1998), 62-63.

<sup>491</sup> Marjolaine Péloquin, *En prison pour la cause des femmes: la conquête du banc des jurés* (Montréal: Remue-Ménage Editions, 2007), 307; and Sean Mills, "Québécoises deboutte! Nationalism and Feminism in Québec," in *Contemporary Québec: Selected Readings and Commentaries*, eds. Michael D. Behiels and Matthew Hayday (Montréal: McGill-Queen's University Press, 2011), 321-328; Sean Mills, "The Empire Within: Montréal, the Sixties, and the Forging of a Radical Imagination," (PhD diss., Queen's University, 2007), 244.

<sup>492</sup> Delmar Karlen, "Disorder in the Courtroom," *South California Law Review* 44 (1970-1): 996.

<sup>493</sup> Law Reform Commission of Canada, *Contempt of Court: Offences Against the Administration of Justice* (Ottawa: Minister of Supply and Services, 1977), 12.

juridical proceedings including disobeying court orders or injunctions and failing to appear as a witness. Criminal contempt is further distinguished through whether statements are made *in facie*—before the court—or not. On this distinction, *R. v. McKeown* (1971) affirmed that *in facie* contempt can be dealt with summarily such that a presiding justice need not be embarrassed through acting as a witness to an event that occurred in his own court and that may be disputed due to events outside the court.<sup>494</sup> And while the threshold for contempt outside of the courtroom or *ex facie* contempt is low, interpretation of the law that determines the degree of harm to the administration of justice is also broad. In the contemporary context, Christodoulidis points out, contempt outside the courtroom includes publications or public complaints that call to question the impartiality of the judiciary and require specific intent to undermine the judicial office.<sup>495</sup> Put another way, as a judicial tool, criminal contempt exists to protect the dignity and decorum of the court and ensure its ordered processes. As such, the invisible summary power of contempt functions on multiple levels. First, as a general deterrent from acting out in court, contempt conviction could result in imprisonment. Second, and at the same time, as a performative utterance: when a formal citation for criminal contempt occurs, the offender is summarily convicted, but contempt can also emerge informally through warnings or more general interactive discussions. In many instances during the FLQ trials, judges, forced to manage self-represented defendants differently than defence counsel, warned and alluded to how defendant speech could be viewed as contemptuous to caution away from recalcitrant behaviour.

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<sup>494</sup> *Ibid.*, 17.

<sup>495</sup> Christodoulidis, “Objection that Cannot be Heard,” 185n15.

*In facie* or direct contempt, which usually corresponds to misbehaviour or disruption in the courtroom, derived its power from the need to assert the authority of the judiciary that protected the administration of justice.<sup>496</sup> With its historical roots in the Star Chamber, the power to summarily punish first began to take shape in the common law through *R. v. Almon* (1765).<sup>497</sup> Distinguishing between the standards of decorum to which legal counsel and the layperson are held to court relative to contempt, Miller states, “it is equally recognized that the adversarial process used in our court systems must make allowance for counsel and, yes, judges, coming out with remarks in the heat of battle, as it were, that would not normally be expected from those same persons.”<sup>498</sup> What Miller does not touch on, however, is consideration of—though now a rarity—the self-represented political defendant. Of course, for the FLQ, this is because the defendants choose self-representation because they would be less constrained than lawyers.

Given the discretionary scope of direct contempt, the question that remains is: are all instances in which a defendant insults the judge examples of contemptuous behaviour? Further, in cases in which proceedings are contentious, what leeway is afforded to trial participants before they cross the threshold of the contemptuous utterance? In *R. v. Vallières* (May 1973), which occurred after Vallières had renounced the FLQ’s use of political violence and a means to an end,<sup>499</sup> the Québec Court of Appeal explored this

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<sup>496</sup> Schneebaum and Lavi, “Riddle of *Sub-judice*,” 178.

<sup>497</sup> In *Almon*, a case that concerned the publication of a pamphlet that accused the Chief Justice, Lord Mansfield, of partiality and arbitrary judgment, Justice Wilmut reasoned that that contempt either before the court or outside of it was a summarily punishable offence and that the protection of the court’s impartiality was incumbent to the administration of justice. Douglas Hay, “Contempt by Scandalizing the Court: A Political History of the First Hundred Years,” *Osgoode Hall Law Journal* 25, no. 3 (1987): 433; Watkins, “Contempt Proceedings,” 127.

<sup>498</sup> *R. v. Barker* (1980) 4 W.W.R. 202 (Alta. C.A.) as quoted in Miller, *The Law of Contempt*, 126.

<sup>499</sup> Anthony Kellett, “Terrorism in Canada,” in *Violence in Canada: Sociopolitical Perspective*. 2<sup>nd</sup> ed. Jeffrey Ian Ross, ed. (New Jersey: Transaction Publishers, 2004), 290.

question as they examined Vallières' earlier contemptuous claims.<sup>500</sup> Vallières had declared he was “fed up with the judicial system,” a statement that echoed his earlier characterizations of “nauseating, biased and dishonest” FLQ-related judicial decisions. Vallières concluded that the judge was “an executioner, a hypocrite, an ignoramus and an incompetent.”<sup>501</sup> The question, then, at what point did Vallières, who acted in his own defence, cross the line? While not applicable as case law in the FLQ context, Miller points to a ruling in *R. v. Glasner* (1994), which reasoned that summary contempt powers must not be used to curtail legal strategies that are just offensive.<sup>502</sup>

Contempt, viewed by the 1977 Commission as an exceptional procedure, must only be administered after giving sufficient warning that the charge will be applied and that contemptuous behaviour must impact the peaceful atmosphere of the trial.<sup>503</sup> On one hand, as a legal mechanism, criminal contempt is used to protect the dignity and decorum of the court—to maintain the normative rituals of the trial and anchor its legitimacy—on the other hand, however, the summary usage of criminal contempt strains the dignity of the courtroom if recalcitrant defendants are unresponsive to the deterrent character of the charge. While criminal contempt is usually used to maintain order, its use in the FLQ trials seemed to contribute to the disorder of the legal encounters.

While most of the FLQ-related contempt of court censure occurred in the courtroom, not all instances in which the judiciary relied on contempt as punitive reproach

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<sup>500</sup> Jacoby writes about how Vallières reintegrated into the political sphere in Québec through his work with the Parti Québécois. Tami Amanda Jacoby, “A Theory of Victimhood: Politics, Conflict and the Construction of Victim-based Identity,” *Millennium: Journal of International Studies* 43, no. 2 (2015): 524.

<sup>501</sup> *R. v. Vallières* (No. 2) (1973), 47 D.L.R. (3d) 363, 17 C.C.C. (2d) 361 (Québec Court of Appeal) as quoted in Law Reform Commission of Canada, *Contempt of Court*, 22.

<sup>502</sup> Miller, *Law of Contempt*, 118n15. Further, and seven years before *Glasner* (1994), the Ontario Court of Appeal, in *R. v. Kopyto* (1987), examined the tensions between a defendant's *Charter* right to expression and the threshold of scandalizing the court. See Schneebaum and Lavi, “Riddle of *Sub-judice*,” 179-80n36.

<sup>503</sup> Law Reform Commission of Canada, *Contempt of Court*, 22-4.

were in response to defendants' actions. At times, journalists and media organizations writing about the political implications of judicial decisions were targeted with contempt charges at the direct behest of the bench or in judicial recommendations to the Crown.<sup>504</sup> For example, the journalistic privilege to protect a source was tested on 18 March 1969 when CBC journalist John Smith was charged with contempt of court for refusing to testify in court to the identity of an alleged FLQ source, Pierre Catellier.<sup>505</sup> However, the focus of the final section of this chapter is the contemptuous speech of the FLQ defendants. Although many were convicted and sentenced for contempt, few appealed. For those who did—Vallières, Chartrand, and Gagnon—narratives of resistance remained visible through motions for dismissal and the appellant court records.

### 6.3 Contempt of Court and the FLQ

The judicial process beginning in January 1971 was such a farce that no one took it seriously, and it appears that the greatest crime of those concerned has been contempt of court, a circumstance reminiscent of the Chicago Conspiracy Trial.

—Laurier LaPierre on the FLQ.<sup>506</sup>

Contempt offences are primarily concerned with fortifying the dignity of the court and Crown, but as the offence evolved, it has been employed to ensure the administration

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<sup>504</sup> The report, conducted in the aftermath of October 1970, refers to many of the FLQ contempt cases and makes reform recommendations. Included in the recommendations and implemented through a 1984 Criminal Code amendment, was the rule that judges could no longer adjudicate over reviews of disruption in the courts over which they presided—a key criticism of observers of the FLQ trials. Finally, it is worth noting that further study on the use of contempt of court charges relative to journalists and questions regarding freedom of the press is needed.

<sup>505</sup> Peter J. Goldsworthy, "The Claim to Secrecy of News Source: A Journalistic Privilege?" *Osgoode Hall Law Journal* 9 (1971): 157n3; and Paul LeBlanc, "Privileged Communication and The Counsellor," *McGill Journal of Education/Revue des sciences de l'éducation de McGill* 7, no. 1 (1972): 17.

<sup>506</sup> Laurier LaPierre, "Québec: October 1970," *The North American Review* 256, no. 3 (1971): 28.

of justice did not fall into disrepute.<sup>507</sup> As the judicial recourse to criminal contempt convictions punctuated the FLQ political trials, I pinpoint three contexts in which high-profile FLQ members were convicted often-repeatedly with contempt. High-profile, rather than rank and file members, are considered because they were more likely to be convicted of more counts of contempt and appeal their sentences. As outlined in previous chapters, these defendants had established a very different relationship with the courts and the laws under which they were charged. First, convicted of multiple counts of contempt through the duration of the LaGrenade Affair and the Trial of the Montréal Five, I consider how Pierre Vallières shifted his performative strategies as an appellant in the Québec Court of Appeal. Relying on Vallières' accounts and the appeal court records, I highlight how his contemptuous behaviour changed over time and how the appeal court, a few years removed, reconsidered the circumstances of the convictions.

Second, and with the seditious conspiracy trial of the Montréal Five as the backdrop, the fiery exchange between Michel Chartrand and Justice Roger Ouimet, in which Chartrand and other defendants put to work a strategy to delegitimize the presiding judge, showed how the defendants attempted to goad Justice Ouimet into appearing oppressive. And third, as the leading reason for FLQ-related contempt convictions was the refusal to testify by defendants and witnesses in the Chenier Cell trials, I consider how each of the four members acted in defiance of the legal conventions of their murder and kidnapping trials. While the previous two chapters contextualized self-represented

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<sup>507</sup> Wes Pue notes that in 18<sup>th</sup> century England scandalizing the court emerged to supplement seditious libel and functioned as yet another legal tool to silence political dissidents. For Hay, criminal contempt offences further entrenched the power of the Crown who viewed the expansion of the press as threatening to its interests. W. Wesley Pue, "Rethinking 'Professionalism': Taking *The Professions in Early Modern England* Seriously," *Canadian Journal of Law and Society* 4 (1989): 181; Hay, "Contempt by Scandalizing," 436-440; and, also see Schneebaum and Lavi, "Riddle of *Sub-judice*," 185.

defendants, the CAGVG, and the Crown's prosecutorial missteps, the final part of this chapter examines how the Québec courts responded to the often-unruly behaviour of the FLQ defendants and likewise how the FLQ defendants attempted to defend themselves through a barrage of contempt convictions.

### **6.3.1 The Contemptuous Self-Representation of Pierre Vallières: From the LaGrenade Affair to the Trial of the Montréal Five**

An examination of Vallières's contempt-related case files and appeal court judgments reveals that the Québec Court of Appeal quashed two of his convictions for contempt. Even if a portion of the sentence had already been served, the appeal court considered the context of the contemptuous behaviour in hindsight and returned a favourable decision for the accused. The appeal court judge, in consideration of mitigating circumstances surrounding contempt convictions, suggested that the trial court judges overreacted and overused the contempt offences. Furthermore, the rationale for such consideration was described by Justice A. Brossard of the Québec Court of Appeal through his adjudication of a series of Vallières' contempt convictions. In 1973, as Justice Brossard evaluated the appealed sentences, he inventoried what read like a contemptuous utterance highlight reel to the court. In reproducing and condensing the offensive speech, only the words are read. Body language, gestures, posture, tone, and cadence, which all played a significant role in the contemptuous moment, were all stripped away within the judicial consideration. The performative act was lost for its content. Despite relying on reproductions of the exchanges in the appeal court judgements as the original sentencing transcripts are unavailable, the referenced contemptuous narratives afford insight into only a part of the mentioned hearings just a few years earlier.

For example, on 7 January 1970, after a judicial warning, Vallières argued that “when accused are called to appear once every two months, against their will, because of their political ideas, they have the right to use the Court to express them.”<sup>508</sup> The statement, following a hearing related to his manslaughter conviction during the LaGrenade Affair, was an example of Vallières’ ongoing frustration with the rate at which his trial was moving through the justice system. After being convicted of contempt of court for expressing this frustration, Vallières quickly composed himself and submitted a legal dossier to the court demanding for the dismissal of the conviction. Dated 19 January 1970, Vallières argued on his own behalf that he should not be sentenced for contempt for reading his favourable 1969 appeal court judgements, which overturned his life sentence, into the record of the court. While Vallières argued that the truth—the decision of the appeal court judges in his first appeal of his LaGrenade Affair manslaughter conviction—cannot be contemptuous, the trial court judge in his retrial deemed quoting the previous decision undermined the dignity of the proceedings over which he presided.<sup>509</sup> As Vallières is concerned with his words (as that was all the appeal court judges could rely on), it was not the content of his speech alone that contributed to the conviction for contempt, but his overall behaviour and body language in the situation that was censured.

Over a year later, in hearings between 26-28 April 1971, Vallières suggested that the presiding judge was “. . . more of a hangman than a Judge,”<sup>510</sup> and that he had “had enough of the intrigues of the administration of so-called justice . . . in Québec, in

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<sup>508</sup> *R. v. Vallières* (No. 2) 1973, 17 C.C.C. (2d) 361, 47 D.L.R. (3d) 363 at 45.

<sup>509</sup> Pierre Vallières, “Representations de la defence quant a la sentence sur une declaration d’outrage au tribunal (instanter) prononcé le 7 Janvier 1970,” *Dossier d’information sur Pierre Vallières* (F-14), Montréal, 19 January 1970, 1-17. William Ready Archive, McMaster University, Stanley-Gray Files.

<sup>510</sup> *R. v. Vallières* (No. 2) 1973, 17 C.C.C. (2d) 361, 47 D.L.R. (3d) 363 at 49.

particular, in political cases the judicial system is an instrument of systemic repression.”<sup>511</sup> While this statement was again met with a summarily punitive response from the trial court judge, Justice Brossard’s consideration of mitigating circumstance on appeal sheds light on how appeal court judges viewed the claims of the FLQ defendants more favourably than trial court judges with some hindsight after October 1970. The judge structured his reasoning around whether he believed that Vallières was no longer inclined to participate in criminal activity. If yes—no additional sentence needed and the conviction is quashed. If no—would further punishment be effective? Arguing no, Justice Brossard explained that “. . . it is doubtful [for the punishment to be effective], for the last six years have probably allowed Pierre Vallières to think it over and at 34 his character is certainly permanently formed.”<sup>512</sup> Building on an early contempt-related appeal case, the judge considered *Chartrand* (1971), a case in which Justice Turgeon reasoned that mitigating and aggravating circumstances are relevant to a determination of the *mens rea* of a contemptuous defendant. While imprisoned without trial or charges after WMA raids, Chartrand was thrust into an “antagonistic and irritating atmosphere which could have upset him.”<sup>513</sup> In the end, Vallières was released as the judge indicated that his sentence had been served and that any more time imprisoned was unreasonable.

As noted in chapter five, while the trial proceedings for seditious conspiracy took shape, the five defendants moved for the dismissal of all the charges and applied for bail. On 26 November 1970, Justice Mackay instructed the defendants that rather than submit oral motions, they must submit their motions in writing. In response, Vallières and Charles

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<sup>511</sup> *Ibid.*, 52.

<sup>512</sup> *Ibid.*, 70.

<sup>513</sup> *Ibid.*, 71.

Gagnon wrote to the judge, refusing to submit written arguments concerning applications for bail via correspondence. Vallières indicated that he would not plead through a letter.<sup>514</sup> Once the letters arrived in front of the court, Vallières and Gagnon were convicted of contempt in the face of the court. On appeal, at issue in the case, wrote Justices Rinfret, Gagnon, and Deschênes was whether the writing of the defiant letters constituted a contempt in the face of the court.<sup>515</sup> With little in the way of precedent apart from an American case that was dismissed, on 18 May 1973 appeal court quashed the sentences and dismissed the convictions.

In sum, and with consideration of the presented pattern of the appeal court reversing a series of FLQ-related contempt of court decisions, I submit that irrespective of whether the convictions or sentences held in the long-term, the short-term payoff of contempt convictions and sentences achieved the goal of the courts and Crown. Through imprisonment for contempt convictions, the bench stymied mobilization of more FLQ defendants and their supporters. For the defendants, outrage by contempt convictions transitioned from views of righteous victimhood (e.g., FLQ targeted by the judiciary) and then to somewhat of a belated vindication (e.g., if convictions were overturned on appeal) of the view they held all along: contempt for the law and legal system.

### **6.3.2 Chartrand Challenges Justice Ouimet**

In *Michel Chartrand: La Colère du Juste* (2003), historian Fernand Foisy characterized the often-cited exchange between Chartrand and Justice Ouimet in the early

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<sup>514</sup> *R. v. Vallières* and *R. v. Gagnon* (18 May 1973) 25 C.R.N.S. 217, 17 C.C.C. (2d) 375, 47 D.L.R. (3d) 378 at 136.

<sup>515</sup> *Ibid.* at 132.

days of the Trial of the Montréal Five as the pinnacle of *la guérilla judiciaire*.<sup>516</sup> While Fois framed this legal strategy as a response to the Kafkaesque nature of the proceedings, he followed up with little analysis on the usage of the strategy. Below, I quote the exchange at length. I read the interaction between judge and defendant as a double-sided performance. As Justice Ouimet used the legal tool of contempt to maintain the dignity of the courtroom, Chartrand, without fear of incarceration, attempted to use contemptuous speech to confront the bench. As a destabilizing moment, the exchange revealed the political character of the preliminary hearings. Perhaps unintentionally, Chartrand provoked Justice Ouimet into an overreaction. Instead of the stabilizing effect intended through the use of the law of contempt, the overuse of the summary judicial power deflated its punitive deterrent character. While such overreaction did not appear to be costly for the judiciary in the short-term, the Québec Court of Appeal overturned his conviction and quashed his sentence.

With characteristic passion, Chartrand opened the exchange in the preliminary hearings of the seditious conspiracy trial with a tone that set the pace of the proceedings. He began with a call for the recusal of Justice Ouimet from the bench, but then the exchange escalated and he accused the presiding judge of being prejudiced, biased, and a fanatic. Echoing Vallières's earlier comments, "But, Mr. J. Ouimet, the impression I have is I do not find myself before a court but before a political party and those who judge me today [are] the Liberals, Liberal Party members,"<sup>517</sup> Chartrand was found in contempt of court for this exclamation. While not all judges would have found this exchange contemptuous, the tenor of the trial had roused a degree of volatility from all involved parties—the judge

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<sup>516</sup> Ibid. at 167.

<sup>517</sup> Chartrand, et. al., *Les procès des cinq*, 49.

included. As Chartrand remarked of the state of affairs in Canada relative to his sedition-related charge, he reiterated that “the core of corruption came from the judiciary, starting from the cabinet; that the most corrupt institution was the bar, and I haven’t changed my mind; so we are supposed to take those tribunals seriously?”<sup>518</sup> To this end, as if it were a game of ‘tug-of-rope,’ Justice Ouimet had picked up the rope and pulled back. The pair engaged in an embittered exchange on the legitimacy of the presiding judge, the trial, and of the authority of the court. Warren submits that it was a rekindling of a long ago extinguished friendship as Roger Ouimet turned his back on Chartrand in their youth activism days to join the Liberal Party.<sup>519</sup>

The exchange, which occurred on the opening day of the seditious conspiracy preliminary hearings, showed not only the character of the presiding judge, but also afforded a broader illustration of the unhinged summary power of contempt. The exchange begins with Chartrand about to be convicted for the first time. He then decided not to bend to the court’s authority and responded:

CHARTRAND: [...] I don’t want the jury to be bothered by the judge who is ‘prejudiced’, biased and fanatic. That’s clear. Then the minimum of decency for a judge, when someone is morally convinced that there will be no impartiality, is to recuse himself, what you have not done, while it has been asked of you three times so far.

THE COURT: Well, then, the judge you’re talking about will now hold you in contempt.

CHARTRAND: Ah! You are funny, you. You are a real comic. You are smaller and lower than I thought. Do you recuse yourself or not?

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<sup>518</sup> Chartrand: “J’ai toujours dit que le nœud de la corruption venait de la magistrature, en partant du cabinet; que l’institution la plus corrompue de la société, c’était le barreau, et je n’ai pas changé d’idée; on est supposés prendre ça au sérieux, ces tribunaux-là?” Foisy, *Michel Chartrand*, 165.

<sup>519</sup> Warren, *Prisonniers Politiques*, 173.

THE COURT: I do not recuse myself and find you guilty of a second contempt of court.

CHARTRAND: [Speaking to the police] He did not tell me to get out yet, don't get upset, you are not the judge here. Now it is the police who run the courthouse.

[Returning to Judge Ouimet] Come see the holes where they are holding us. You have visited several prisons; you brag about it. Come see the hole behind your beautiful yard, in your courthouse, the hole where we are: five by seven, no light, nothing.<sup>520</sup>

As the audience to which Chartrand spoke shifted, he continued to chastise the fallibility of the court—and dared the police to act. In turning his attention away from Justice Ouimet to address the rest of the court, Chartrand acted such that the judge had a moment to convict him of a second count of contempt. Yet, in doing so, Justice Ouimet doubled-down and opened an opportunity for Chartrand to ask him for another and another. As Chartrand brushed off the convictions, Justice Ouimet responded briefly to Chartrand's now politicized demand for recusal.

While contemptuous utterances were not negotiable in law, the judge, in his response, attempted to engage the contemptuous statements instead of speaking past it. The exchange continued:

THE COURT: I found you guilty of contempt of court.

CHARTRAND: Yes, that's easy, it is easier when you're behind the police. We all know that. But do you recuse yourself or not?

THE COURT: I will certainly not.

CHARTRAND: Ah! Ah! You'll see that I will not appear before you. I can guarantee you that.

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<sup>520</sup> For more, see Chartrand's appeal of his contempt conviction: *Chartrand v. The Queen* (1971) 26, 21 C.R.N.S. 49

- THE COURT: Third contempt of court.
- CHARTRAND: I guarantee you that. Give me another one. Come on, fourth contempt, fifth contempt.
- THE COURT: I sentence you... [interrupted]
- CHARTRAND: Judge Ouimet is fanatic, biased.
- THE COURT: I sentence you to one year in prison.
- CHARTRAND: One more year my friend, if it makes you happy.
- THE COURT: Get me [him] out of here.
- CHARTRAND: Hobo!
- THE COURT: Well, it's been better than I thought.<sup>521</sup>

Chartrand was quick to appeal his conviction. Despite Chartrand's actions, Warren writes that "the excessive reaction of Judge Ouimet reinforce[d] the impression of a politicization of justice."<sup>522</sup> However, I submit that Chartrand, in asking to be censured again and again, used personalized attacks to provoke the judge into a personal reaction and attempted to make the court appear oppressive. The spontaneity of the heated interactive exchange and Chartrand's half apology to Justice Ouimet once the proceedings resumed the following Monday reiterated the unpredictability of recalcitrant performances and how unproductive, at times, they are as courtroom strategies.<sup>523</sup> The final reflective comment of Justice Ouimet (noted in the final line of the quoted transcript) offers insight into the learned judge's

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<sup>521</sup> For the archival transcript of this exchange see *Queen v. Chartrand et. al.*, pre-trial transcript (Case #70-6700, January 8, 1971, 73-78; and for its multiple reproductions (all in French) see Warren, *Prisonniers Politiques*, 173-4; Chartrand, et. al., *Le Procès des Cinq*, 21-3; Foisy, *Michel Chartrand*, 170-2; and Fernand Foisy, *Michel Chartrand: Les Dires d'un Homme de Parole* (Montréal: Lanctôt Éditeur, 1997), 159-62.

<sup>522</sup> Warren: "La reaction excessive du juge Ouimet renforce l'impression d'une politisation de la justice." Warren, *Prisonniers Politiques*, 174.

<sup>523</sup> Chartrand: "Pour ma part, moi, je m'en excuse . . . Seulement, je pense que vous allez admettre que je n'ai pas besoin de la tribune de la Cour pour dire ce que je pense [For my part, I apologize. . . Only I think you will admit that I do not need the Court's forum to say what I think]." Chartrand, et. al., *Le Procès des Cinq*, 113.

expectations of the preliminary hearings. It was as if he expected the proceedings to turn out more problematically than they did. Shed of all prior formal decorum (e.g., ‘Your Honour’ this . . . ‘Your Honour’ that...), the pre-trial proceedings opened as a final-stand for the FLQ—the brightest minds of the movement prepared a juridical offensive against not only the court, but also the state as the courts were marshalled as a space to contest the legality and constitutionality of the perceived apprehended insurrection.

In short, if only for a moment, contemptuous exchanges caused the trial proceedings to deviate from its “ritualized . . . exercises in adversarial struggle.”<sup>524</sup> For FLQ defendants, using disruptive behaviour to politicize and draw additional attention to how they constructed their narrative of (in)justice and the formal legal processes not only increased the attention paid by the public to the trials and its participants, but also amplified the political stakes of the trial. With the military on the streets of Ottawa and Montréal, political ideologies clashed in public spaces (e.g., on television, in newspapers, and on university campuses) as the government, police, and media-stoked fears of another attack and the capacity of the FLQ’s clandestine organization.

### 6.3.3 The Trials of Paul Rose and the Chenier Cell Members

This is a colonial court installed and maintained by force . . . and I deny it the right to judge any Quebecer.

—Paul Rose on his 1971 murder trial.<sup>525</sup>

The criminal trials of the Chenier Cell, which included Paul Rose, Jacques Rose,

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<sup>524</sup> Falk, *Making Sense of Political Trials*, 5; Allo, “Show Trial,” 48.

<sup>525</sup> Paul Rose: “Cette cour coloniale installée par la force est maintenue par la force et je lui refuse le droit de juger tout Québécois . . . Mon vrai procès, je l’aurai après l’indépendance du Québec et c’est le peuple du Québec qui me jugera.” Jacques Lacoursière, *Alarme Citoyens! L’affaire Cross-Laporte du connu à l’inconnu* (Ottawa: Les Éditions La Presse, 1972), 420.

Francis Simard, and Bernard Lortie, resulted in convictions for a variety of offences including murder, non-capital murder, kidnapping, and being an accessory after the fact.<sup>526</sup> These are the FLQ trials that became the most prominent and vivid in public awareness because they were directly connected to the kidnappings that resulted in the Québec government's request for assistance from the federal government, the invocation of the WMA, and the murder of Pierre Laporte.

Arrested on 28 December 1970 in a farmhouse outside of Montréal,<sup>527</sup> the stakes for the Chenier Cell were much different than for other FLQ members. Unlike the vague charges of seditious conspiracy faced by the Montréal Five, the murder and kidnapping charges were clear and supported with substantial and minimally contested evidence. While the trials were characterized by each defendant's inevitable disruptions, the trials of the Chenier Cell members (the self-directed cell that was afforded the most legal and media attention) illuminate how censure for contempt of court afforded recalcitrant defendants space to further contest the authority and legitimacy of Québec trial courts. In these trials, the censure of contemptuous political speech rather than the challenge of the criminal indictment is the focus.

While complete trial court records of the trials are unavailable (or restricted), I draw on the robust accounts of Jacques Lacoursière's *Alarme Citoyens!* (1972), Manon Leroux's *Les Silences D'Octobre* (2002), and Warren's *Prisonniers Politiques* (2013) to contextualize and examine the trials of the Chenier Cell members. For Warren, who

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<sup>526</sup> Paul Rose was convicted of murder and kidnapping and sentenced to two life sentences; Francis Simard was convicted of non-capital murder and received a life sentence; Bernard Lortie was convicted of kidnapping and sentenced to 20 years; and Jacques Rose was acquitted of murder and kidnapping, but convicted of being an accessory after the fact in the kidnapping of Laporte and sentenced to eight years. Riseborough, ed. *Canada and the French*, 217 and 224.

<sup>527</sup> Leroux, *Les Silences D'Octobre*, 17.

recounted the events that unfolded during the first kidnapping trial of Jacques Rose (which resulted in a hung jury on 11 May 1972), the Chenier Cell trials were an exercise in the assertion of a rigid judicial authority.<sup>528</sup> A provincial politician was dead, and the public demanded justice. For example, in a May 1972 bail hearing for Jacques Rose, Robert Lemieux, after Rose's bail was denied, began reading from the list of jurors whom he claimed had acted as his informants. In response, Justice Alphonse Barbeau convicted Lemieux of contempt. Amid his protest, *Sûreté du Québec* (SQ) officers wrestled him to the ground and hauled him out of the courtroom. Even his co-counsel Pierre Cloutier was convicted and sentenced to three days for contempt despite attempting to maintain some semblance of order in the courtroom.<sup>529</sup> The trials of Jacques Rose (in which he was acquitted of kidnapping in a second trial on 9 December 1972, acquitted of murder on 22 February 1973, but then convicted of being an accessory after the fact 17 July 1973),<sup>530</sup> Simard (who self-represented, shifted between filing rejecting the jurisdiction of the court and maintaining his silence throughout his trial in protest of the impossibility of a fair trial, was convicted on 20 May 1971),<sup>531</sup> and Lortie (who was found guilty of kidnapping on 22 September 1971)<sup>532</sup> featured familiar defiant theatrics (e.g., disputations about the jurisdiction and legitimacy of the court, tearing up records provided by the court, and

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<sup>528</sup> Warren, *Prisonniers Politiques*, 175-8.

<sup>529</sup> In the end, once Lemieux's FLQ work had concluded, on 18 July 1973, he was sentenced to two and a half years' imprisonment for contempt of court. Warren, *Prisonniers Politiques*, 177; Eleanor S. Wainstein, *The Cross and Laporte Kidnappings, Montréal, October 1970* (Santa Monica: Rand, 1977), 56-57.

<sup>530</sup> Nicole Daignault highlights that after his trial the defence learned that representations had been made to the jury to the effect that if they were to find Jacques Rose guilty on one count, he would serve a reduced sentence for the time spent in custody. Leroux, *Les Silences D'Octobre*, 24-7; Daignault, "Les procès politiques," 42; Riseborough, ed. *Canada and the French*, 222-225.

<sup>531</sup> Leroux, *Les Silences D'Octobre*, 22-3; Lacoursière, *Alarme Citoyens!* 435-7; and Riseborough, ed. *Canada and the French*, 221.

<sup>532</sup> Leroux, *Les Silences D'Octobre*, 23-4; Lacoursière, *Alarme Citoyens!* 437-8; and Riseborough, ed. *Canada and the French*, 221-222.

numerous contempt convictions).<sup>533</sup> The remainder of this final section focuses on the trials of Paul Rose because he was the most vocal in his opposition to the court and he appealed some of his convictions thus the records of his legal encounters after the October Crisis are more accessible than other Chenier Cell members.

As jury selection for Rose's murder trial began on 25 January 1971, it became apparent that two incompatible narratives would dominate the proceedings. On the one hand, Rose, who represented himself,<sup>534</sup> took every opportunity to challenge the authority and jurisdiction of the court, while on the other, Justice Nichols attempted to maintain order and the administration of justice. On the second day of the jury selection, a process throughout which Rose represented himself, he was temporarily expelled from the proceedings. However, before he was expelled, a potential juror and engineer claimed (during Rose's questioning) that for him a mere accusation constituted the presumption of guilt. When asked by Rose if he could be impartial, the juror responded, "I would be very *certainly partial*."<sup>535</sup> In line with the jury empanelment processes, the last two jurors had to adjudicate on the question of whether the engineer could be impartial. Much to the surprise of Justice Nichols and Rose, the two jurors determined that, yes, the engineer could be impartial.<sup>536</sup> Justice Nichols was stuck. Declare a mistrial or accept the juror. After a day-long adjournment, he accepted the decision. Unsurprisingly, Rose berated the court

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<sup>533</sup> Pierre Vallières, *The Assassination of Pierre Laporte* (Toronto: J. Lorimer, 1977), 72 and 187-190; "The Ronald D. Crelinsten, "The Internal Dynamics of the FLQ during the October Crisis of 1970," *Journal of Strategic Studies* 10, no. 4 (1987): 61-65.

<sup>534</sup> Pierre Cloutier served as Rose's legal advisor through his murder trial. Paul Waters, "Rose wants co-suspect Francis Simard to testify at murder trial today," *The Montreal Gazette*. 27 January 1971.

<sup>535</sup> Canadian University Press, "The Politics of a Courtroom: The Trial of Paul Rose," *The Chevron* 11, no. 44 (9 February 1971): 815.

<sup>536</sup> *Ibid.* For more on the pre-emptory challenges used by Paul Rose and his appeal to the Québec Court of Appeal concerning the fairness of his trial see *Rose v. The Queen* (1973) Que. C. A. 579, 12 C.C.C. (2d) 273 22 C.R.N.S. 46.

and was expelled again. In the days that followed, Justice Marcel Nichols used the half-measure of expulsion and had the courtroom police officers turn off Rose's microphone to mitigate his disruption of the Crown's juror vetting process. Such half-measures, writes Maya Steinitz, are concerned with the maintenance of the performed ritual of the trial. A criminal trial is composed of many routinized processes, some repetitive (e.g., the vetting of jurors), but all form the ritual of the trial.<sup>537</sup>

From the onset of Rose's murder trial, he attempted to challenge the authority of the court with the claim that he was before a colonial court, which was installed and maintained by force. In his view, the 'colonial court' could not possibly render justice for Québécois people.<sup>538</sup> The question, then, is how does law recognize contemptuous speech? The offence of contempt is most effective through how it marks revolutionaries' utterances as invisible; it censures their political speech in such a manner that the usage of contempt leaves the juridical process intact.<sup>539</sup> Simultaneously, the summary power of contempt renders the adjudication unchallengeable.<sup>540</sup> By unchallengeable, Christodoulidis and Veitch mean without the "possibility of negotiability" of the contemptuous statement.<sup>541</sup> When Paul Rose lamented that he sat before a colonial court, for example, this claim was neither litigable nor was it up for discussion. While this statement was inflammatory, the

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<sup>537</sup> Steinitz, "'The Milošević Trial—Live!'" 115.

<sup>538</sup> The view of the judiciary as a colonial institution to which Rose make reference is a characterization of the colonial relationship between the English and the French (dating back to the New France, the Conquest, and colonial British relations in Lower Canada and Québec), in which law was a colonial tool of domination. See *McLeod v. St. Aubyn* (1899) A.C. 549 and *Boucher v. the King*, (1951) SCR 265, 1950 Can LII 2 (SCC), <http://canlii.ca/t/1nlg6>. The full report is available at the *La Commission d'enquête des citoyens sur les mesures de guerre*, 11.

<sup>539</sup> Christodoulidis and Veitch document the law's silencing of revolutionary speech within the trials of Red Brigades members in Italy and the Baader-Meinhoff group in Germany. Emilios A. Christodoulidis and Scott Veitch, "The Ignominy of Unredeemed Politics: Revolutionary Speech as Différend," *International Journal for the Semiotics of Law* 10, no. 29 (1997): 141-57; and, Christodoulidis, "Objection that Cannot be Heard," 179-202.

<sup>540</sup> Christodoulidis and Veitch, "Unredeemed Politics," 154.

<sup>541</sup> *Ibid.*

political nature of the statement was reduced to a question of law, which was resolved by the court.<sup>542</sup> Even if a statement is deemed contemptuous and rejected in law, it must have “been rejected *as if it were* a legal claim.”<sup>543</sup> While Rose’s claim does read as incompatible in the legal context, it does have some historical roots. Historically, colonial courts tended to overuse exceptional measures such as contempt of court to curtail unruly colonial subjects. While the argument was political at its core, its legal reasoning was grounded in a JCPC case, *McLeod v. St. Aubyn* (1899). In that case, the JCPC overturned a contempt ruling by a lower colonial court. In the case, Lord Morris wrote that the offence of scandalizing judges tended not to be used anymore in England and therefore should not be elsewhere. For Justice Nichols, however, such a statement subverted the very political-legal system he was tasked to uphold. As Christodoulidis and Veitch explain, “[f]or the radical, the utterance is a political denunciation of a system of domination; for the judge, it undermines the Court as guarantor (in the last instance) of the political process itself.”<sup>544</sup> As such, the revolutionaries’ subversive utterances are incompatible with the political-legal system and therefore non-negotiable as legal argumentation before the court because such utterances are censured. Moreover, irrespective of the strength or persuasiveness of a political argument such claims fail on the grounds of “what counts as proper forum” or not. To that end, institutional parameters establish the lexicon of the debate (even in political trials) as the state is the author of the dominant discourse.<sup>545</sup>

However, when these intermediate approaches did not work, Justice Nichols, in a final attempt to maintain order in the trial, shifted from his use of the temporary summary

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<sup>542</sup> Ibid., 151-3.

<sup>543</sup> Ibid., 149. Emphasis in the original.

<sup>544</sup> Ibid., 154.

<sup>545</sup> Christodoulidis, “Objection that Cannot be Heard,” 196-7.

power of contempt to the authority of the criminal law. On 8 February 1971, the presiding judge expelled Paul Rose from the rest of his own trial under the authority of section 557.2(a) of the *Criminal Code*. Justice Nichols, who insisted that he take full responsibility for the expulsion, argued that not even contempt of court encouraged Rose to maintain any semblance of courtroom decorum.<sup>546</sup> To justify the absence of the accused in his trial, the judge, admitting that it was impossible to find in Canadian law a single precedent, based his decision on an American Supreme Court case which had permitted the expulsion of the accused during their trial because, by his conduct, he prevented the normal progress of proceedings.<sup>547</sup> As a condition of his expulsion, Rose had to apologize to court to gain re-entry into the courtroom. Further, Justice Nichols indicated that unlike the United States, Canada affords no constitutional right to the accused that secures their presence in court. However, the implication of expelling Paul Rose from the courtroom was that he was neither present nor did he have legal representation to represent him in court. As a temporary resolution, Justice Nichols ordered the Barreau du Québec to appoint a friend of the court. The Bar appointed Montréal lawyer Claude Boisvert. As *amicus curiae*, Boisvert did not represent Rose, the Crown, or the Court, and was permitted only to speak to and attend to points of law.<sup>548</sup> Unsurprisingly, Boisvert, for the most part, remained silent.

Building on Justice Nichol's commentary, Ertür's examination of Bobby Seale complements the study of recalcitrant FLQ defendants, as both Seale and Rose redirected contempt citations back at the court. For example, after the Illinois judge had denounced Seale's contemptuous behaviour, he retorted: ". . . You are in contempt of the people's

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<sup>546</sup> Lacoursière, *Alarme Citoyens*, 425.

<sup>547</sup> Daignault, "Les procès politiques," 42.

<sup>548</sup> Lacoursière, *Alarme Citoyens*, 425.

constitutional rights. You are in contempt of the constitutional rights of the mass of the people of the United States.”<sup>549</sup> Rose, similarly, after being warned for his contemptuous language as he presented a motion, exchanged words with Justice Nichols:

THE COURT: . . . I must confess that in no way do I intend to play your game and allow you to judge me. I have taken an oath of office, and if you do not think I am upholding it, I will ask you to take that up with the Canadian Parliament and have me removed from office. I consider your request a disgraceful affront. And, for declaring that I was party to a coalition with the Crown, I find you guilty of contempt of court. Sentencing is reserved for the end of the trial.

ROSE: I find you guilty of contempt of the people.<sup>550</sup>

Neither Seale nor Rose had the legal authority to advance such claims. Ertür contends that Seale turned a legal convention back on itself and in doing so, if only for a moment, shook the legitimacy of the trial ritual.<sup>551</sup> Here, I agree with Warren’s characterization of Paul Rose’s political defence that it was more contrarian than anything else.<sup>552</sup> With no overarching FLQ legal strategy as a guide, individual interest and personality took the lead in Rose’s trial. The politicization of his defence did much less than his FLQ comrades to advance any *felquistes*-related ideological commitments. Rose, as I show below, reverted to the earlier strategies used by the first *felquistes* defendants, such as George Schoeters, who rejected the totality of the legal system and claimed the courts were a foreign imposition. For Rose, this declaration—that he found the court in contempt of the people—was an exercise in hostile pantomime as the defendant’s direct and ongoing contempt for

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<sup>549</sup> *United States v. Seale* (1972), 461 F.2d 345, 378 as quoted in Ertür, “Spectacles and Spectres,” 122.

<sup>550</sup> Paul Rose: “Je vous trouve coupable d’outrage au peuple.” Lacoursière. *Alarme Citoyens!* p. 423.

<sup>551</sup> Ertür, “Spectacles and Spectres,” 122-124.

<sup>552</sup> Warren, ““Outrage au peuple!”” 135.

the court was aimed at calling the administration of justice into disrepute.<sup>553</sup>

Through distinguishing his representative peer group, he attempted to undermine the legitimacy of the court, but also asserted a hopefulness for a future vision of justice in Québec. Rose outlined this sentiment on 29 January 1971 in a pre-trial statement to the court:

ROSE: My true trial, I will have it after the independence of Québec and it is the people of Québec who will judge me.<sup>554</sup>

Throughout the trial he was critical of the composition of the jury—his alleged peers that sat in judgement of him. He continued to emphasize the fact that women could not yet sit on juries in Québec. For Rose, his peers were the workers, the guys from St. Henri, the Québec people, not engineers and businessmen.<sup>555</sup>

Ultimately, on 13 March 1971, Paul Rose was convicted of the murder of Laporte. In his closing statement, Rose reiterated his perceptions of the legal institution within which he was being tried:

ROSE: I tell you right away that in a sense your verdict has practically no importance.<sup>556</sup>

[...]

I was a member of the FLQ. I am a member of the FLQ. There will always be an FLQ as long as Québec has not been liberated . . . I have never concealed the fact that I took part in the kidnapping of Pierre Laporte. But that is all I said. I never spoke of anything else because it was a question of solidarity. It involved every member of the FLQ.<sup>557</sup>

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<sup>553</sup> Lacoursière, *Alarme Citoyens*, 420.

<sup>554</sup> Paul Rose: “Mon vrai procès, je l'aurai après l'indépendance du Québec et c'est le peuple du Québec qui me jugera.” Lacoursière, *Alarme Citoyens*, 425.

<sup>555</sup> Rico, “Les événements,” 39.

<sup>556</sup> Comeau, Cooper, and Vallières, *FLQ*, 249.

<sup>557</sup> Riseborough, ed. *Canada and the French*, 220.

Unlike other *felquistes* defendants who rejected the jurisdiction of the charge (e.g., earlier FLQ members) or denied their involvement in the alleged criminal activity (e.g., Vallières and Gagnon through the LaGrenade Affair) or plead not guilty and then dodged discussion of the offence to focus on the admissibility of the indictment and its constitutionality (e.g., the Trial of the Montréal Five defendants), Paul Rose used his defence summation to reiterate his guilt in the murder of Laporte. For Rose, who pleaded not guilty, used the trial to state that “I did it,” and then confronted the court at every turn, his defiant self-representation became a spectacle within a trial that the state maintained was an ordinary criminal trial in which justice was done. More to the point, to what extent did Rose, unwittingly or not, contribute to the legitimation of the post-October Crisis criminal justice processes through the manner he contested his guilt?

#### **6.4 Conclusion**

On appeal, Rose challenged the trial judge's continued application of the summary power of contempt. Arguing that he was unable to participate fully in his own defence because he had spent much of his trial in a cell because of several contempt convictions,<sup>558</sup> his petition was quickly denied by the Québec Court of Appeal as Rose also used the application to further expand his vision of justice in Québécois society.<sup>559</sup> Consequently, the initial conviction and life sentence were upheld. Later that year, on 30 November 1971, Rose was also convicted of kidnapping as sentenced to life imprisonment. He served close to twelve years before being granted parole.

Where Paul Rose and the other Chenier Cell defendants were defiant in their

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<sup>558</sup> Rico, “Les événements,” 40.

<sup>559</sup> Leroux, *Les Silences D'Octobre*, 21.

politicized speeches and refusals to participate, Chartrand and Vallières opened space to push back against the judiciary through politicized appeals to the rule of law (which claimed that the Crown was engaged in an unfair prosecution) and made use of the appellate courts to contest sentences for contempt of court. The Chenier Cell defendants, however, did not succeed in their appeal petitions.

In developing this argument relative to the LaGrenade Affair and the trial of The Montréal Five in the previous two chapters, particularly related to how the seditious conspiracy trial defendants undermined the Crown's position on their indictment and provoked Justice Ouimet into a closed session hearing, this chapter centred on the escalation to contempt convictions and on how the FLQ defendants continued to defiantly resist the courts in the face of significant court imposed sanctions for unruly behaviour. As a means to examine the FLQ trials, contempt of court proceedings illuminated how defendants acted out as they attempted to engage with or refute the conventional decorum of the courtroom, a decorum the bench was dutifully bound to uphold.

## Chapter Seven: Conclusion

Le fusil précédait le Parti.

—Denis Monière on the FLQ.<sup>560</sup>

In 1977, several years removed from the dissolution of the FLQ, Monière criticized how the FLQ approached political action. He argued: “Le fusil précédait le Parti.”<sup>561</sup> Translated as “the rifle preceded the Party,” what Monière suggested was that the FLQ put acts of politicized violence before the ideological and political struggle necessary to mobilize the people of Québec. Violent action, intended as both spectacle and catalyst in the awakening of the Québécois people to what the FLQ viewed as the colonial and imperial violence of the state, fell short. Put another way, Marc Laurendeau suggested, “[that Vallières and Gagnon had] hoped for a spontaneous revolution (psychologically determined) rather than an historical revolution, conditioned by the meeting of matured economic and social factors.”<sup>562</sup> In reality, action before effective political organization did not have its intended outcome. *Felquist* ideology (or *felquisme*), at its core, was a fragmented philosophical fusion of a denunciation of the exploitation of Québécois people by Canadian capitalist and American imperialist interests and a rejection of legal paths to an independent and socialist Québec.<sup>563</sup> This philosophical fusion was much more apparent when a wider view of FLQ activity is considered. Whereas earlier FLQ networks targeted symbols of colonial and imperial oppression (with no consideration of Québec’s First

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<sup>560</sup> Monière, *Le développement des idéologies*, 279.

<sup>561</sup> Ibid.

<sup>562</sup> Marc Laurendeau, *Les Québécois violents: un ouvrage sur les causes et la rentabilité de la violence d'inspiration politique au Québec* (Sillery, Québec: Éditions du Boréal Express, 1974), 49 as quoted and translated in Tetley, *The October Crisis, 1970*, Appendix Y: The Roles of the Participants in Retrospect, 51. Accessed via: [https://historyofrights.ca/wp-content/uploads/documents/FLQ\\_appendixy.pdf](https://historyofrights.ca/wp-content/uploads/documents/FLQ_appendixy.pdf)

<sup>563</sup> Monière, *Le développement des idéologies*, 278-9.

Nations people), later networks focused attention on Montréal labour strife.

Almost as soon as the FLQ initiated its bombing campaigns, its membership found themselves before legal officials and the courts. Responsible for seven deaths and the injuries of many others, the courts characterized the actions of the FLQ as terror, tyranny, and anarchy.<sup>564</sup> That is outside of, or as an exception to, legitimate politics. For the FLQ, their legal encounters forced the *felquistes* to translate their political and legal worldviews into the courtroom. The FLQ political trials and their defendants tested how Canadian law and the Québec bench managed “the boundaries of possible politics” relative to the criminal trial through how they expelled irreconcilable political claims from juridical spaces.<sup>565</sup> In this vein, and while explicitly political, violent means were irreconcilable with the courts and the broader public. Through the consideration of the criminalization of expressions of support for terrorist organizations, Christodoulidis and Veitch theorize the legitimacy of eliminating “statements, speakers, and speaking positions . . . from political dialogue.”<sup>566</sup> For example, in *Jamieson v. British Columbia* (1971), WMA-related power authorized the prosecution of five educators for expressing their sympathetic opinions about the FLQ.<sup>567</sup> Legitimate or not, the extent to which censorship tactics are deployed in response to political organization viewed as unfavourable by the state remains contested.

Relative to the FLQ political trials, centering self-represented defendants’ speech affords deeper consideration of the performative character of what is viewed as irreconcilable political claims. Such claims would otherwise be filtered out of legal arenas

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<sup>564</sup> FLQ-related deaths included O’Neill (21 April 1963), Leslie McWilliams and Alfred Pinisch (29 August 1964), Thérèse Morin (5 May 1966), Jean Corbo (14 July 1966), Jeanne d’Arc Saint-Germain (24 June 1970), and Pierre Laporte (17 October 1970). Tetley, *The October Crisis, 1970*, Appendix D: The October Crisis *per se*, 1. Accessed via: [https://historyofrights.ca/wp-content/uploads/documents/FLQ\\_appendixd.pdf](https://historyofrights.ca/wp-content/uploads/documents/FLQ_appendixd.pdf)

<sup>565</sup> Christodoulidis and Veitch, “Litigating Dangerous Politics,” 26-33.

<sup>566</sup> *Ibid.*, 28.

<sup>567</sup> *Jamieson v. British Columbia* (Attorney General) [1971] B.C.J. No. 126 21 D.L.R. (3d) 313.

and historical reflection. Self-represented defendants, more closely and more often than legal counsel, situated themselves at the boundaries of law and politics to undermine or leverage the administration of justice for their political benefit.

By anchoring a legal history of the FLQ trials within broader themes in Canadian legal history and relevant legal doctrine, I stress the intersection of the *felquistes* legal encounters and debates about legal performance in political trials and litigation. In developing a multi-layered consideration of how FLQ defendants viewed the law, political system and legal representation in courts, chapters two and three examined a lesser considered the deployment of self-representation as a politicized legal defence strategy. As the narrative of the self-represented defendant unfolded, so too did their complicated and ever-shifting view of the rule of law and their attempts to advance their cause through claims made about it.

Building on this, chapters four and five analyzed the trials related to the LaGrenade Affair and the Trial of the Montréal Five. The study of these two legal encounters (one before and one after the 1970 October Crisis) roots critical consideration of the performative dimensions of political trials and the legal performances of trial defendants—particularly how defendants use a variety of defence strategies to attempt to delegitimize the legal proceedings. Again, a variety of defendants with often divergent goals used a variety of strategies to contest the perceived unfairness of the application of the law. For example, in earlier FLQ trials, defendants would (with the proceeding continuing around them) deem the law a foreign imposition. Later, with more sophisticated legal approaches used (e.g., self-representation, appeal to the rule of law and substantive legal rights, the appeal of convictions, and constitutional challenges), defendants attempted to show the

partiality of the law and the political influences on the trials. In chapter six, trials in which censure for contempt of court emerge are centered alongside how such disruptive behaviours became a device in the self-represented defendants' argumentation style. Through consideration of instances in which Vallières and Chartrand were sanctioned for contempt relative to Paul Rose and Lemieux, I showed how variations in individual defendant's political, legal, or individual aims (i.e., whether imprisonment was a deterrent) within political trials influenced how those defendants advanced defences.

Political trials argued Allo, offer up spaces to articulate counter-hegemonic discourses and deploy what Foucault called 'subjugated knowledges' against alleged 'truth-bearing discourses of the state.'<sup>568</sup> Put another way, what were once the silenced grievances of a marginalized population were filtered to the forefront of political and legal debate. This tension between the subjugated experience and dominant institutional forces is captured in Erna Paris' June 1971 *MacLean's* article. She reported: "When [Robert] Lemieux goes to court, Québec goes on trial."<sup>569</sup> While Lemieux is a placeholder for the FLQ, the statement implied that the FLQ was putting Québec on trial. For the FLQ to put Québec on trial calls into question whether the *felquistes* defendants attempted to advance a claim about the character of Québec's national identity. Much of the FLQ's political narrative of injustice in the courtroom was occupied with the denouncement of the socioeconomic realities of Québec rather than an articulated vision of an emancipated Québécois public. A homogenous national identity was not a preoccupation of the *felquistes* once Vallières and Gagnon emerged as vocal proponents of clandestine FLQ actions. Was the FLQ representative of all French-speaking Québécois people? Certainly

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<sup>568</sup> Allo, *Law and Resistance*, p. 109.

<sup>569</sup> Paris, "The Radicalization of Robert Lemieux," 55.

not.

On a practical legal level, the personae that Lemieux had cultivated relative to the FLQ trials had professional consequences. Notably, at the end of Paul Rose's final criminal trial, Justice Mathieu sentenced him to two and a half years imprisonment for the multiple counts of contempt Lemieux had accumulated as a legal representative for FLQ defendants. In June 1974, on appeal, his sentence was reduced to six months. Released in October the same year, the Barreau du Québec then disciplined Lemieux for conduct unbecoming to the honor and dignity of the profession.<sup>570</sup> Returning to Paris's statement, such a claim could have been said to be true for any one of the *felquistes* defendants throughout the trials. Through the course of the trials, defendants addressed the courts with a full spectrum of responses ranging from respect to contempt. As they addressed the court and charges against them, the defendants also spoke through the court at the state.

Capturing this tension, on 9 November 1970 (at the height of the October Crisis), Claude Ryan penned an editorial in *Le Devoir* (the newspaper of which he was editor-in-chief) and asked what was viewed a controversial question: "Might not the types of political and social structures under which we live be responsible, to an extent yet to be determined, for the continual crises which we have witnessed?"<sup>571</sup> This question, within which I read the law as part and parcel of the described political and social structures, encouraged the reconsideration of the divisive political, social, and economic stratification of Québec society through the period.

Reading political defence strategies into historical consideration of the divisiveness of *felquiste* politics not only adds to a legal historiography of a salient political moment in

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<sup>570</sup> Daignault, "Les procès politiques," 45.

<sup>571</sup> Saywell, *Québec 70*, 150.

Québec, but also fosters a conceptual rethinking of how FLQ sympathizers and legal representatives are read relative to the enmeshed possibilities of legal mobilization and political struggle both in and outside courts. Conceptually, the *felquiste* defendant experience, rather than those of other political actors (e.g., cabinet ministers and journalists) or juridical insiders (e.g., the Crown, judges, or Justice Ministers), opens analytical space for new empirical evidence to interrogate political trials in Québec (and more broadly in Canada) and the power of legal performances. Importantly, sustained attention to written French-language accounts of the FLQ legal encounters amplified the internal tension with *felquistes* politicized legal activity.

Finally, in an evaluation of how historians think about terrorism in Québec, Philippe Côté-Martine argued that *felquistes* criminality must be reconsidered beyond its exceptionality to be read relative to other domestic and international socialist struggles of the period.<sup>572</sup> In a similar vein, the development of a legal history of the *felquistes* trials, which centres the performative and procedural elements of the legal proceedings, attempts to do just this (although with an emphasis on political trials): move FLQ scholarship beyond conversations of its exceptionality as a domestic terrorist organization and the FLQ as comparative foil. To this end, this project takes the FLQ trials as a case study to glean a deeper understanding of how self-represented political defendants recast normative claims to law. As defendants articulated their political views on the possible futures of Québec through their respective trials, the courts responded with varying techniques of censure. Rather than remain static, the FLQ defendants' politics also developed and shifted throughout their legal encounters and as they moved on with their lives. For example, in

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<sup>572</sup> Philippe Côté-Martine, "L'historiographie Québécoise et le terrorisme: une historicité à définir pour un objet encore fuyant," *Politique et Sociétés* 35, no. 2-3 (2016): 212.

December 1971, Vallières renounced political violence for party politics; and Gagnon, in 1977, deemed the separatist project “bourgeois and reactionary nationalism as he called for a Canadian workers’ revolution across Canada.”<sup>573</sup> Paul Rose, however, remained defiant through his imprisonment.<sup>574</sup> Implicated in such consideration is how various groups, who operate on the fringe of political and social movements (those who engage in political violence or otherwise), make use of the legal tools at their disposal.

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<sup>573</sup> Pierre Vallières, *Choose!* Translated by Penelope Williams (Toronto: New Press, 1972), 87-117; Pierre Vallières, *The Assassination of Pierre Laporte* (Toronto: J. Lorimer, 1977), 192; Tetley, *The October Crisis, 1970*, Appendix Y: The Roles of the Participants in Retrospect, 57. Accessed via: [https://historyofrights.ca/wp-content/uploads/documents/FLQ\\_appendixy.pdf](https://historyofrights.ca/wp-content/uploads/documents/FLQ_appendixy.pdf)

<sup>574</sup> For a full consideration of Paul Rose’s experience in prison, see Paul Rose, et. al., *Dossier: Paul Rose* (Montréal: Editions du CIPP, 1981).

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