

# SPEECH TO SDS CONVENTION BY RAP BROWN LAWYER FIGHTING GOVERNMENT REPRESSION: "TAKE THE OFFENSIVE," SAYS KINOY

Printed here are excerpts from a speech given by Attorney Arthur Kinoy to the SDS National Conference at Bloomington, Indiana on December 28. The tape was not turned on at the very start of his speech, so the first few sentences are a summary of what was said then. The transcript of the speech follows the \*\*\*\*\*.

Mr. Kinoy stated, from his experiences as a lawyer in movement cases, that he believes that in the next four to six months we are going to see in this country a major attempt at political repression, that the decision to use this repression has already been made at the highest levels of government in Washington, and that we must prepare for repression by knowing the nature and complexity of the legal and repressive machinery to be used.

The signal for the beginning of this mass repression was the frameup prosecutions instituted late this summer against Rap Brown. The important thing to understand is not the singling out of Rap and the institution of the prosecutions against him. The important thing is not the utilization of a law under which there has never been a successful conviction. The important thing is not the institution of prosecutions in which now some of their own witnesses say they don't have a shred of credible evidence to move on. The important thing is that they have achieved what they wanted because they have developed a new technique in this country, a technique of preventive arrest.

### Rap Confined

The simple fact of the matter is that Rap is confined to the Southern District of New York and he is not permitted to speak anywhere in the country other than in the Southern District of New York. And, to the eternal shame of the American movement, no fight has been made on this, nobody knows about this, nobody knows that ten days ago a Justice of the Supreme Court of the United States turned down a request for emergency relief so that Rap Brown could go to a university to speak to the student body; a most respectable and conservative of invitations.

Regardless of the fact that the conviction will probably be knocked out, because the law is as blatantly unconstitutional as it could be, the concept of preventive arrest has been developed into a technique for immobilizing the leadership of the American resistance movement. And the American resistance movement didn't know anything about it and didn't do anything about it and didn't fight on it.

### Government Tactics

The signal that they were going to move was then immediately followed by action. The government has a series of complex blocs of machinery which it can move into action against the entire leadership of an opposition movement. First is the frameup prosecution, and we have not seen the last of those.

It is no mystery to anybody that another militant leader of the black movement is back in the United States. It is no mystery to anybody that there are people sitting in Washington right now trying to figure out which particular statutes will provide an attack upon him. But this is just the bare beginning. Simultaneous with the development of the frameup prosecutions against the leadership of the movement which always skillfully and cleverly attempt to isolate first those whom they feel to be most vulnerable, least likely to have support, and least likely to have help, a pattern is set.

Look what they can do on the basis of Rap's case. They can pick up any militant leader, and it doesn't matter what the nature of the charge is, or whether or not the charge will be thrown out two, three, four years later, and stop him from speaking. Merely by placing a geographical restriction as a qualification of the bond issue -- if Rap's case is permitted to stand.

The next level is to resurrect that section of repressive machinery of the government which has gotten a little out of use. That was the whole structure of the Congressional Committee inves-

tigation. Now, what do we know for a fact?

### Congressional Investigation's

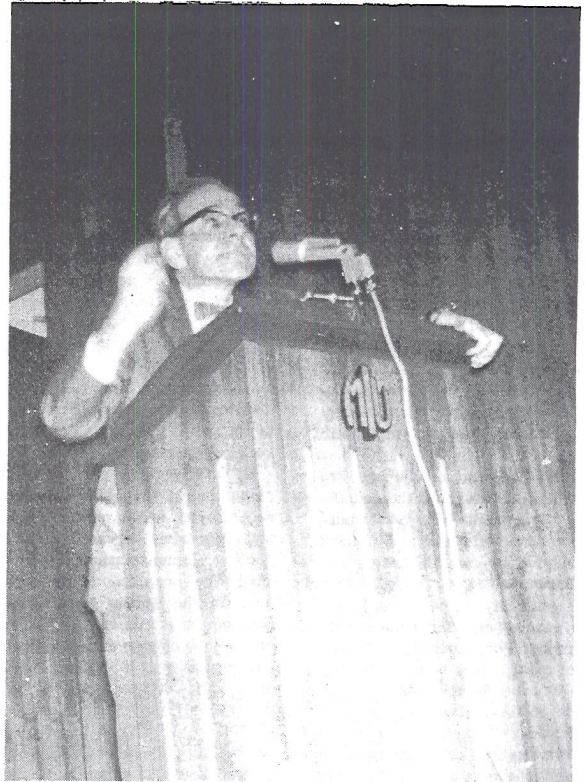
We know that a major decision has been made to open up wholesale congressional investigations of the whole sweep of the anti-war movement and the black militant movement throughout the country coming from three primary sources, the McClellan Committee, the Eastland Committee, and the UN-American Activities Committee. Now, this is not idle speculation. Again, every responsible member of the resistance movement should know what the simple facts are. The simple facts are that these committees have already had their resolutions of authority for the investigations passed; already have their investigators in the field; and in at least seven different cities subpoenas are already out from both the Eastland Committee and the McClellan Committee.

Let me tell you a little story because it illustrates the way in which they have planned their offensive action. You know they're accustomed to lawyers who are effective and who managed to get a number of decisions from the Supreme Court that membership lists and records and files of organizations could not be subpoenaed by Congressional Committees because it violated the First Amendment. So a good friend of mine, the Senior Senator from the state of Mississippi, with some assistance, worked out a beautiful scheme in 1964 in New Orleans. The scheme was: you get state officials to use state anti-sedition statutes, obviously unconstitutional, statutes the Supreme Court had thrown out years ago. Using these statutes, the state gets a search warrant, raids the organization and takes its files and records.

Meanwhile the organization rushes to a federal court and says the statute is unconstitutional, that it's a fraud and an outrage. Meanwhile behind the back of the Federal court and the state court and everybody else, Senator Eastland and his cohort Mr. Sourwine were down there with subpoenas from the Senate Committee to the state prosecutor who illegally had the books, records and files of the civil rights organization involved -- the Southern Conference Educational Fund, SCEF. When we innocently and naively went into the Federal courts and said, "All right, now these raids were illegal, give us back our books and records," the state officials got up in court and said "We're very sorry, we can't give them back to you, they're in the hands of the Senate of the United States."

### Illegal Legality

Now, using that technique, just three months ago, the McClellan Committee did exactly the same thing in the state of Kentucky. Using a statute which 10 years ago the Supreme Court of the United States said was unconstitutional, the Kentucky authorities went in and arrested the McSurelys, staff workers for SCEF. At the same time they used a warrant and raided their home and took three truckloads of material. Well, they cleaned out everything the McSurelys had and then our lawyers rushed into court saying this statute was unconstitutional. The Federal Court agreed. But what happened? It became clear that the purpose of the whole thing was not to make sedition arrests, for the statute was obviously uncon-



Arthur Kinoy addressing SDS National Council (Photo: Joe Blum)

stitutional. The purpose clearly was to permit the McClellan Committee, using the technique Eastland invented in New Orleans, to seize letters, books and records, and correspondence with people suggested as volunteers. Don't you think it helps the power structure in Kentucky to get that information? Of course it does. That's why they go after it. The McClellan Committee is moving all over the country. And what happens simultaneously?

### Committees Out for Blood

There is a division of labor. The division of labor is that the Eastland Committee is going to go after black uprisings and their interrelationship with what they call the white left. All right, that's their sphere of operation. HUAC has announced its hearings to dovetail in between the McClellan hearings and the Eastland hearings. So the committee structure is now going to operate full scale.

First you have individual frameup prosecutions. Then you have the committees which have decided to open up full-scale, wholesale exposure-type hearings. But that's not sufficient. A deal was made in Washington, which again very few people know anything about. The deal was made to extend for at least one more year of life the Subversive Activities Control Board -- the "McCarran" Board. Now that was one of the most fantastic episodes in recent Constitutional history. Ever since the Truman veto message, every single time the McCarran Act has come up for renewal, religiously, the Attorney General of the United States has come before the Judiciary Committees of the House and Senate and has said: This statute is completely unconstitutional; it violates the First Amendment and we urge you not to extend its life. And religiously the Senate and House have extended its life. But the Justice Department has always gone through the act.

Now a fascinating thing happened this year. For the first time in the history of the statute (and this goes back to the dark days of the McCarthy period), the Attorney General of the United States refused to take the position the Act was unconstitutional. He said he was too busy to appear before the Senate committee on this legislation. And instead the Majority leader of the Senate, acting for the White House, said in effect: We acknowledge that this board has really not performed any

useful function over the last several years, because unfortunately every single time it gets an order against a so-called subversive organization to register the Supreme Court manages to throw it out. Therefore we're going to warn this board. We're going to give it one more year of life and unless it produces results in the next year we're going to come in at the end of that year and urge you to abolish it.

Incredible! There has never been a statute like this written in American history. Into this new "McCarran Act" is a provision that says that unless the board, within the next year, acts successfully against four organizations, it will expire. The SACB may move against SDS -- we think that's very likely.

They'll use the McCarran Board, they'll use the committees . . . All right . . . that's branch three. What's branch four . . . ?

We now have our first mass indictments under the Selective Service Act, for refusal to be inducted. Seventy indictments in San Francisco, all returned en masse, not just single ones. Seventy indictments returned last week in San Francisco, with grand juries now sitting in at least five other areas of the country. This was a fundamental, basic decision made by the Justice Department to move now. They haven't reached yet the level of people who have turned in their cards, and these are not draft card burning cases. These are just the accumulated backlog of cases of young men who refused to cross the line. And as everybody knows, the Justice Department has been following a very different policy up to this point. Simultaneously what happened . . . ?

The Hershey directives. Along with the decision to have mass prosecutions there has been a decision for full-scale implementation of the Hershey directives from one end of the country to another.

Now the final category I won't even spell out because that's still on the drafting boards. And that I'll leave to your imagination. Because on the drafting boards are the classic espionage act cases, the Conspiracy Cases, the Smith Act prosecutions -- sitting there waiting to move. (Kinoy gave this speech a week before the members of THE RESIST were indicted for conspiracy -- Editor.)

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## FIGHTING REPRESSION *Con't. from p 5*

### Scared to Death

Now let me put something to you very bluntly. The unfolding of all these techniques of mass repression is new and different, and represents a major change in policy on the part of the Administration. What's the purpose? What's the reason? The simple fact of the matter is that this is not the best way for them to operate. It is not the best way for them to rule. It is not the best way for them to carry out their objectives. They would much prefer to accomplish their ends without the consequences which flow from the opening up of a program of mass repression. And I suggest to you that the reason why they made this decision — and it's a serious decision that goes to the heart of every single thing every single one of us has to think through as to what we're going to be doing in the days to come — is that they're afraid; they're frightened now, and they're frightened in a way they have not been.

I don't know where everybody else was in July and August this summer, but I had some work to do in Newark. There were a lot of problems in Newark this summer. And I saw one thing on the face of the Mayor of that city, and the police commissioner — and that was fear. And they were frightened, and they remain frightened of the upheavals in the black ghettos from one end of the country to the other. They are scared, they're frightened, they don't know where it is going, they don't know what is going to happen.

And what is the second thing they are frightened of? They're frightened about you. They're frightened about the impact of the student generation on the problem of one simple, central thing — the problem of the draft. They made policy decisions, very important policy decisions, taken after tremendous splits and differences within their own ranks. They made policy decisions about the elimination of graduate deferments. And for the first time now they face a situation that they are frightened about because they don't know what will happen. For the first time they face a June when a graduating class all over this country has no out, no escape, faces the Army, faces the war in the bluntest and most direct way. The one thing the White House, the State Department, the Pentagon, was most frightened at was the possibility that a large number of young men would not go. Because that and that alone was the thing they did not know how to cope with, that was what they were frightened about and that is what they remain frightened about.

### Intimidate the Movement

I suggest that the two fears together — the fear of the black ghetto uprisings and the fear that the effect of eliminating deferments may impel a whole student generation to face its conscience with no escape, no outs — is forcing them to move. Now the men in Washington are frightened that there will be some leadership and some planning. They're frightened that these two currents will fuse in some way; they're frightened at the impact on their entire policy of these developments.

Therefore they have decided that they will resort to the classic form of mass repression to create the other side of the coin of fear — to create the fear in the currents of the movement and the people whom they want to keep from doing simple things — talking together, planning together, moving together. Now what's the purpose of the overall program of repression? Do they care ultimately whether or not they make the convictions stick? No, that isn't the point. They're desperately concerned with creating an atmosphere of fear and paralysis from one end of the country to the other so that the well-springs of social action can't move in a directed form. They move out of desperation. They move out of fear.

### Take the Offensive

The way which one meets this and resists this is to turn the situation on its head: TURN IT TOTALLY ON ITS HEAD. And let me give you just one or two examples, because you're going to have to face every single one of these problems.

The Committees attack. Traditionally in this country for 20 years everyone who was called before the Un-American Activities Committee took a defensive posture. As a result the Committee gained its objective, which was not primarily to terrorize the witness but to terrorize everybody else. And they're counting on that again. So two years ago in Chicago and Washington we came to a very fundamental decision about how one meets mass repression. Very simple. You take the offensive. You reject utterly and totally a defensive posture. We said that the House Committee as an institution had no right to exist, and as constituted it is wholly illegal under the American Constitution. Therefore we decided to challenge it head-on. And that is what we did as everyone knows.

Let me tell you something that very few people know. Do you know what happened as a result of the heroic fight the Berkeley people and the New York people put up at the Washington hearings and the people in Chicago put up by saying they weren't going to participate in the hearings, that they were illegal, that they rejected the entire structure, that they were going to defend the best and the essence of American democracy by having nothing to do with them, by asking a Federal court to do its duty and strike the Committee down?

This fall a three judge federal district court in Chicago ordered HUAC to stand trial as defendants. We're going to put HUAC on trial this spring in Chicago. The Supreme Court has said that the First



Arthur Kinoy (Photo: Joe Blum)

Amendment means that American citizens may not be chilled in the exercise of fundamental rights, and may not be deterred or frightened from exercising their rights. Now what is more chilling than HUAC?

The circuit court of appeals agreed with what the Supreme Court said in a case we won three or four years ago, called the Dombrowski case. This is a case you should learn a lot about, all of you. (One thing I hate to tell you is that it's not true that you're not going to have to learn about it. What happens in the movement is that the movement people themselves become the best masters of law, in the best sense of the word, because they must learn how to use it.) The approach of this case came out of the experiences of the Southern movement that you don't sit back and take it on the head; you move first. The Supreme Court held that you don't have to stand trial before you challenge a governmental institution that chills people in the exercise of their First Amendment rights.

### Aggressive Tactics

So the Chicago federal court has said that the Un-American Activities Committee is properly charged with chilling the American people for the last 20 years in the exercise of their rights. On January 8, defendant Willis, the Chairman of the Committee, will present his answer to the complaint. Summonses have been served on defendant Willis and others and in the spring of this year in Chicago the Committee will be tried. Translate that technique into every single form of experience.

What did we do when Eastland stole the SCEF records? We didn't just sit back. We sued him for half a million dollars. And the Supreme Court last year ordered Mr. Sourwine, the general counsel of the Eastland Committee, to stand trial in the District of Columbia as a defendant in a conspiracy to violate the civil rights of citizens. And in addition the court in its mandate said that costs for this action in the amount of \$770 are assessed against defendant Sourwine.

For six months Sourwine and Eastland have been fighting that. Not because Sourwine doesn't have \$700, but because Sourwine doesn't want to make a check to Dr. James Dombrowski and SCEF signed J.D. Sourwine.

Why do I tell you these stories? Because we must learn how to develop aggressive offensive techniques utilizing the law, which enable, help and assist in developing and mobilizing an aggressive, offensive counter-reaction. When you work in a community, instead of sitting there and being clobbered and going into municipal court and defending your disorderly conduct cases, and being the defendant all the time, you can counter with an offensive, aggressive legal action. It raises the whole morale of the community, the whole morale of your own people; it puts you on the offensive, but more than that it gives the movement a million and one forms of organization and activity to build around. Now, this is the way we have to plan to meet the mass offensive against us which is being opened up.

### All On the Block Together

Think through what the powers that be have done. Think a little bit about what I said before. This is not the best way for them to move, because they make terrible mistakes. They're throwing us all together, whether we like it or not. They're going to move against SNCC, there isn't the slightest question. And they're going to move against the FDP, there isn't the slightest question. They're both on the chopping block today. And they both know it and they both are going to have to stand up and fight together. I tell you an interesting thing. It's true of the black militant movement and it's true of the white militant movement, and they're both on the block together.

What reaction has done has created the bridge which none of us could create by

ourselves. We have got to understand that now, because that's the bridge. The bridge is not for the whites to say to the blacks now they're going to solve their problems in the black ghetto, or in rural ghettos, or in Mississippi or Alabama. Of course not. But when black militant organizations stand before the McCarran Board — and they will — and stand before the Eastland Committee — as they already do — and the white organizations stand before them, there is no time for discussion of any other kind of problem. The enemy solves the problems. We simply don't have any time to get hung up in our hang-ups, because we have to solve the problems of how we are going to have a common strategy.

You know a black leader said something very powerful to me the other day. He said, "You know what I like most about that action you brought in Newark — to put the Newark police department in receivership?" What was most important to him was that the suit said who the real law-breakers are.

Now we say the same thing when we move affirmatively against governmental repression. The government is turning on and destroying the ideas and concepts of political freedom. In order to meet their fears now they must abandon the ideas and concepts of political freedom. Our fight for political freedom is not a fight we have made up. You know it's not a fight that originated in SDS or SNCC or anywhere else. These are ideas and concepts deep in the roots and heart of this country.

The ideas of political freedom are the ideas we fight for when we fight for constitutional freedom. These were the ideas which Sumner fought for when he called for defeat of the fugitive slave laws. These ideas of political freedom are ideas which the men in power are now turning against. In order to have mass repression they must destroy those ideas. So we must come forward as the champions of these ideas and in so doing . . . I happen to believe that millions of Americans will join us . . . I happen to believe that we can win. And that is why this is a fight in which all the lawyer can do is throw out thoughts, suggestions, techniques for the people. Because political repression is going to be met ultimately only by political thinking and organization. And that's your problem, not the lawyers!

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