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July 4, 1972

Dear Friends:

In the last two weeks we have added happy endings to many of the cases in this docket report! The Supreme Court's 8-0 decision striking down the Nixon administration's attempt to engage in warrantless wiretapping is one of the most significant victories in the Center's history. Argued before the Supreme Court in February by Arthur Kinoy, this decision will aide in the defense of political and peace activists.

Other recent Center victories have affirmed the right to assemble and demonstrate in the nation's Capitol (Jeannette Rankin Brigade v. Capitol Police); a newsman's right to resist an overbroad subpoena or "fishing expedition" (WBAI); the principle of the separation of church and state (People of the State of New York v. Sister Mary Alice Scully); and the common sense of the people over the vindictiveness of the prosecutor (People v. Feliciano and United States v. Glick). In addition, charges against Dr. Spock and others who have petitioned Congress for a redress of grievances have been dismissed (U.S.A. v. Benjamin Spock).

While we are pleased by this streak of victories, the current session of the Nixon Court has dealt some severe blows: Its ruling on the constitutionality of "use immunity" makes our work in the field of grand juries immeasureably harder. And the decision in the Caldwell case bodes ill for our WBAI case concerning source documents. We were also struck by the 5-4 vote refusing Congressional immunity to Senator Mike Gravel and his aides from grand jury investigation concerning the Pentagon Papers. Perhaps the true state of the nation is most accurately reflected in Justice Douglas' opinion in the wiretapping case:

> We are currently in the throes of another national seizure of paranoia...Those who register dissent or who petition their governments for redress are subjected to scrutiny by grand juries, by the FBI or even by the military. Their associates are interrogated, their homes are bugged and their telephones are wiretapped.

(Over)

What a time for us to have to endure financial problems. Our Xerox, telephone, and travel expenses are rising, some staff members are as much as four months behind in pay. Our legal advisors, volunteers all, put in hundreds of hours every week. Our lease at 588 Ninth Avenue is up - while we are not unhappy about leaving this office with its inadequate space, its unreliable heating and air-conditioning systems, and its accoustical problems - we are worried about the cost of moving and furnishing a new space.

You are the people that we depend on most. No case in this docket report could have been taken without your support. Please help.

Peace,

The Center Staff

July 17, 1972

REPORT FROM TALLAHASEE

Since there has been limited and incomplete coverage of the recent federal grand jury in Tallahassee investigating the Vietnam Veterans Against the War, we are sending you this special report. Although this is but one in a long series of grand juries, we believe that it is particularly significant because it represents egregious abuses of constitutional rights and because there are indications that the Tallahassee indictments may be used in the Nixon campaign to discredit one of the broadest based anti-war organizations opposing the administration's policy.

Last week 23 members and staff of VVAW were subpoenaed to appear before a Tallahassee federal grand jury investigating alleged plans for violence at the Miami conventions. Conducted by Guy Goodwin of the Justice Department's Division of Internal Security, subpoenas were issued on July 3, although nearly all were served in a coordinated two hour sweep on Friday, July 7. The subpoenas were returnable on July 10, at 9:30 a.m., the first day of the Democratic National Convention and the day of VVAW's first major demonstration in Miami (a demonstration which had been publicly announced for several months and for which a permit had been obtained from the Miami police department.)

On Sunday, July 9, we tried to obtain a hearing on a motion for a temporary restraining order in a civil action, VVAW v. Kleindienst, alleging that the subpoenas constituted prior restraint on free speech and preventive detention to silence VVAW in Miami. U.S. District Judge Middlebrooks refused to hold a hearing Sunday and ultimately heard argument on Monday afternoon after the grand jury had begun to examine witnesses and only a few hours before the demonstrations were to begin (Miami is more than 8 hours from Tallahassee by car.) The motion for a TRO was denied as was a motion for adjournment to seek and consult with counsel. The grand jury continued calling witnesses on Tuesday while two of us argued before Chief Circuit Judge Brown on a motion for an emergency stay, in New Orleans. Again our motion was denied.

On Wednesday, four witnesses were notified that they would be offered immunity. On Thursday, July 13, the final day of the convention, 11 subpoenas were dropped (5 were dropped on Wed). Of those excused, at least 8 were never asked substantive questions by the grand jury but were effectively kept away from Miami. The immunity and contempt "hearings" were held on Thurs. At neither were we permitted to call witnesses or to fully argue the constitutional issues concerning the validity of the grand jury, the subpoenas, or the questions asked of witnesses. We were never served with any papers on the government's motion for contempt and the questions which the witnesses allegedly refused to answer were never read to the judge or placed in the record. We were not permitted to cross examine Guy Goodwin about his affidavit denying illegal wiretapping (which was served on us and the court at the same moment the judge was reading his findings of contempt), or to place before the court objections to the affadavit's inadequacy. Our request for an adjournment to prepare for the contempt "hearing" was denied. Four witnesses, Jack Jennings, Bruce Horton, Wayne Beverly and John Chambers were immediately jailed without bail, and to date, the Fifth Circuit has refused to hear our application for bail or stay without formal papers. We hope a hearing will be granted today (July 17.)

As a postscript, conspiracy indictments of 6 VVAW leaders were returned by the grand jury under the same statutes challenged in U.S. v. Dellinger (the Chicago trial.) Two of those in jail for contempt are named in the indictment as unindicted co conspirators. We spent much of Saturday trying to get lawyers into the Tallahassee county jail to meet with witnesses and defendants. Access was refused under an alleged order of Judge Middlebrooks. In fact, he denied having so directed, and called the jail to clarify the matter. Local counsel can now meet with clients when necessary. We expect success in the contempt appeals.

So ended, at least for the moment, a new low in grand jury history - We hope you are reading up on grand jury law to prepare for Guy Goodwin's visit to your home city .....

Doris Peterson, Jim Reif and Nancy Stearns

(Attorneys of Record: Doris Peterson, Jim Reif, Nancy Stearns, Cam Cunningham, Judy Peterson, Jack Levine, Carl Broege, assisted by Ben Smith, Lou Natali, Barry Litt and Don Stang.)

C E N T E R F O R C O N S T I T U T I O N A L R I G H T S
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D O C K E T R E P O R T

G R A N D J U R Y A N D S U B P O E N A S

1. RUSSO v. BYRNE

This case grew out of the charges pending against Anthony Russo and Daniel Ellsberg in Los Angeles in the widely publicized Pentagon Papers case.

When Russo refused to testify before the grand jury on June 23, 1971, the government immediately moved the District Court for an order compelling him to give evidence pursuant to 18 U.S.C. §2514, which provides for immunity from prosecution. When Russo still refused at this point to testify, he was held in civil contempt, which judgment was affirmed by the Court of Appeals. In re Russo, 448 F.2d 369 (9 Cir. 1971). When a stay was denied, Russo v. United States, 404 U.S. 1209 (1971), Russo was committed to jail. After being incarcerated for 46 days, Russo agreed to testify upon the condition that he be provided with a transcript of his grand jury testimony. The District Court approved this condition and ordered Russo released from jail. However, when he appeared outside the grand jury room, ready to testify, Russo was refused entry by the U.S. attorney who informed him that he would not allow Russo to testify upon the condition already approved by the District Court because he deemed the Court's order to be unlawful; and this despite the fact that the government had not even sought to appeal that order. The refusal to allow Russo to testify was solely on the part of the government, not the grand jury which was not even consulted on the question. The District Court thereupon ruled that in light of Mr. Russo's willingness to testify and the government's refusal to provide him with a transcript, Russo was purged of contempt. In re Russo, Misc. No. 1821 (C.D. Cal. 1971). The government never appealed this ruling but, instead, indicted Mr. Russo (Along with Dr. Ellsberg, charged in an earlier indictment) in a superseding indictment returned in December, 1971.

Center attorney Jim Reif has worked on one aspect of the case -- whether, in light of the fact that the government, not the grand jury, made the decision not to allow Russo to give evidence, Russo is entitled to the immunity from prosecution he undoubtedly would have received had he been allowed to testify. The District Court denied a motion to dismiss the indictment against Russo, and a petition for writ of mandamus was denied by the Court of Appeals. Certiorari is pending.

(Jim Reif, Arthur Kinoy, with Leonard Weinglass, Jeffrey Kupers and Peter Young.)

2. PEOPLE OF THE STATE OF NEW YORK v. WBAI-FM, ET AL. (NEW YORK STATE)

UNITED STATES EX REL. GOODMAN v. KEHL (U.S. DISTRICT COURT)

Initiating a novel variation of the Caldwell case, WBAI-FM, a crusty, listener-sponsored radio station noted for its coverage of movement news, resisted a subpoena requesting all broadcast material with relation to the riot at the Manhattan House of Detention (Tombs) in October, 1970. At issue was the over-broad nature of the subpoena, the applicability of New York State Statute 79-h, protecting newsmen from such subpoenas, and the First Amendment fight of the press to protect, and the public to receive the untrammeled flow of news which, we argued, would be appreciably "chilled" if newsman were required to produce tapes of live, spontaneous broadcasts for use in criminal prosecutions.

Upon refusing to surrender the tapes, WBAI station manager, Edwin Goodman, was cited for contempt, and incarcerated upon the order of a Trial Court Justice. The next day, Saturday, Center attorneys petitioned both appellate-level courts of New York for his release which was refused. After an extraordinary Sunday hearing, Center attorneys won his release under a federal writ of habeas corpus granted by U.S. District Judge, Marvin Frankel. Although the writ was subsequently reversed by the Second Circuit, that Court took the opportunity to announce, for the first time in this circuit, that state bail procedures will be subject to federal constitutional review. In addition, the Circuit Court delayed reversal to permit a new application to the New York Appellate Division which immediately granted a stay of the contempt order and sentence.

When the merits of the case finally came before the Appellate Division, the District Attorney had considerably narrowed his subpoena. WBAI then revealed that it did not have the specific material requested, thereby rendering the subpoena moot.

The Appellate Division, in an opinion viewed as a substantial victory, ruled that the contempt judgment was "improper" since there is no duty to respond to an over-broad, general subpoena. Since the subpoena was moot, the Court did not decide the First Amendment issue, but it acknowledged that the First Amendment may well be involved in subpoenas for broadcast information depending upon the facts and circumstances of the particular case. The decision thus indicates that the burden of enforcing subpoenas against newspeople will be on the prosecutor whenever such subpoenas are resisted.

(Rhonda Copelon Schoenbrod, Peter Weiss, Michael Ratner and Doris Peterson with Jeremiah Gutman)

3. IN THE MATTER OF A GRAND JURY SUBPOENA DUCES TECUM SERVED UPON WBAI-FM (ALBANY COUNTY COURT)

In the wake of the uprising and murders of inmates and guards at Attica, the Albany office of Commissioner Russell G. Oswald was bombed. The Weather-undergound took credit for the bombing by means of a typewritten note received by a reporter with radio station WBAI-FM, a Pacifica station noted for its full coverage of Movement news. A subpoena, directing that the note be produced before an Albany grand jury, was served. A motion to quash the subpoena was made and heard on October 19, 1971, based upon the First Amendment and New York Civil Rights Law §79-h, which grants to newspeople an absolute right to refuse to disclose the content or source of any news. This case marks one more attempt to convert the media into an investigative arm of the state and thereby to destroy its ability to gather and disseminate "uncanned" news.

Declaring the primacy of the District Attorney's interest in criminal prosecutions, the Albany County Court upheld the subpoena, engrafting upon the statute the distinction between solicited and unsolicited news which severely and irrationally undercuts its effectiveness. The case is now on appeal before the Appellate Division.

(Rhonda Copelon Schoenbrod and Peter Weiss)

4. IN THE MATTER OF RALPH STAVINS (D. Mass.)

Ralph Stavins, a Fellow at the Institute for Policy Studies, was subpoenaed to appear before the Pentagon Papers grand jury in Boston. Originally, Center attorneys participated in this case in an advisory capacity only. A motion to quash based upon the First Amendment and an allegation that Mr. Stavins had been the subject of unlawful electronic surveillance, was denied by Judge Caffrey. Mr. Stavins then appeared twice before the grand jury but declined on both occasions to answer all but preliminary questions regarding identification.

At this point, Center attorneys assumed primary responsibility for this litigation. On October 29, 1971, the government sought an order compelling Mr. Stavins to testify. The application was resisted upon the grounds that the grand jury questions were the product of unlawful electronic surveillance of Mr. Stavins. This time, that claim was supported by affidavits describing how scientific tests conducted the previous two nights had demonstrated that the Institute and Mr. Stavins home were both the subject of electronic surveillance. Upon this showing, the Court urged the government to withdraw its application (in effect, denying it) and ordered the government not to ask anymore questions of Mr. Stavins unless it could adequately rebut the showing.

In December, 1971, the government filed an affidavit which purported to be a disclaimer of surveillance. Mr. Stavins was resubpoenaed a week later. We thereupon filed a motion to quash this subpoena upon the ground, inter alia, that the government affidavit was an inadequate denial of surveillance. After the submission of briefs and oral argument, the District Court (Judge Anthony Julian) agreed and quashed the subpoena. The court relied

primarily on the brevity and ambiguity of the government's affidavit. This is the first case (involving either a witness or defendant) in which a government denial of surveillance had been rejected as insufficient. Because the affidavit in question is a form affidavit used in almost every case where the government purports to deny surveillance, the decision by the District Court may well have far-reaching ramifications.

The government first filed a notice of appeal but then moved to dismiss its appeal. It has failed to proffer any new disclaimer regarding electronic surveillance of Mr. Stavis.

(Doris Peterson, Jim Reif, Morton Stavis and Peter Weiss)

5. IN THE MATTER OF A SUBPOENA SERVED UPON LEONARD RODBERT (D. Mass.)

Dr. Leonard S. Rodberg, Resident Fellow at the Instutite for Policy Studies in Washington, D.C. and personal staff assistant to Senator Mike Gravel, was subpoenaed to appear before the Boston grand jury investigating the Pentagon Papers. A motion to quash the subpoena was denied, although a protective order prohibiting the questioning of Dr. Rodberg regarding Senator Gravel's reading of the Pentagon Papers into the Congressional Record was entered by the Federal District Court. Senator Gravel appealed the decision and the Court of Appeals not only stayed Rodberg's subpoena but stayed the entire grand jury proceeding pending its decision of Gravel's appeal. The Government cross-appealed from the District Court's protective order.

In its decision of January 7, 1972, the Court of Appeals broadened the ptotective order entered by the District Court, ruling that Dr. Rodberg could not be questioned about anything he did or learned about in the course of the performance of his duties as Senator Gravel's aide. The Court, however, refused to broaden the lower court's order with respect to third persons other than Dr. Rodberg who may have assisted Senator Gravel. The government appealed the decision of the Court of Appeals as affording too much protection to Dr. Rodberg and third parties, and Senator Gravel appealed it arguing that it did not provide enough such protection. Certiorari was granted, the cases consolidated, oral argument was expedited, and a decision is pending.

(Doris Peterson, Jim Reif and Morton Stavis)

6. IN RE KENNETH TIERNEY

Eleven Irish Americans were subpoenaed to appear before a grand jury in Fort Worth, Texas investigating the alleged shipment of arms to the IRA in Northern Ireland. Center attorneys have raised the issue of electronic surveillance and charged that immunity is meaningless because foreign governments, in this case the British government, are not bound to honor such immunity. We have also objected to the denial of the right to counsel insofar as the government, for the first time, has refused to allow the witnesses to consult with counsel even outside the grand jury room. As of this writing, five defendants are in jail for contempt and a stay or bail pending appeal has been denied

W O M E N ' S R I G H T S

7. ABERLE v. MARKEL
(D. Conn.)

This is a federal civil action under 42 USC §1983, on behalf of over 800 women attacking the constitutionality of Connecticut's abortion statutes on the ground, inter alia, that they violate plaintiffs' rights to life, liberty, equal protection under the Fourteenth Amendment, and their right to privacy under the Fourth and Ninth Amendments. In addition, plaintiffs charge that the statutes constitute cruel and unusual punishment in violation of the Eight Amendment.

The application to convene a three judge court was denied and the complaint dismissed by the District Judge in May, 1971, on the authority of Harris v. Yonger, 401 U.S. 37 (1971). The Second Circuit reversed the decision, ruling that the plaintiffs, physicians, and abortion counselors had standing, and permitted them to amend their complaint to add a pregnant plaintiff. The three judge court was convened and issued a declaratory judgment holding the abortion statute unconstitutional in a strong opinion affirming a woman's right to liberty and privacy. After further litigation concerning the state's application for a stay of the decision pending appeal, the Court issued an injunction against enforcement of the statute and rejected the stay application. Supreme Court Justice Marshall also denied the state's application. Immediately thereafter, Governor Meskill reconvened the state legislature which passed a new and even more restrictive abortion statute.

In response, a motion has been filed before the original three judge court asking that they enforce their original injunction by enjoining the new statute, and that, in addition, they hold Governor Meskill in contempt for violating their order enjoining the old statute. A hearing on the motion was held on June 9. The contempt order was denied.

(Nancy Stearns with Catherine Roraback, Katherine Emmett, Marilyn Seichter, Barbara Millstein, Ann Hill, and numerous other women attorneys)

8. ABROMOWITZ v. KUGLER
(D. J.J.)

This is a §1983 action on behalf of 1,200 New Jersey women attacking the abortion laws of that state. Declaratory and injunctive relief was sought. Argument before a three judge court (Judges Foreman, Garth and Barlow) was held in December, 1970. In the spring of 1972, the three judge court held the New Jersey abortion statute unconstitutional on the grounds of vagueness and privacy. (The court interpreted the guarantees of privacy to encompass much of what the plaintiffs in Aberle v. Markle had argued women are guaranteed under the Fourteenth Amendment right to liberty.) The court concluded, however, that the plaintiffs in Abromowitz, none of whom were pregnant, did not have standing to challenge the law and ruled on behalf of physicians and counselors in the companion case of YWCA v. Kugler.

The state sought a stay of the declaratory judgment entered by the Court which was denied by the three judge court. Following the action regarding a stay in Aberle v. Markle,

the state applied to the Third Circuit for a stay. There has been no action on that motion to date. In the meantime, the legislature threatens to pass a new restrictive statute.

(Nancy Stearns with Nadine Taub and Ann Marie Boylan.)

9. WOMEN OF RHODE ISLAND v. ISRAEL (D.R.I.)

ABORTION COUNSELING SERVICE v. ISRAEL (D.R.I.)

These consolidated cases are both §1983 actions challenging the Rhode Island abortion statutes (including one which prohibits abortion counseling). A preliminary injunction was denied by Judge Pettine in Abortion Counseling Service in June 1971, but a three judge court was convened (Judges Coffin, Pettine and Wyzanski). That court heard a request for a temporary restraining order on behalf of a pregnant woman in early November, 1971, but was unable to determine the legal issues before the time passed when the woman needed to have the abortion. The plaintiff, therefore, had an abortion out of state; whereupon, the court held the application for the t.r.o. was moot.

The hearing on the merits was held on December 13, 1971, and no decision has been entered.

(Nancy Stearns and Janice Goodman, with Judy Hodge, Bernie Grossberg, Barry Vogel and Richard Zacks.)

10. WOMEN OF THE COMMONWEALTH v. QUINN (D. MASS.)

This is a class action brought by more than 100 Massachusetts women to challenge the Massachusetts abortion law. A three judge court was convened and the judges assigned were the same as in the Rhode Island case above (No. 9). A motion to dismiss was filed by the state, but no action has been taken by the three judge court.

(Nancy Stearns, with Kathleen Allen, Helen Gray, Judy Schatzow Remcho and Barry Vogel.)

11. WHEELER v. FLORIDA (Florida Supreme Court)

This is an appeal from the conviction of a 23-year old woman of the crime of abortion-manslaughter. The defendant was convicted on July 13, 1971 for having had an abortion. In October, she was sentenced to two years probation provided she marry the man she was living with or leave the state to live with her family in North Carolina.

Ms. Wheeler is presently on bond, her sentence stayed pending the completion of her appeal to the Florida Supreme Court. In February 1972, the Florida Supreme Court held the state's

abortion statute unconstitutional in the case of Florida v. Barquet. On May 18, 1972, in response to a motion for summary reversal, that court reversed Ms. Wheeler's conviction and remanded her case to the trial court for appropriate action in light of Barquet. The Felony Court of Records has not yet acted on the remand order.

(Nancy Stearns.)

12. YOHN v. RIVERVIEW HOSPITAL (D. N.J.) A §1983 action by a wife and husband against two New Jersey Hospitals which had refused to perform a requested tubal ligation on Ms. Yohn. After one hospital refused to perform the operation, Ms. Yohn became accidentally pregnant, thus, she was also suing for damages for the costs of raising her unplanned child.

When both hospitals agreed to change their policies and to perform sterilizations for women who requested them, Ms. Yohn agreed to withdraw the action.

(Nancy Stearns, with Nadine Taub and Ann Marie Boylan.)

13. BYRN v. NEW YORK CITY HEALTH AND HOSPITALS CORPORATION (New York Court of Appeals) In an attempt to invalidate the current New York abortion law and reinstate the old restrictive law, a law professor at Fordham University sought and obtained appointment by the Queens Supreme Court as guardian ad litem of all fetuses about to be aborted in New York City municipal hospitals. Judge Francis Xavier Smith entered a preliminary injunction against all municipal hospital abortions pending the outcome of the litigation. In the same order, Judge Smith granted a motion on behalf of several pregnant women and the Women's Health and Abortion Project to intervene as defendants in the action, represented by Center attorneys.

An immediate appeal was taken by the City, the State and the intervening women. The Appellate Division ruled that the preliminary injunction was improperly granted and dismissed Professor Byrn's complaint upholding the constitutionality of the New York abortion law. Byrn has appealed to the New York Court of Appeals which heard argument on May 30, 1972.

(Nancy Stearns, Rhonda Copelon Schoenbrod, Janice Goodman with Ken Norwick.)

14. DANIELSON v. BOARD OF HIGHER EDUCATION (S.D. N.Y.)

A §1983 class action for declaratory and injunctive relief against a maternity leave rule enforced by the New York City Board of Higher Education. The Board refused to grant leave to the father for purposes of child care, although leave can be granted to the mother under the provision. Plaintiffs are members of the faculty of the City University of New York. In cross motions to dismiss and for summary judgment, Judge Motley denied both motions and ruled that if plaintiffs can prove that the leave in question is for purposes of child care rather than recovery from childbirth that it may not be denied to Mr. Danielson. The Court further set for trial the question of whether Ms. Danielson could be denied her sick leave pay for the days following childbirth.

(Nancy Stearns and Liz Schneider, with Veronica Kraft.)

15. MONELL v. BOARD OF SOCIAL SERVICES (S.D. N.Y.)

This is a class action by employees of the New York City Board of Education and the Department of Social Services challenging the constitutionality of compulsory maternity leave practices of both departments. In each case the department in practice requires that a pregnant woman go on leave at the end of seven months pregnancy without regard to whether or not she is physically capable of continuing her work. These practices are attacked on First, Fourth, Fifth, Ninth and Fourteenth Amendment grounds. In cross motions to dismiss and for summary judgment, Judge Motley denied both motions and ordered a trial in which plaintiffs will seek to prove that there is, in fact, a seven month rule and that plaintiffs are required to go to Board of Education or Department of Social Services doctors to obtain permission to work.

(Nancy Stearns and Liz Schneider, with Oscar Chase.)

16. CORA WALKER v. COLUMBIA UNIVERSITY AND LOCAL 241 (T.W.U.)

This is a class action on behalf of maids employed by the University against the University and the local union for sex-based job discrimination. In January, 1972, 30 maids (all women) were given two weeks notice at a time when Columbia was hiring janitors (all men). Columbia claimed that the layoffs were budgetary. In cooperation with co-counsel, Carol Lebow of New York Women Lawyers, sex discrimination charges were filed with the State Commission on Human Rights and the Equal Employment Opportunities Commission. Attorneys also went into State court for a temporary restraining order. The court eventually denied the injunction, but because of the pressure of further litigation and the publicity surrounding the case, the maids have not been released.

The bases of the job discrimination claim are: sex-segregated job classifications -- all maids are women, all janitors are men;

and equal pay -- maids and janitors do substantially the same work under the guidelines of the equal pay act, but janitors receive $17.00 per week more than maids. Relief requested includes the establishment of one job category: cleaners -- with one salary scale (the janitors'), and one seniority list so that any future layoffs will fall equally, at least, on men and women. In addition, attorneys are seeking back pay for maids who should have been earning janitors' salaries from the start. A hearing before the State Commission on Human Rights was held on Monday, June 12, 1972. Further proceedings were set for July.

(Janice Goodman, with Carol Lebow.)

17. A PETITION TO DENY THE LICENSE RENEWAL OF WABC-TV

A petition to deny the license renewal of WABC-TV on behalf of the New York Chapter of the National Organization for Women (NOW) was filed with the Federal Communications Commission on May 1, 1972. Based on extensive monitoring studies conducted by NOW, the petition charges massive violations of FCC regulations concerning ascertainment, fairness and employment. Specifically, NOW charges that WABC-TV (a) does not consult with women or women's groups concerning women's programming; (b) presents a distorted and one-sided image of women; and (c) employs a smaller percentage of women than any other local television station.

WABC-TV has asked for and been granted an extension before filing a reply. Negotiations are currently in progress.

(Janice Goodman, Rhonda Copelon Schoenbrod, Nancy Stearns and Liz Schneider, with Deborah Biel, Judith Hennessee and Joan Nicholson from NOW.)

18. LOWERY v. STRACHAN (S.D. N.Y.)

This is a §1983 action by a female postal employee to enjoin imminent dismissal on grounds of race and sex discrimination. A temporary restraining order was granted by Judge Lasker but subsequently dissolved by stipulation when plaintiff decided to take the Civil Service route for appealing her termination. The local Civil Service office rules against complainant and an appeal is being taken to the final administrative level, the U.S. Civil Service Board of Appeals in Washington, D.C.

(Nancy Stearns and Janice Goodman.)

19. PILNICK v. NEW YORK UNEMPLOYMENT COMPENSATION BOARD

This winter, the Center undertook to represent a woman who had been denied benefits before and after the birth of her child. Exhausted by her efforts to earn the benefits to which she was entitled and discouraged by the rejection of her claim by the hearing examiner, the client did not wish to pursue the claim further. Center attorneys are investigating the possibility of a class action challenging the blatantly discriminatory policies and practices discovered.

(Janice Goodman and Rhonda Copelon Schoenbrod.)

20. SANCHEZ v. BARON (E.D. N.Y.)

A §1983 class action on behalf of junior high school women denied admission to shop class solely because of their sex. After the action was filed, the school admitted the named plaintiff to the shop class and proceeded to argue mootness. Since then, the litigation has centered around the propriety of the lawsuit as a class action. A hearing was held on November 3, 1971, and Judge Mischler held that the action could continue as a class action.

Plaintiffs have served defendants with interrogatories concerning their policies relating to male and female students in all classes. The interrogatories have not yet been answered. The New York State Legislature has passed a bill barring discrimination in education other than physical education. It is not yet clear what effect that law will have on the case.

(Nancy Stearns, with Bruce Ennis and Nancy Couturier.)

21. JEANNETTE RANKIN BRIGADE v. CAPITOL POLICE (D.C.CIR.)

This is an action challenging the constitutionality of a federal statute prohibiting demonstrating, walking or standing in groups on Capitol grounds. On appeal of a denial of a three judge court, the Court of Appeals (Judges Fahy and Burger) held that the case was not moot, that the First Amendment issue was not insubstantial, and that a three judge court should be convened. Judge Bazelon dissented on the ground that the Court of Appeals should declare the statute unconstitutional on its face, thus making remand unnecessary. See 421 F.2d 1090 (D.C. Cir. 1960). On remand, cross-motions for summary judgment were made and the case was argued in July 1971, before the three judge court.

This is the same statute used to arrest approximately 990 Mayday supporters assembled on the steps of the Capitol in May 1971, to hear anti-war speeches by United States Congressmen. Congresswoman Abzug and Congressman Dellums joined as parties plaintiff to complain of these subsequent Mayday arrests. The three judge Federal District Court, in May 1972, declared the statute to be unconstitutional, enjoined its enforcement and refused to accept the government's proposed saving construction of the statute.

On June 8, 1972, the government filed a notice of appeal signifying its intention to appeal this decision directly to the United States Supreme Court.

(Bill Bender, Morton Stavis, with Lawrence Speiser.)

22. BROWN v. NIXON

The Center, as counsel to the Lawyers Committee on American Policy in Vietnam, filed suit in the Federal District Court for Massachusetts, on November 24, 1971, to enjoin President Nixon from failing to comply with the mandate of the Mansfield Amendment (Title VI of the Military Procurement Act of 1971). This title declared it to be the policy of the United States that the war in Indochina be terminated as quickly as possible, and requested the President to set a date for the complete withdrawal of American forces from Indochina, subject only to the release of American prisoners. In signing the law, the President declared that he considered it to be without binding effect and that he would disregard its mandate.

This was the first action based on the Mansfield Amendment, which became effective on November 17, 1971. Since then, a number of suits throughout the country have been filed based on the President's willful disregard of the Mansfield Amendment. His act of defiance is one of the main grounds of the impeachment resolution now pending in the House of Representatives.

After the escalation of April 1972, the Center moved for a preliminary injunction restraining the President from continuing the massive bombing, and for summary judgment on the question

of whether or not the Mansfield Amendment was binding on him. At a preliminary hearing, Judge Ford reserved decision on the Federal Government's motion to dismiss President Nixon as a defendant. Unfortunately, further action on the case has been delayed by the Judge's illness.

(Peter Weiss, Morton Stavis, Bill Cunningham and Linda Huber.)

23. UNITED STATES OF AMERICA v BENJAMIN SPOCK et al

On May 24, 1972, Redress, a Washington-based committe of prominent citizens from all over the country attempted to present a petition to the House of Representatives to protest the failure of Congress to end the war. Ninety-four persons were arrested on charges of criminal trespass. Twelve decided to plead not guilty. At issue is the constitutionally guaranteed right to petition Congress for redress of grievances.

A motion to dismiss on First Amendment grounds and on the fact that the capitol police did not follow their own regulations was argued by a Center attorney on June 23 and granted on June 26.

(Peter Weiss, Doris Peterson, Bill Cunningham with Ira Lowe, Myrna Raeder, David Clarke and Susan Newman)

24. PEOPLE OF THE STATE OF NEW YORK v SISTER MARY ALICE SCULLY et al

The seven nuns and one Catholic laywoman who are defendants in this case, were arrested in St. Patricks Cathedral on April 30, 1972, and charged with lying in the center aisle of St. Patricks Cathedral during a high mass and causing a disturbance. The Catholic Church has taken the position that it does not want these women prosecuted for their activities in their own church during a religious ceremony, but District Attorney Hogan's office is continuing with the prosecution. Center attorneys moved to dismiss the complaints on the ground that §240.21 of the New York Penal Law is unconstitutional on its face and as applied because it violates the Free Exercise and Establishment of Religion Clauses and the Free Speech Clause of the First Amendment, and the Due Process Clause of the Fourteenth Amendment; and because this prosecution is against the wishes of the Catholic Church, violates separation of church and state.

The defendants in this case were trying to make known to their fellow worshippers their abhorrence to the continued killings of innocent people in Indochina and were urging their leaders to take a position of moral leadership in bringing an end to the war. The case involves a clear issue of separation of church and state with the state improperly involving itself in internal church matters. The court dismissed the complaints.

(Doris Peterson, Michael Ratner for Center, with Margie Ratner who is now handling the case. Center attorneys withdrew as their motion to dismiss on constitutional grounds was to be heard by [illegible]

25. TAYLOR v KENTUCKY STATE BAR ASSOCIATION

A federal civil action was brought seeking declaratory and injunctive relief from disciplinary proceedings instituted against Dan Taylor, a movement attorney in Louisville, Kentucky. The Court of Appeals, 424 F.2d 478 (6th Cir. 1970) unanimously reversed a District Court order dismissing the complaint and remanded for an evidentiary hearing. After the hearing but before the decision, Dan Taylor represented Narvel Tinsley, Jr., one of two black men accused of killing two white police officers. On October 29, 1970, after the jury returned their verdict in the Tinsley case, Judge John P. Hayes, without notice, without specification of charges, and without allowing Taylor to speak in his own behalf or be represented by counsel, sentenced Dan Taylor to four and one-half years for contempt.

On November 4, 1971, the same judge entered an ex parte order disbarring Dan Taylor from further practice in his court. Appeals were filed in both the contempt and disbarment actions. On January 14, 1972, the United States District Court dismissed the civil action, stating that the Kentucky State Bar Association could continue its proceedings to discipline Dan Taylor, which had been stayed during the pendancy of the civil action. That case is on appeal to the United States Court of Appeals for the Sixth Circuit. In the disciplinary proceeding by the Kentucky State Bar Association, briefs for both sides have been filed in the Court of Appeals of Kentucky.

(William Kunstler, Morton Stavis, Arthur Kinoy and Doris Peterson, with Jerry Gutman and Bob Sedler.)

26. INQUIRY OF WILLIAM M. KUNSTLER FROM STAFF OF GRIEVANCE COMMITTEE OF THE NEW YORK CITY BAR ASSOCIATION

During the course of the trial People v. Baker, William M. Kunstler was interviewed on a radio talk show where he stated certain facts and expressed certain opinions. Despite the fact that the matter was fully reviewed by the trial judge and despite the fact that he took no action whatever against Mr. Kunstler, subsequently the chief counsel of the Grievance Committee of the New York City Bar Association asked Mr. Kunstler to "explain" his action in the light of Rules of Rules of Professional Conduct of the American Bar Association. Important constitutional questions are involved, including the freedom of attorneys to make public the issues in their cases, and the discriminatory pursuit of a defense attorney representing unpopular defendants when no action is taken against district attorneys who regularly use the media to shape public opinion about cases they are prosecuting. A strong reply has been submitted, taking the position that the complaint is wholly unwarranted and that the matter should be dismissed.

(Morton Stavis, Jim Reif, Linda Huber, with Paul O'Dwyer.)

27. YOUNG LORDS v SUPREME COURT OF STATE OF NEW YORK (SD. N.Y.)

This is a Federal civil action by Center and other movement legal organizations and their clients challenging the constitutionality under the First and Fourteenth Amendments of Part 608 of the Rules of the Appellate Division, First Department. Part 608 requires disclosure of numerous facts concerning legal organizations which seek to become excepted under Judiciary Law §495(5) from the general prohibition in §495 against the practice of law by corporations and voluntary associations. A three judge court (Judges Feinberg, Wyatt and Tyler) was convened but denied plaintiffs' motion for a preliminary injunction without reaching the merits of the constitutional claims. 328 F.Supp 66 (S.D. N.Y. 1971). Because defense counsel represented to the Court that approval under §495 might be forthcoming if plaintiffs applied for such, and further that no action would be taken against plaintiffs until thirty days after final disposition of the action, the Court felt there was no irreparable injury justifying preliminary relief. Negotiations with the Appellate Division regarding the disclosure requirements are now in progress.

(Victor Rabinowitz, Jim Reif and Nancy Stearns, and other attorneys.)

CONGRESSIONAL COMMITTEES

28. UNITED STATES v McSURELY

Alan and Margaret McSurely were convicted in June 1970, of contempt of Congress. Their conviction followed a three-year struggle which began with the efforts of state and local authorities in Pikeville, Kentucky, to oust the McSurelys because of organizing work they were doing among miners. They were prosecuted for sedition and all their papers seized. After the statute was declared unconstitutional, the Permanent Subcommittee of Investigations of the Committee on Government Operations of the United States Senate (McClellan Committee) served subpoenas and tried to obtain the papers which had been illegally seized by state officials. The McSurelys challenged the subpoenas and their conviction followed. The case was argued on appeal to the United States Court of Appeals for the District of Columbia in January 1972, and a decision is expected shortly.

The case presents important constitutional questions as to whether a Senate Committee can exercise its subpoena power if the subpoena was composed on the basis of the prior illegal seizure of documents by state officials and Senate Committee staff.

(Morton Stavis and Nancy Stearns.)

29. McSURELY v McCLELLAN

Since the Senate Committee staff and Senator McClellan obtained from state officials documents belonging to the McSurleys of a purely personal nature and having no possible connection with the business of the Senate, the McSurelys instituted a damage action against the Senator and members of his staff and the state officials responsible for the illegal seizure and the turnover to the Senate staff. Notices to take depositions of the Senator and members of his staff were served and the government moved to defer discovery pending decision on the criminal case. The District Court has not yet ruled on the government's motion.

(Nancy Stearns and Morton Stavis)

30. NPAC v HISC (HUAC) (D.C. Cir.)

PEOPLE'S COALITION FOR PEACE AND JUSTICE v HISC (D.C. Cir.)

Two lawsuits, filed in May, 1971, challenged the constitutionality of HISC subpoenas seeking plaintiffs' bank records after HISC had obtained at least a portion of those records from plaintiffs' Washington bank without plaintiffs' permission. The subpoenas were issued even in the face of a preliminary injunction obtained in a similar case enjoining execution of the same type of subpoena.

On the basis of USSF v Eastland, a preliminary injunction was granted to plaintiffs in both cases (which have been consolidated) and the government has appealed. Appeal briefs have been submitted by both sides. The case has not yet been set for argument.

(Nancy Stearns, with Burt Neuborne and Jeremiah Gutman.)

31. UNITED STATES SERVICEMEN'S FUND v EASTLAND (D.C. Cir.)

The USSF, which helps support GI activities, particularly coffeehouses near military bases, brought this civil action to invalidate an Eastland Committee (Internal Security Subcommittee of Judiciary Committee) subpoena of USSF bank records, and to declare the Eastland Committee unconstitutional on its face and as applied. The District Court's denial of the temporary restraining order was reversed by the Court of Appeals. Plaintiff's motion for preliminary injunction was denied but the Court of Appeals granted an emergency stay of enforcement of the subpoena. On the basis of a Senate resolution forbidding him to disclose any information not a matter of public record, defendant Sourwine, Committee Counsel, refused to answer nearly all questions asked him in depositions. In January 1971, plaintiff moved for an order compelling Sourwine to answer. Judge Gasch, however, refused to rule and, instead, forced plaintiffs to hold a hearing on their application for permanent relief, thus effectively precluding meaningful pre-trial discovery. In October 1971, he denied both the motion to compel discovery and the motion for a permanent injunction. USSF is appealing Judge Gasch's decision, and the subpoena continues to be stayed pending appeal. Appeal briefs have been filed but argument has not yet been set.

(Nancy Stearns, with Jeremiah Gutman.)

W I R E T A P P I N G

32. UNITED STATES v UNITED STATES DISTRICT COURT

In a prosecution for conspiracy to destroy government property, the defendants moved for disclosure of electronic surveillance. In response, the government admitted surveillance without a search warrant, but took the novel position that it was lawful because the Attorney General had authorized the surveillance as a matter of national security. The District Court rejected the government's claim and ordered disclosure. United States v Sinclair, 321 F.Supp. 1074 (E.D. Mich. 1971). The government sought review of that order by mandamus. The Sixth Circuit agreed that mandamus was appropriate, but in a 2-1 decision held that in a purely domestic situation, there can be no exception to the warrant requirement of the Fourth Amendment even when the Attorney General claims national security is threatened. Certiorari has been granted and if the Supreme Court agrees that mandamus will lie, this will be the first Supreme Court test of this unprecedented claim that the Attorney General has essentially unreviewable power to decide whether or not a search warrant need be obtained in cases involving electronic surveillance.

Arthur Kinoy argued the case before the Supreme Court on February 24, 1972. On June 19, the Supreme Court, in an 8-0 decision, upheld the ruling of the Sixth Circuit, declaring such warrantless wiretapping unconstitutional.

(Arthur Kinoy, William J. Bender, William M. Kunstler and Linda Huber, with Buck Davis and the Rutgers University Constitutional Litigation Clinic.)

33. DELLINGER v MITCHELL

This is a suit under the Fourth Amendment and 18 USC §2520, for damages and injunctive relief for electronic surveillance of the Chicago Eight, and nine Anti-war and Black liberation organizations. In connection with the Chicago Conspiracy trial and the trial of Muhammad Ali for refusing to submit to induction, Clay v. United States, 430 F.2d 376 (5th Cir. 1970, rev'd on other grounds, 403 U.S. 698, 1971), the Justice Department again admitted surveillance without a warrant and made the same national security argument as above. This lawsuit was instituted not only to vindicate Fourth Amendment rights, but as a means of preventing interference with plaintiffs' First Amendment activities. After notices for depositions, interrogatories and requests for admissions were served, the District Court granted defendants' motion to stay all proceedings until final disposition of the Chicago Eight trial and appeal. On appeal, the District of Columbia Court of Appeals unanimously held the stay invalid and remanded to the District Court for further proceedings.

On remand, the government again sought a stay of trial pending decision in the Keith case. The plaintiffs opposed the stay. The court ordered that the trial go forward as to the plaintiffs who were not specifically convicted in Chicago. The case is now ready for discovery and trial.

(William J. Bender, Arthur Kinoy, William M. Kunstler with

34. KINOY v MITCHELL
(S.D. N.Y.)

This is a Civil Action by Center-attorney Arthur Kinoy and his daughter, Joanne Kinoy, for damages and injunctive relief for alleged electronic surveillance conducted in violation of the Fourth Amendment and 18 USC §2520. This action differs from Dellinger v. Mitchell in that there is no related criminal proceeding, and the government has, as yet, neither affirmed nor denied the existence of surveillance.

In July 1971, Judge Tenney denied the defendants' motion to dismiss the cause of action and, subsequently, also denied the government's application that he certify his order to permit an interlocutory appeal. In its answer, the government, claiming executive privilege, has refused to admit or deny surveillance. Discovery and further pre-trial proceedings are presently being undertaken.

(Jim Reif, Arthur Kinoy, with other attorneys.)

M I L I T A R Y

35. PATTERSON v. EATON (D.Ma

A Federal civil Action for declaratory and injunctive relief. This class action attacks the constitutionality of the compulsory ROTC military training course at Bangor High School on First Amendment grounds. This course at Bangor High is the oldest high school military training program in the United States and the only one in the State of Maine. It includes training in the firing of deadly weapon, military drill and general indoctrination in the need for a military.

After plaintiffs' motion for summary judgment was filed, defendants capitulated by making ROTC voluntary. The new regulation was made to apply retroactively to all plaintiffs. Having obtained the full relief they sought, plaintiffs stipulated a dismissal of their lawsuit -- without prejudice to its reinstitution should the school board ever revert back to its compulsory ROTC regulation.

(Jim Reif with local counsel)

36. AMSTERDAM v. LAIRD (E.D.N.Y.)

Civil action to enjoin harassment of Okinawa-based Center-affiliated attorney, Mark Amsterdam, and legal worker, Carol Dudek, in violation of the Fifth and Sixth Amendments. Mark and Carol have been in Okinawa for almost 1-1/2 year representing GIs in their increasing conflicts with the Army. The Army has engaged in a continuous effort to deter the Amsterdams from continuing their work with GI's. Harassment has included extended personal surveillance, attempts to exclude them from the many Army bases and efforts to discredit them with their clients, by posting their pictures at base entrances which announce that they are considered "undesirable" by the Army.

The government is now attempting to litigate whether the plaintiffs, in fact, are residents of the Eastern District of New York. (Plaintiffs Amsterdam and Dudek lived in the Eastern District prior to their departure for Okinawa.)

(Nancy Stearns and Peter Weiss with Ken Kimmerling)

37. UNITED STATES v. HERSCHEL DAVID POPLIN

David Poplin was stationed on Okinawa, attached to the 7th Psychological Operations Group, when he refused an order that he felt constituted a war crime. He was not charged with disobeying an order. Instead, he was subjected to seven months of petty harassment by the officers and men of his unit. This treatment culminated in Poplin's going AWOL. He was apprehended, tried and convicted. The sentence was suspended and he was ordered, over his pleas and objections, to return to his old unit. At that time, he decided that he would not cooperate with the military system in

any way. Almost immediately upon his return he was charged with failure to salute and report, being out of uniform, refusal of an order to see a certain officer, and attempted escape during a short period of incarceration. He was convicted and sentenced to nine months imprisonment. The appeal brief was filed in December 1971, raising three issues: that the charges are largely duplicative; that returning Poplin to the unit that had harassed him for seven months constituted a gross abuse of discretion; and that the activities carried on by the 7th Psychological Operations Group are violative of international law agreements. The Poplin case was lost in the Court of Military Review. An appeal will be taken to the Court of Military Appeals.

(Michael Ratner, Peter Weiss and Rick Wagner)

38. UNITED STATES SERVICEMEN'S FUND

The Center is co-counsel in representing USSF in its attempt to stave off threatened revocation of its tax exemption by the Internal Revenue Service. The IRS has taken the position that USSF, which supports GI newspapers and coffeehouses, is not entitled to tax exemption because it is opposed to the war and the draft. Our position is that USSF is a modern-day equivalent to the USO and the IRS's position constitutes an abuse of their discretion and an abridgement of First Amendment rights. A protest filed last year against the proposed revocation resulted in the case being referred by the New York District Office of IRS to Washington, and the latter issued a lengthy questionnaire about the USSF's activity which has just been answered.

A hearing was held at the Internal Revenue Service office in Washington on May 17, 1972, resulting in a request by the IRS for submission of additional briefs and information.

(Peter Weiss with Mitchell Rogovin)

39. USSF v. LAIRD (D.D.C.)

Civil action filed in March 1971, on behalf of United States Servicemen's Fund, actors and actresses, and servicemen, seeking an order permitting USSF shows to be performed on military bases, posts and hospitals throughout the country. This lawsuit was initiated following the Army's refusal to permit a USSF show at Fort Bragg in North Carolina.

In May 1971, the government moved for a change of venue to a North Carolina district court on the ground that it was a purely local issue. Plaintiffs objected because the action was national in scope seeking relief not only at Fort Bragg but at Army bases throughout the country. Further, the refusal at one base was on the basis of instructions from the Department of the Army in Washington, D.C. In September, Judge Gasch granted the defendants'

motion. However, the United States Attorney in North Carolina, answering on behalf of the government, has agreed with the plaintiffs that North Carolina is not the proper venue. No further action has been taken by either party.

(Nancy Stearns, Jim Reif and Bill Bender)

40. HESS v. LAIRD (D.C.D.C.)

This is an action by a marine corporal and his wife challenging the constitutionality of the Marine Corps' order prohibiting wives of corpsmen from visiting husbands stationed in the Western Pacific (not Vietnam) more than once during a tour of duty, or for longer than 60 days. If a wife disobeys this regulation, the husband gets transferred (as did Private Hess), court martialed or fined. Center attorneys claim that this is an unconstitutional denial of Linda Hess' right to travel freely and an unlawful extension of military authority over a civilian. In addition, the order is an unconstitutional denial of Private Hess' right to due process as he is being punished for the acts of another. The First Amendment right to free association is also an issue in the case.

(Janice Goodman and Michael Ratner with Alan Dranitzke and Eric Seitz)

41. UNITED STATES v. WOODS

This is an appeal of a court martial of Lance Corporal M.C. Woods who was convicted of manslaughter while stationed in Okinawa. Woods was represented by Center attorney, Mark Amsterdam, in Okinawa. The appeal raises the issue of improvident guilty plea because of a good self-defense claim.

(Michael Ratner and Peter Weiss)

42. UNITED STATES v. ANDERSON

This is an appeal of a conviction of a soldier stationed in Okinawa. He was defended at his court martial by Center attorney, Mark Amsterdam. Anderson is accused of threatening an officer by stating, "I'll kill you." The appeal brief has been filed and raises First Amendment issues regarding the constitutionality of the conviction.

(Michael Ratner, Peter Weiss and Linda Huber)

43. NEW YORK CITY v. VIETNAM VETERANS AGAINST THE WAR and DRUG MENDING ZONE

This case arose out of a sit-in at the Veterans Administration building by 18 Vietnam veterans who were protesting the government's lack of rehabilitation for veterans who became addicted while in the service. After negotiations broke down, the New York Police Department arrested the 18 men who were released on summonses. At Court, Center attorneys negotiated with the District Attorney and won a dismissal of all charges.

(Michael Ratner and Doris Peterson with Margie Ratner and Jesse Berman)

44. UNITED STATES v. PABLO YORUBA GUZMAN

Yoruba is a draft resister who is a member of the Young Lords Party. He refused induction on the grounds that the draft law does not apply to Puerto Rico and that he would not serve in a colonialist army. He was convicted in the District Court, the Judge denying, in a long opinion, Center attorney's contention that the jury was illegally constituted because of age and race exclusions. The case is on appeal with briefs due June 23, 1972.

(Michael Ratner)

45. UNITED STATES v. BENJAMIN CRUZ

Attorneys at the Center have filed a number of pretrial motions. We have moved to (1) dismiss the indictment for the reason that the "draft" laws cannot be constitutionally applied to Puerto Rico, (2) dismiss the indictment because the jury which indicted the defendant excluded young people and Puerto Ricans, (3) dimiss the indictment on the ground that Cruz is being selectively prosecuted because of his political views, and (4) disclose electronic surveillance. A decision should be forthcoming on these motions in August or September. Benjamin Cruz is a member of the Young Lords Party and refused induction into the army. Trial is scheduled for November.

(Michael Ratner and Jesse Berman)

46. VVAW - THE STATUE OF LIBERTY CASE

As part of its "Operation Peace On Earth," fifteen members of VVAW entered and occupied the Statue of Liberty. Designed to "put the war back on page one" the action included the placing of an inverted American flag on the Statue's crown as a symbol of liberty in distress.

The federal government immediately moved in Federal District Court for a temporary restraining order to evict the veterans. Center attorneys opposed the granting of this order. They argued that the occupation was an act of symbolic speech protected by the First Amendment, and that it interfered with no function of the government except its monopolistic use of the Statue as a backdrop to dramatize its official version of Liberty. The order was first denied and then granted a full day later, at which point the veterans peacefully marched out. No further action was taken by the government.

(D[illegible]

P R I S O N

47. BACH v. MITCHELL (D. Conn.)

This is a federal civil action filed in October 1971, on behalf of 11 federal inmates at Danbury Correctional Facility, Danbury, Connecticut, challenging their transfer and dispersion, revocation of parole and loss of good time in retaliation for distributing leaflet within the prison. It also challenged the arbitrary denial of parole to Fathers Daniel and Philip Berrigan for advocating a work stoppage and hunger strike. The suit tests the lack of standards in parole board procedures and the extent to which inmates may organize politically and disseminate material critical of prison conditions.

In a hearing on a motion for a preliminary injunction, Judge Blumenfeld dismissed the complaint. Center attorneys appealed but withdrew the appeal for three reasons: 1) most of the plaintiffs are now out on parole or otherwise not bailable, and one plaintiff withdrew; 2) a case raising parole issues is now before a very good judge in Washington, D.C., and an unfavorable appeal decision in Bach v. Mitchell might adversely affect the Washington decision; and 3) a new Danbury case is now being raised as an outgrowth of a recent work stoppage.

(William C. Cunningham, S.J., Janice Goodman and Rhonda Copelon Schoenbrod and Liz Schneider)

48. INMATES OF ATTICA v. ROCKEFELLER

This suit is a civil action pursuant to 42 U.S.C. §§1983, 1986, 1987 and 1989 to compel state and federal prosecutions against Nelson Rockefeller and other state officials directly involved in the Attica massacre. The suit sought to enjoin the holding of an Extraordinary Term of the Supreme Court which Rockefeller directed to try the Attica cases. The District Court dismissed the complaint. A decision concerning appeal has not yet been made.

(Michael Ratner)

49. STATE v. WATSON

STATE v. BUFFORD

These are prosecutions against prisoners in the New Jersey State Prison alleging assault of guards. In one of the cases the defendant was one of eight prisoners who were badly beaten in an unprovoked attack by guards. The indictment of the prisoners came about after the filing of an affidavit in a federal court action describing the assault by the guards. An affirmative civil rights action for damages on behalf of these eight inmates is also in preparation.

The second case involves a charge that an inmate assaulted a guard where the evidence appears to be plainly to the contrary, and there are indications that the inmate is being prosecuted because of his dissidence.

(Morton Stavis and Rhonda Copelon Schoenbrod)

50. TRENTON STATE PRISON NEGOTIATION

Following the uprising in Rahway State Prison on Thanksgiving Day (1971), prison officials in Rahway and Trenton, New Jersey, encouraged the development of a program of prisoners representation committees and the election of representatives on a rotating basis. The program was short-lived because in January 1972, as a result of a peaceful work stoppage, four of the leaders of the prosoners' representative committee were put in punitive segregation. Halting efforts to revive the committee are currently underway, but prison officials are unwilling to permit the committee to function in an independent fashion and will not even permit them to have counsel of their own choice when they meet with proson officals.

(Morton Stavis)

51. AUSTELL v. YEAGER

When some of the leadership of the Trenton negotiating committee was locked up in punitive segregation, suit was filed in the Federal court. Upon the filing, the members of the negotiating committee were released. Thereafter, the case developed as a broad due process attack upon prison disciplinary procedures. The case was argued before a three-judge federal court on June 7, 1972, and a decision is awaited.

(Morton Stavis, Rhonda Copelon Schoenbrod with Henry Hill)

52. SPELLER v. WAGNER, ET AL.

An inmate of New Jersey State Mental Institution for the criminally insane was found strangled to death in his cell. Although prison officials have claimed that the inmate committed suicide, the nature of the strangulation has led an independent pathologist to view it as presumptively homicidal. On behalf of the family of the decedent, a suit was filed against officials of the New Jersey Correctional System, including the doctors and guards responsible for decedent. The issues include not only the nature of death but the question whether the State had the right to incarcerate the defendant (an alleged sex offender) for ten years, on the theory that he needed specialized mental treatment, without, in fact, giving him any such treatment.

(Morton Stavis, Linda Huber with Eldridge Hawkins)

53. MERCER COUNTY INMATES

A group of about 40 Black inmates at the Trenton State Prison (New Jersey) filed a proceeding pro se with the Supreme Court of New Jersey claiming that the judicial system of Mercer County is discriminatory. Though the Court rejected the petition, Center attorneys have been seeking to collate data to resubmit the case. The main information sought relates to disparate sentencing between black and white. A community group closely identified with the prisoners has been researching records in the County Clerk's office to find evidence of discriminatory sentences.

(Morton Stavis, Rhonda Copelon Schoenbrod, Liz Schneider with Victor McTeer)

L E G A L - E D U C A T I O N A L P R O J E C T S

54. PUERTO RICO - COMMISSION OF INQUIRY OF POLITICAL REPRESSION

Public hearing on political repression in Puerto Rico were held during the week on August 16-19, 1971, in three major towns on the Island by a panel of legal scholars under the sponsorship of the Center. The Commission members are: Prof. Dan Collins, N.Y.U.; Prof. Hebert O. Reid, Howard U., Chairman of the Commission; Prof. Thomas Farer, Rutgers U., Ann Fagan Ginger, Meiklejohn Civil Liberties Library, California; and John Van Dyke, Ass't. Prof., Hasting College of Law, U. of California.

Due to economic realities, the Center undertook the responsibility of having the complete Spanish Transcript - including all the documents turned over to the Commission, written depostitions, etc. - translated into English. This has been possible with the cooperation of the Puerto Rican community in New York. The final report will be completed in August 1972, as well as a documentary

film based on this material.

(Gina Cestero, Janice Goodman, Peter Weiss and Rick Wagner)

55. OKINAWA — Center attorney Mark Amsterdam and legal worker Carol Dudek have been providing free legal counsel and assistance to GI's on Okinawa for approximately 1-1/2 year. During this time, they have defended, in more than 100 courts-martial, men charged with riot, assault and murder, as well as the most common charges of AWOL and possession and sale of drugs. More important than the nature of the offenses with which their clients have been charged, is the manner in which Mark and Carol have conducted the defense. At every opportunity they have struck at the inequity and unconstitutionality of the system of military justice, and exposed the racism, authoritarianism, and general oppressiveness of the military itself.

(Mark Amsterdam and Carol Dudek)

INTERNATIONAL RACISM

56. DIGGS, ET AL. v. CONNALLY, ET AL. (D.D.C.) — This is a federal civil action seeking declaratory and injunctive relief to prevent the importation from Zimbabwe (Southern Rhodesia) of metallurgical chromite and other materials. Importation of these substances is barred by United Nations Security Resolutions and Presidential Orders. Since the passage of the Byrd Amendment, defendants Union Carbide and Foote Mineral have started importing metallurgical chromite and other materials into the United States under a General License allegedly authorized by the Byrd Amendment.

This case involves the allocation of power between Congress and the Executive in dealing with our treaty obligations; the manner in which Congress may or may not abrogate solemn international commitments; and the binding effect upon the courts of the United States ratification of the United Nations Charter and of mandatory Security Council resolutions, where the United States has failed to exercise its veto. Plaintiffs in this action include all the members of the Black Congressional Caucus, Zimbabwe citizens who want to return to their homeland, writers and church people who are presently barred from entry into Zimbabwe by the illegal white government (which the United Nations sanctions are designed to bring to an end).

Plaintiffs' motions for temporary and preliminary injunctive relief were denied without reaching the merits and plaintiffs' substantive claims. Cross motions for summary judgment were argued on May 25.

On June 19, the District Court decided the case against the plaintiffs and dismissed the action. An appeal to the Court of Appeals on an emergency basis is being pressed.

(Morton Stavis, Doris Peterson, Rhonda Copelon Schoenbrod with Andre Surena, Joel Carlson and Bert Lockwood).

C R I M I N A L

57. CHICAGO CONSPIRACY
(N.D. Ill.)

DELLINGER v UNITED STATES
(No. 18295)
IN THE MATTER OF DAVID DELLINGER, et al
(No. 18294)

These are the appeals from the convictions for violations of the federal anti-riot act, 18 USC sections 2101-02, growing out of the demonstrations at the 1968 Democratic National Convention and the convictions for alleged contempt of court during the trial of the Chicago Eight. The appellants in the substantive case are Rennie Davis, David Dellinger, Tom Hayden, Abbie Hoffman and Jerry Rubin; in the contempt case the appellants are those five plus John Froines, Lee Weiner and attorneys Leonard Weinglass and William M. Kunstler. (Bobby Seale's appeal from his convictions for contempt is also pending.)

The appeal in the contempt cases was argued on February 9, 1972, before Circuit Judges Fairchild, Cummings and Pell of the Seventh Circuit. On May 11, the Seventh Circuit unanimously reversed the ten contempt convictions imposed by Judge Julius Hoffman on the eight defendants and on the two defense attorneys. Seven of the contempt specifications against Len Weinglass and twelve of the contempt specifications against Bill Kunstler were dismissed outright. All of the other contempt specifications against the defendnats and the two attorneys were reversed and remanded to the District Court for further proceedings before another judge. The Court found that Judge Hoffman was personally embroiled with the defendants and the attorneys and should not have sat on these cases; that he should not have proceeded summarily against either the defendants or the attorneys; and that on remand appellants are entitled to jury trials unless the judge to whom the case is referred decides that the maximum sentence should be six months total for an appellant on all remaining specifications against him.

The appeal in the substantive case was argued on February 8, 1972, before the same three judge panel of the Seventh Circuit and is awaiting decision.

(Arthur Kinoy, Morton Stavis, Jim Reif, Doris Peterson, with Helene Schwartz and numerous other attorneys.)

58. PEOPLE v LAY
(N.Y. Sup.Ct.)

In 1968, six Black men were charged with conspiracy to commit murder, conspiracy to commit robbery, possession of bombs, and possession of firearms. This case gained notoriety as the District Attorney charged that the defendants had conspired to "kill a copy each week." Each was eventually released on bail, but only after all had spent varying lengths of time in jail.

At the trial in April-May, 1971, all the charges were dismissed against one defendant for lack of evidence. One defendant was acquitted on all counts. The remaining defendants were acquitted on all the conspiracy counts but convicted of the felony of

possession of weapons. Two received three year sentences and two received probation. The relatively light sentences were imposed after several leaders from the Black community came forward to support the defendants. The case raises serious questions about the propriety of the conduct of two police infiltrators, and the main issue on appeal concerns entrapment. Oral argument before the New York Appellate Divison was held on June 2, 1972.

(William Kunstler and Linda Huber, with Larry Rabinowitz.)

59. HAMPTON v CITY OF CHICAGO
JOHNSON v CITY OF CHICAGO
BREWER v CITY OF CHICAGO
(N.D. Ill.)

These lawsuits, together with Clark v City of Chicago, were filed on behalf of those injured in the police raid on the Black Panthers in Chicago in December, 1969, and on behalf of the survivors of Fred Hampton and Mark Clark who were murdered in that raid. All four are suits for damages and all consolidated for trial. Dave Scribner has committed himself to work on behalf of the Center as general counsel in this litigation.

A tremendous amount of time and effort have already gone into the investigation, accumulation and analysis of the facts surrounding the raid. It is apparent that only through these lawsuits can the community be made aware of the true facts in what is believed to be a planned murder which was part of a larger plan to exterminate the Panthers and their supporters.

Another step that was taken is the filing of an application in the District Court on behalf of the survivors to expunge the report of the federal grand jury which, in declining to find violations of the civil rights of Hampton, Clark and the survivors by the police raiders, engaged in a vitriolic, gratuitous and illegal attack on the Black Panther Party and its members.

The District Court granted the state's motion to dismiss as to the defendants, City of Chicago and Cook County, as well as to the defendants, State Attorneys, Mayor and Police Hierarchy. The District Court also denied the Grand Jury Report Petition and an appeal has been taken to the Seventh Circuit Court of Appeals on these issues. An Amended Complaint containing the remaining counts has been filed in the District Court.

The criminal trials of State's Attorney, Mr. Hanrahan, and the officers, is scheduled for this summer and, therefore, the civil cases will enter the discovery stage.

(Bill Bender, Arthur Kinoy, with Dave Scribner and John Hyman.)

60. NEW JERSEY v BOBBY LEE WILLIAMS

Defendant was shot by a policeman from the Plainfield Police Department immediately before the policeman died at the hands of an angry crowd that reacted to the wanton shooting of Williams. Williams was subsequently indicted for inciting to riot, assault with intent to kill, and assault on a police officer. The incitement count was nolle prossed after the statute was attacked by motion as unconstitutional.

Williams was acquitted of assault with intent to kill, and the jury hung on the charge of assault with a dangerous weapon (given to the jury as a "lesser included offense" of the charge of assault with intent to kill).

The primary constitutional issue in this case, raised both on appeal in the state court and in the federal courts by way of habeas corpus proceedings, is the legality of the intentional sealing of Williams' indictment for a period of more than eleven months. The issue of the alleged violation of Williams' Sixth Amendment speedy trial rights is presently pending decision on a Writ of Certification in the New Jersey Supreme Court.

(Bill Bender and William Kunstler.)

61. STATE v LYNCH

A total of twenty indictments against nine persons were returned in September, 1971, charging conspiracies to construct a bomb. The charges arose out of a labor dispute in Maine and a lengthy strike by the Amalgamated Meatcutters Union, primarily over the issue of a union shop. Two of the nine are editors of Paine, an underground newspaper in Bangor which supported the strike and generally criticized the local establishment. The union members are represented by union counsel, and the Center has undertaken the representation of Kevin Lynch, editor of Paine. (His co-editor fled after arrest warrants were issued and has not been apprehended.) All were released on bail.

On motion, the Superior Court dismissed the charge against Lynch for conspiracy to construct a bomb on the ground that the indictment failed to charge an offense. A motion to dismiss the remaining charge against Lynch - possession - remains pending. A total of seven other indictments have been dismissed mostly on grounds that they fail to charge an offense. In the fall of 1971, a trial of two of the union defendants on a conspiracy count led to a mistrial after Vickers, the ninth indictee, who had allegedly given a statement to the police, refused to testify against them at trial, even after being offered immunity from prosecution. He was held in contempt for this refusal, which is presently on appeal.

A retrial of these two defendants produced another refusal by Vickers to testify and another contempt citation. This time, however, the two defendants were convicted. Their case is presently on appeal. The state has made no move as yet to bring Lynch or any of the other remaining defendants to trial.

(Jim Reif, with local counsel.)

62. UNITED STATES v. GLICK
(2d Cir.)

In December 1970, eight (8) young resisters who call themselves "The Flower City Conspiracy," were found guilty by a federal jury in Rochester, New York, of breaking into and taking records from the Rochester offices of the Selective Service System, United States Attorney, and the Federal Bureau of Investigations.

John Theodore Glick was one of these defendants. They were sentenced to terms varying in length from 9 months to 18 months -- Glick receiving 18 months. Their bond was revoked, and they began their sentences immediately. Glick, representing himself, had his appeal dismissed, but later reinstated by the Second Circuit when the Court discovered his trial transcript had not reached him until July 1970. By that time, Glick had been included as one of the now eight (8) defendants in the superseding indictment returned in Harrisburg, Pennsylvania, on April 30, 1971 (see United States v. Ahmad). Notice of appearance was filed for Glick; his release on bond ($10,000) pending appeal in United States v. Glick was obtained on October 1, 1971.

On his indictment in Harrisburg as one of the eight defendants, he was released on his own recognizance! A motion was filed in the Second Circuit asking the Court to order the trial judge in his case to hold a hearing and place on the record whether he communicated with the jury during their deliberations, in the absence of defense counsel and the defendant; and, if so, the nature and extent of those communications. The motion was based on the affidavit of a newspaper reporter who interviewed two of the trial jurors the day after their verdict. The trial judge denied on December 14, 1970, a similar motion by the one defense counsel (seven of the defendants represented themselves).

On December 20, 1971, the Second Circuit remanded this case to the Western District of New York for a hearing in accordance with a motion made by the defense. On January 20, 1972, at that hearing, Judge Burke presented us with a statement of fact which he said represented what happened dealing with our motion. In it he admitted not only the conversation or communication with the jury which we had alleged, but revealed the existence of another oral communication. Nevertheless, the judge concluded that the jury had not been prejudiced in any way, and denied defendant's motion for a new trial. Briefs have been filed and argument had on June 14, 1972, in the Second Circuit Court of Appeals.

(William C. Cunningham with Paul O'Dwyer)

63. STATE v. KEATON
(Florida Sup. Ct.)

Three young Black men were charged and convicted of murder in Florida and sentenced to death. The Center has undertaken a substantial part of the appeals work. The convictions were based primarily upon confessions extorted by trickery after several days of intensive questioning. The defendants had been refused counsel and the right to speak to relatives. This, as well as the constitutionality of the death penalty, is a major point of the appeal.

After defendants were convicted, three other persons, unknown to

the defendants, were charged by the same district attorney who prosecuted the defendants, with the same exact crime! Because of this later fact, we have argued that the judgments against the defendants must be reversed and the indictments dismissed, or minimally, defendants awarded a new trial.

(Jim Reif and Morton Stavis with Margie Ratner, Paul Ross and Kent Spriggs)

64. STATE OF NEW YORK v. DESEDA, ET AL.

On May 30, 1972, 23 people -- workers and physicians -- at Lincoln Hospital, in the South Bronx, were arrested on misdemeanor and felony charges ranging from criminal trespass to first degree assault, for watching a political film in the workers' lounge during their lunch hour. The film was sponsored by the Health Revolutionary Unity Movement (HRUM). Center lawyers in conjunction with other members of the Young Lords Party Defense Committee, have undertaken the criminal defense of those arrested.

We are also planning to institute a federal action for injunctive relief against future interference of any kind by hospital authorities and police with meeting at the hospital involving political discussions and the showing of political movies.

(Linda Huber, Liz Schneider, Jim Reif, Mike Ratner with other attorneys)

65. UNITED STATES ex rel. YANES v. MALCOLM (U.S. Dist. Ct. N.Y.)

In another attempt to expand the use of Federal writ of habeas corpus to bring relief to state defendants denied their constitutional rights in the prosecutorial process (see United States ex rel. Goodman v. Kehl), Center attorneys sought to enjoin the ongoing trial of four defendants facing substantial criminal charges growing out of a brief takeover at the Riker Island Juvenile Facility in New York City. Despite repeated assertions that they were trying to retain a private attorney, and despite the fact that at the outset of the trial they had a commitment from William M. Kunstler to represent them after only a brief adjournment, the Court ignored their protest and forced them to go to trial. Being denied the right to counsel of their choice, they refused to permit their assigned attorneys to put in any defense and were summarily convicted. The habeas corpus petition was filed before the verdict and denied without opinion. The denial of the right to counsel will be challenged on appeal in the state courts.

(William M. Kunstler, Rhonda Copelon Schoenbrod with William Schaap)

66. PEOPLE v. BAKER ("THE HARLEM SIX") (N.Y.Sup.Ct.)

In 1964, six Black youths were arrested and charged with first degree murder, attempted murder and attempted robbery in connection with the stabbing of the owners of a Harlem clothing store. The arrests followed by two weeks an incident in which the same youths had successfully intervened in the attempted beating by police of other boys accused of stealing from a fruit stand.

Tried in 1965, the six were convicted but the convictions were overturned by the New York Court of Appeals. People v. Baker, 296 N.Y.S.2d 745 (1968). One was severed and convicted on retrial. A second pleaded guilty to manslaughter. The retrial of the other four resulted in a hung jury. Seven and one-half years later (the defendants had been held without bail since the date of their arrests), the State tried these four for the third time. Center attorneys represented one of the four in this third trial, which began in November. Lasting more than two and a half months, this trial produced still another hung jury: 7-5 for acquittal. Although most people thought the District Attorney would drop the case at this point, he refused and at the urging of the same Assistant District Attorney who has sought to have the defendants convicted through three trials and eight years, moved for a fourth trial.

The defendants moved to dismiss the indictment and for bail. Courtroom hearings were jammed as support for the defendants grew. At one hearing, people literally knocked over guards who were denying them access to the courtroom and filled every available space in the court. Finally, although murder is usually a non-bailable charge, bail was set by Judge Joseph Martinis at $5,000 for each defendant. The money was raised in a single day, largely through the Harlem Community, and after eight years the Harlem Four were released -- at least pending decision on their motion to dismiss the charges against them.

That motion is now based not only on the fact that the defendants have already been prosecuted three times and been incarcerated for eight years, but upon facts which have come to light since the last trial ended in January. Since then, the parole officer of Ollie Roe, the only witness who claimed to have seen the defendants in the store where the stabbings occurred, has said that this "witness" told him in 1965 that he could not identify any of the defendants as the persons he saw running out of the store and that the only person he could recognize was Barnes, who denied he was at the scene at the time of the stabbings. It also raises the serious question whether the Assistant District Attorney and/or the police may have intentionally suppressed their knowledge of this fact for all these years. Hearings on a motion to dismiss are expected shortly.

(William M. Kunstler and Jim Reif with Conard Lynn, Lewis Steel and Ed Leopold)

67. UNITED STATES v. LESLIE BACON (S.D.N.Y.)

In April 1971, Leslie Bacon, a young woman in the movement, was arrested in Washington, D.C., and held in lieu of $100,00 bail as a supposed material witness in the

Capitol bombing. Flown to Seattle, she was questioned intensively before a federal grand jury for several days about the bombing. When it became obvious she know nothing about the bombing, she was then questioned about numerous other movement activities. When Bacon declined to respond to subsequent questions after being ordered to do so, she was held in civil contempt and jailed for several days until a stay was obtained.

Apparently in retaliation for her refusal to talk in Seattle and to cover up the government's embarrassment over having arrested, with enormous attendant publicity, a woman who know nothing about the notorious crime in connection with which she had been arrested, the federal government then indicted Bacon charging her in a multi-count indictment with having conspired to blow up a bank in New York. This is the same crime that 5 other persons had already pleaded guilty to in state court and for which the State District Attorney had consciously declined to prosecute Ms. Bacon.

Numerous pre-trial motions were filed, and although most of the motions were denied by Judge Ryan, the government has once again admitted having conducted electronic surveillance without a search warrant and the legality of the surveillance and its effect upon the indictment and trial are now being litigated. [Meanwhile, the Court of Appeals for the Ninth Circuit has ruled unanimously that the government's original arrest of Ms. Bacon was illegal, Bacon v. United States, No. 71-1826 (9 Cir., 1971), and her appeal from the judgment of contempt is before the Supreme Court on a petition for certiorari.] Judge Ryan has since stayed ruling on the legality of the government's admitted surveillance until the Supreme Court decides United States v. United States District Court, No. 70-153, so the trial of this case is nowhere in sight. [Meanwhile, the government has obtained an indictment charging Bacon with perjury before the Seattle grand jury before which she testified in April 1971.]

(Jim Reif and Doris Peterson (of counsel) with Bill Schaap, Linda Huber, Henry diSuvero and Leonard Weinglass on the New York case)

68. UNITED STATES v. EQBAL AHMAD, ET AL. M.D.Pa.)

This is the so-called Berrigan Conspiracy Case -- a federal indictment in Harrisburg, Pa., of six, then eight anti-war activists on charges of conspiracy to kidnap Henry Kissinger, blow up heating systems in government buildings in Washington, D.C., and break into draft boards. Sending letters, both "threatening" and "contraband" into and out of a federal prison is also charged. There are seven "unindicted co-conspirators," from whose number Father Daniel Berrigan has been dropped in the superseding indictment.

On April 5, 1972, the jury in the Federal District Court for the Middle District of Pennsylvania, returned a verdict that they were unable to reach a unanimous decision on counts 1 through 3 -- the kidnapping and conspiracy charges leveled against seven defendants who were then on trial -- nor were they able to arrive at a verdict on counts 2 and 3 which then remained outstanding against Father Philip Berrigan and Sister Elizabeth McAllister for sending communications threatening to kidnap Henry Kissinger through the United States mails. The remaining seven counts resulted in a

finding of guilty by the jury and so Sister McAllister faces a total maximum punishment of 30 years, and Father Berrigan faces a total maximum confinement of 40 years. The defense made motions following the trial for judgments of acquittal on counts 1 through 10 under Federal Rule of Criminal Procedure 29, and those motions are still under consideration by the judge.

The defense also conducted a hearing and appeal on the electronic surveillance the government had admitted. (The judge had ruled that this could take place only after the trial.) At that hearing, an FBI agent testified under oath that they had indeed conducted a tap of the subject (who must remain nameless) from November 24, 1970 to January 6, 1971, six days before the return of the indictment in this case. More amazingly, he said under oath that the purpose of the electronic surveillance was to "investigate this case." By his testimony, therefore, he admitted to the commission of a crime prohibited by 18 U.S.C. §25. As of this date, Judge Herman has not yet decided on the motions that have been argued and no date has been set for the sentencing of Father Berrigan and Sister McAllister. If the defense motions were granted, it would result in a non-appealable order and could obviate the necessity for sentencing.

(William C. Cunningham and William J. Bender with Ramsey Clark, Paul O'Dwyer, Leonard Boudin, Tom Menaker and other attorneys)

69. STATE OF NEW YORK v. FRANKLIN MYERS

Franklin Myers is one of the defendants in the criminal cases arising out of the Tombs (Manhattan House of Detention) disturbances. Since that time he has also been indicted for the misdemeanor of criminal contempt of court. We are defending him on the contempt charges. The alleged contempt arose out of a speech he gave regarding his desire to have a new counsel in his Tombs' case. Center attorneys are moving to dismiss the contempt charges because: they do not specify what language in the speech was contemptuous; the contempt statute is unconstitutional; and if the judge did not wish to punish him for contempt the grand jury should not be permitted to indict him for it. Motions were filed on June 10, 1972.

(Michael Ratner and Jim Reif)

70. STATE v. AUSTELL

Jerome Austell was sentenced to the New Jersey State Prison for 7 to 10 years on a charge of receiving and attempting to alter a stolen $150 money order. Center attorneys became interested in assisting Mr. Austell because he has emerged as a leader among Black inmates in Trenton State Prison and his sentence is plainly excessive. Moreover, he was sentenced after a plea of guilty given through an attorney who was a public defender, and who did not advise the defendant of an important search and seizure defense. As a result of appeals to the New Jersey Appellate Division, the defendant is awaiting resentencing and a hearing is underway as to the knowing-voluntariness of his plea of guilty.

(Morton Stavis and Liz Schneider)

71. PEOPLE v. FELICIANO

Carlos Feliciano, a 43 year old Puerto Rican nationalist, was accused in 1970 of some 41 bombings in the City of New York. He was subsequently indicted in both New York and Bronx Counties but charged only with two attempted arsons. He was held on bail of $300,000 for almost 17 months and released only after it was finally reduced to $55,000. On June 22, 1972, a jury in Bronx County acquitted him of all six counts of the indictment against him. Significantly, Feliciano's sole defense was that the charges against him had been fabricated by the police and the jury's verdict more than substantiates this claim. He is now awaiting trial in New York County and it is expected that his acquittal in the Bronx will have a substantial effect on the New York County prosecution.

(William M. Kunstler, Conrad Lynn and Robert Bloom)

72. STATE v. TURCO

In 1970, Arthur Turco, a New York lawyer who represented the Black Panther Party in Maryland, was indicted for murder in the first degree in connection with the death of an alleged informer in the summer of 1969. After a trial in which one key prosecution witness' testimony was stricken by the court as inherently incredible and others contradicted themselves throughout, the jury failed to agree on a verdict. Subsequently, after the institution of a federal law suit seeking to enjoin Turco's retrial, he was permitted to plead guilty to a minor misdemeanor and given a suspended sentence without probation. At the same time he was allowed to state in court that he was innocent of the charge against him and to give the names of the witnesses who would have testified for him in the event of another trial and the testimony they would have given. He is now practicing law in Rochester, New York, where he and his wife moved after the termination of the legal proceedings against him.

(William M. Kunstler, Harold Buchman with Arthur Turco)