CABLE: CENTERITES, NEW YORK

CENTER FOR CONSTITUTIONAL RIGHTS

Fall, 1973

Dear Friend:

The attached Center Docket Report contains descriptions of all our current cases. We have allotted more space than usual to the "Gainesville 8 Conspiracy Case" not only because of its complexity, but also because it so clearly demonstrates the despicable methods and frightening goals of the Nixon Justice Department.

One would have thought, after having failed to obtain convictions in so many celebrated conspiracy trials (Spock, Chicago, Berrigan, Russo-Ellsberg, Gainesville, etcetera) the Administration would have perceived how deeply offensive these political persecutions are to the American public. Unfortunately, we can only answer this by pointing out that the Center must now prepare for the defense of American Indians in yet another conspiracy case, growing out of the events at Wounded Knee. Among the pending charges is one of conspiracy to violate the anti-riot act, flowing from the airlifting of food and medical supplies to the sick and starving people occupying that historic town! We look forward to still another victory in the courts. But at what price - in time, in money, and in personal anguish for the defendants and their families? (Please read the attached Sunday New York Times article by Russell Baker.)

At a time when the vast investigative machinery of the Justice Department should be focused on rooting out the pervasive corruption in our government, the President of the United States, in an act of indescribable arrogance, fired Special Prosecutor Archibald Cox and disbanded his task force. Yet, simultaneously, the Justice Department is pressing its attack against a group of people who, in desperation, attempted to dramatize the plight of the Indian Nation. Such is justice under Richard Nixon.

We are outraged, as we know you are. But our outrage will, as always, take the form of defending the constitutional rights of that ever-growing list of "enemies". You have supported us in the past. Please contribute again now. Our need is very great - as is the threat to our liberty.

For Justice,

The Center Staff

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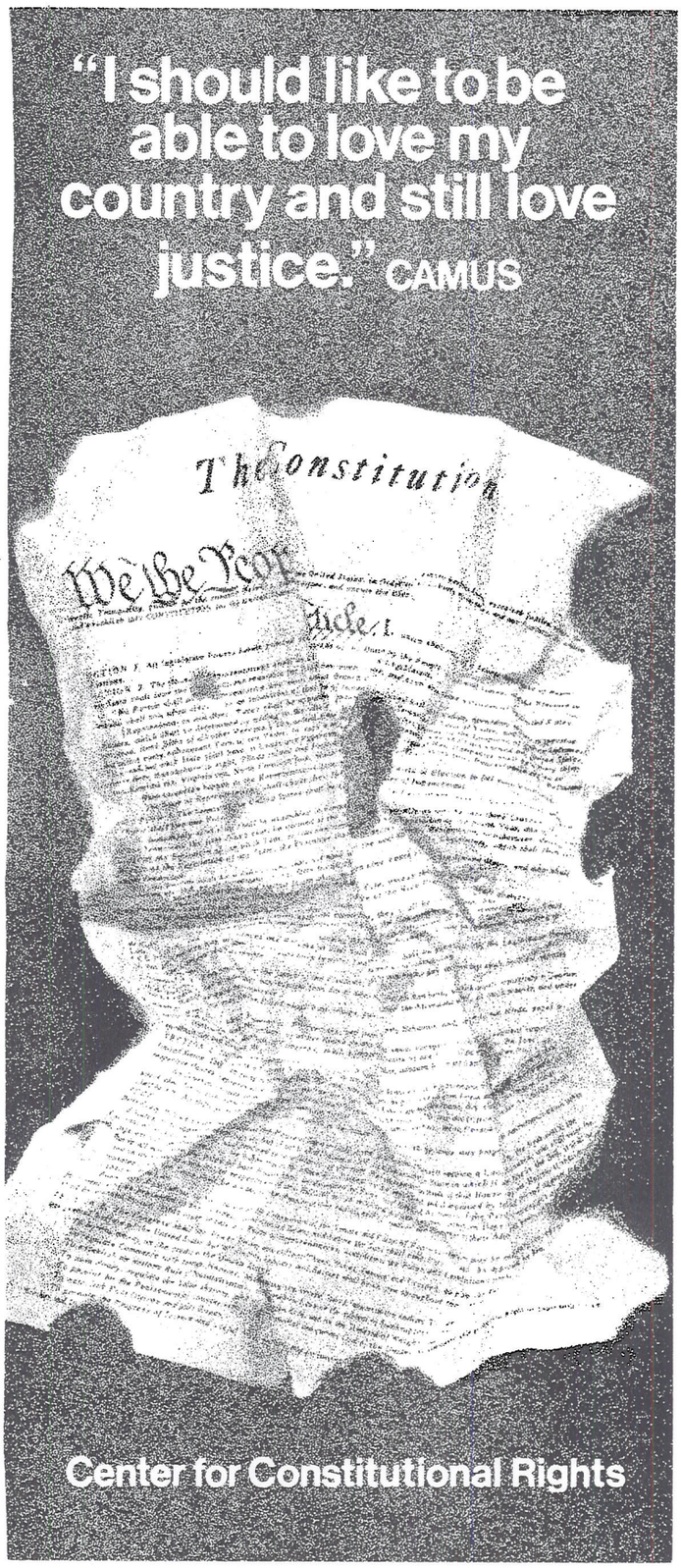
DOCKET REPORT 1973



(1) UNITED STATES v. BRIGGS, et al., a.k.a. "THE GAINESVILLE 8 CONSPIRACY CASE" - The "Gainesville 8" case was a major undertaking by Center attorneys from its inception in July, 1972 to its conclusion in August, 1973. The Center legal staff included Doris Peterson, Morton Stavis, Nancy Stearns (for most of the case), Jim Reif for much of the grand jury and pre-trial work and Rhonda Copelon for the attack on the jury selection system. In addition, Center attorneys worked in closest cooperation with other attorneys on the case, namely Cameron Cunningham and Brady Coleman of Austin, Texas and Larry Turner of Gainesville, Florida.

On July 7 and 8, 1972 twenty-three leaders of Vietnam Veterans Against the War from around the country were subpoenaed to appear before a federal grand jury in Tallahassee, Florida at 9:30 a.m. on July 10th, the opening day of the Democratic National Convention in Miami Beach. VVAW had obtained permits for peaceful demonstrations in Miami Beach during that week.

Center attorneys responded immediately by traveling to Florida to represent the subpoenaed VVAW leaders. Numerous motions were filed on their behalf and a civil action, VVAW v. KLEINDEINST, was instituted to stay the subpoenas. Among the first of many motions that were filed was a motion for the government to disclose which of the grand jury witnesses represented by Center attorneys and counsel associated with them were government informers. Guy Goodwin, a United States Attorney from the Internal Security Division of the Justice Department, was required by the Court to take the witness stand and make such disclosure. Goddwin responded by denying, under oath, that any of the witnesses represented by the defense attorneys were informers for the government. One of those witnesses, Emerson Poe, appeared at the trial thirteen months later as a government witness and testified that he had been a government informer during the entire period he was a VVAW member, dating back to well before the time he was subpoenaed.

On July 13th four VVAW members were summarily held in contempt for refusal to answer questions before the grand jury. These contempts were reversed by the Fifth Circuit Court of Appeals for failure to grant a contempt hearing. Such a hearing was quickly scheduled and the four were again held in civil contempt and jailed. Again the contempts were reversed, this time on the grounds that the government's denial of electronic surveillance of the attorneys was inadequate. The government did not file any further denials.

Also on July 13th the rest of the grand jury witnesses were released from their subpoenas, after having been detained in Tallahassee for four days, without being asked anything more than their names. Simultaneously, the Democratic National Convention passed a resolution condemning the Tallahassee grand jury investigation of the Veterans. That evening, in an extraordinary nightime session, the grand jury indicted six members of VVAW. (Several months later the grand jury, in a superceding indictment, added another Veteran and John Briggs, a VVAW supporter, as defendants. Briggs had previously been held in civil contempt for refusing to testify before the grand jury, but after an appeal was filed the government had the contempt vacated and, instead, indicted him).

Seven of the defendants were charged with conspiracy to disrupt by violent means the Republican National Convention in Miami Beach, which was to occur the following August. In addition to being charged with conspiracy, one of the defendants, Scott Camil, was charged with teaching and demonstrating the use of an incendiary device and with possession of an unregistered destructive device. The eighth defendant, Stan Michelson, was charged with being an accessory after the fact and with misprision (concealment) of a felony.

Pre-trial Stage - A full set of pre-trial motions and memoranda was presented. The following describes only the more unusual of them:

Defense Motion to Recuse - The first major motion sought the recusal (removal) of Judge David L. Middlebrooks on the grounds of bias toward the defendants and their attorneys which emerged during the grand jury proceedings and the arraignment. Judge Middlebrooks presided over the grand jury which indicted the eight and ruled on the contempt proceedings which occured during the grand jury, denying bail to all of those he found in contempt. Following the issuance of the second indictment Judge Middlebrooks granted defendants' motion and he was replaced by Judge Winston E. Arnow, Chief Judge of the Northern District of Florida.

Motion to Strike Grand and Petit Jury Array - The composition of both the grand and petit juries was challenged on numerous grounds including the exclusion of blacks and the underrepresentation of women because of a provision for automatic

excusal for women with children under ten years of age. Defendants were granted the right to examine the jury rolls in detail and presented testimony concerning the underrepresentation of blacks, but their motion to strike was denied.

Motion for Disclosure of Electronic Surveillance - There were several motions and hearings regarding the disclosure of electronic surveillance, and memoranda were filed challenging the adequacy of the government's denial of surveillance. Following disclosures made during the Watergate Hearings concerning possible surveillance of VVAW, defendants unsuccessfully tried to present some of the relevant Watergate facts to the Court. These facts set forth in detail the links between Watergate and the Briggs indictment. In the course of the electronic surveillance hearing the government successfully moved to quash the subpoenas of numerous Justice Department and former Justice Department officials subpoenaed by the defense.

Motion to Dismiss and for Hearing with Respect to Bad Faith Prosecution - From the outset, defendants took the position that the charges against them were brought in bad faith and for political purposes. The initial bad faith motion dealt primarily with the timing of the grand jury, the indictments and the arraignments to coincide with the national political conventions and the Presidential election, as well as the reasons the government sought to destroy VVAW. As with the motion for disclosure of electronic surveillance, the Watergate Hearings and trial disclosed numerous apparent connections between that event and the VVAW prosecutions, but the Court refused to permit the defense to prove those connections.

Motion for Hearing with Respect to Governmental Misconduct - Hear again, Watergate led us to re-examine events which had transpired since the grand jury and to request hearings to uncover connections between governmental misconduct exposed in the Watergate investigation and such behavior in the Briggs case. The Center filed lengthy motions for hearings with respect to such misconduct as the break-in at the office of attorney Carol Scott the day after the grand jury subpoenas were served and the removal of only one item - Ms. Scott's file on Scott Camil (pertaining to another case on which she had represented Camil). Again, the Court refused to admit even the possibility of such connections.

Opposition to the Court's Suggestion that Defense Attorneys Pay Costs of Hearing Regarding Break-in - Having rejected defense testimony regarding the break-in of Attorney Scott's office, the Court then held a hearing to determine whether defense attorneys should be required to pay the costs of the earlier hearing. Defense attorneys opposed any such ruling and an amicus brief, written by Helene E. Schwartz, was filed on our behalf by the National Lawyers Guild, the National Emergency Civil Liberties Committee and the American Civil Liberties Union. Defense attorneys were not required to pay the costs of the hearing.

Motion for Disclosure of Agents and Informers in the Defense Camp, Motion for Disclosure of Agents and Informers (in general) - Because of the well-known government infiltration of VVAW we sought to determine who, if anyone, that was in any way connected with the defense camp was an agent or informer. Such information was necessary in order to preserve the confidentiality of the lawyer-client relationship and to protect against disclosure of our trial strategy. Two motions were filed in this regard, the first mentioned above, and the second, a motion for a general disclosure of those agents and informers who related in any way to the prosecution of the defendants. In response to the first motion, the government submitted numerous documents to the Court in camera (in chambers) which we believe contain the identities of agents and informers. Although a number of such persons surfaced as government witnesses during the trial, we believe that many more still remain undisclosed.

Opposition to Moving the Trial to Pensacola - Although the trial was on the Gainesville docket from the time of the indictment, Judge Arnow, who sits in Pensacola, sought to move the trial to his home division. He was supported in this by the government. The defendants opposed such a move for a variety of reasons including the fact that the population of the Pensacola Division (and therefore a Pensacola jury) is composed primarily of persons in, employed by or retired from the military, or dependents or spouses of such persons, or those who rely on the military for their livlihood. Defendants' memos also deal with the question of the right to be tried in the Division where indicted and the question of pre-trial publicity affecting the place of trial.

Opposition to Imposition of a Gag Order - Several months prior to trial, Judge Arnow raised the possibility of imposing a gag order on defendants and their attorneys. Defendants filed memoranda opposing such an order (which was eventually imposed on the eve of trial). The order ultimately entered was far more restrictive than that originally contemplated, and included a gag on any person "acting in concert with" the defense, and prohibited anyone but attorneys and pro se (acting as one's own counsel) defendants from talking with witnesses or prospective witnesses. Defendants filed a petition(for mandamus)with the Fifth Circuit challenging the constitutionality of the order (which also limited demonstrations) and asking that it be revoked. The Circuit read Arnow's order as permitting defendants represented by counsel to interview witnesses, but otherwise refused to rule on the constitutional issues. Here again the National Lawyers Guild, the Emergency Civil Liberties Committee and the American Civil Liberties Union filed briefs amicus curiae (friend of the court) opposing the gag order. In addition, a petition was filed by the Miami Herald, ten Florida newspapers (all affiliates or subsidiaries of the New York Times), and the Reporters Committee for Freedom of the Press challenging the legality of the gag order.

Application of Beverly and Chambers - Beverly and Chambers are VVAW members who were named by the government as "unindicted co-conspirators", or, in other words, part of the conspiracy against whom no criminal charges were brought. The concept of an unindicted co-conspirator is fundamentally unconstitutional. It enables the government to introduce the words and acts of individuals as being part of or evidence of a conspiracy without having the duty to prove the charge of conspiracy against them. The unindicted co-conspirator has no standing in court and, thus, is tainted by the designation of conspirator without being entitled to the opportunity to refute the charge (by calling his/her own witnesses, cross-examining, etc.) in open court. A major brief challenging the constitutionality of naming unindicted co-conspirators was filed and the appeal of the denial of the application by the trial judge is scheduled for oral argument in the Fifth Circuit Court of Appeals shortly.

Other Motions Filed (partial list):

For Suppression of Evidence
For Bill of Particulars
For Discovery and Inspection (including material such as the Gemstone files)
To Inspect and Copy Grand Jury Minutes
To Proceed In Forma Pauperis (as a poor person) and for Daily Transcript
To Conduct Individual Voir Dire (questioning of prospective jurors)
For Pre-trial Hearing on Conspiratorial Agreement
To Dismiss Indictment on Grounds of Unconstitutionality of Statutes
To Dismiss for Failure to Apprise Defendants of Nature of Charges
For Hearing with Respect to Illegal Mail Interceptions
To Intervene in Contempt Hearings of CBS-TV for Violation of Ban on Sketching in Courtroom
Opposition to Ban on Demonstrations and Order of Sequestration
Requested Voir Dire Questions
Requested Charges to the Jury

The Trial

On July 31, 1973 the trial began in Gainesville, Florida. Three of the defendants appeared as their own counsel and the rest were represented by a team of six attorneys, including three from the Center.

During jury selection, while the defense was meeting to determine how to exercize its pre-emptory challenges, two F.B.I. agents were caught in a telephone closet which was connected to the defense office by a vent. They had with them a suitcase full of electronic equipment. A hearing was granted by the Judge who, consistent with his indulgent attitude toward the prosecution throughout the case, elected to accept the story of the two agents that they were merely checking the F.B.I.'s own telephone lines in the building!

The government, during the trial, relied almost entirely on an array of undercover agents and informers for the F.B.I., the Dade County Police and the Florida Department of Law Enforcement. They included William Lemmer who, the defense showed, had a long history as an agent provocateur; Charles Becker, an F.B.I. agent and one of the original unindicted co-conspirators who, evidence revealed, had set up the Gainesville meeting at which the government claimed the "conspiracy" was hatched, and who was a best friend of one of the defendants;

Louis Anchill, an informer for the Florida Department of Public Safety, who had sworn he would "get" Scott Camil for accusing him of being precisely what he was - an informer; Emerson L. Poe, an F.B.I. informer who had developed a close friendship with Camil and who exploited Camil's trust of him to attend defense committee meetings, acquire the mail box combination to which legal mail was sent, and to extract defense strategy information by inviting Camil to "work on the case" at his home; and an undercover agent named Koehler who had lived in defendant Alton Foss' home for a period prior to the Democratic National Convention and who admitted on the witness stand that he had never heard any discussion of a plan to disrupt the Republican or any other convention, nor had he heard any mention of the use of automatic weapons or explosives which are listed in the indictment.

Lemmer, Becker and Poe all held high offices in VVAW and enjoyed, until their exposure, the trust of the membership. Yet they were as inept as witnesses as they had been deceitful as friends, frequently being forced into admissions that contradicted the government's theory of the case. And, of course, the detestable nature of the very function they were performing for the Justice Department was not lost on the jury.

There were gross instances of prosecutorial misconduct during the case and continuing right up until the verdict was delivered. Just before the trial began, the prosecution belatedly turned over a list of twenty-five persons who it thought might have exculpatory evidence (evidence indicating the innocence of the defendants). Jencks Act material (prior statements) regarding government witnesses, so crucial to cross-examination, was not turned over to the defense in compliance with the law (44 pages of Lemmer's prior statements were produced after the defense had rested!). News reports revealed that one of the prosecution witnesses was, at the time of his testimony, under investigation by the government (and has since been charged with four counts of grand larceny by the State of Florida), yet this information was hidden from the defense. And, after the verdict, one of the jurors informed the defense that the prosecution was coaching its witnesses, through the use of hand signals, while they were testifying.

At the end of the government's case the defense decided to put on only one technical witness and then rest, "letting the prosecution's case collapse of its own weight" as the Nation magazine of October 1, 1973 put it. The jury, which had been sequestered for the major portion of the trial, took less than four hours to acquit all of the defendants on all of the charges.

CRIMINAL CASES

(2) CHICAGO CONTEMPT CASE (IN THE MATTER OF DAVID DELLINGER, ET AL.)

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 Bill Kunstler were dismissed outright. All of the other contempt specifications against the defendants 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.

After reversal of the contempt convictions in May 1972, the government pressed the case for retrial. Appointment of a new judge being required, it appeared that almost all of the federal judges in the Chicago area were disqualified since most of them had filed a motion before the Seventh Circuit supporting Judge Hoffman. Ultimately, Chief Justice Burger of the United States Supreme Court designated Judge Edward T. Gignoux of Maine to try the case.

Motions were made to dismiss and to compel the government to disclose wiretapping. After denial of these motions, mandamus petitions were filed with the Seventh Circuit, without success. The government in papers filed with the District Court Judge agreed to limit maximum prison sentences to six months and thereby, over the opposition of the defendants, obtained the denial of a jury trial. The case is now set for trial October 29.

The parallel case of contempt against Bobby G. Seale was dropped by the government because in that case the Circuit Court required that the government, as a condition to retrying the contempt case, reveal its illegal wiretapping. The government chose to drop the case rather than make such revelation.

(Morton Stavis and Jim Reif)

(3) UNITED STATES v. RUSSELL MEANS

Russell Means is one of the national leaders of the American Indian Movement (AIM) who spearheaded the recent incident at Wounded Knee. As a result of the impoverished conditions on Indian reservations, with their high rate of unemployment, lack of decent housing, widespread malnutrition and lack of medical care, the problems of the American Indian have become a focus of concern for much of the American public.

Means is charged with 11 counts arising out of the Wounded Knee incident. The Center has recently filed a motion to dismiss based on several different grounds including the constitutionality of the statutes involved, bad faith prosecution, prejudicial pretrial publicity and failure to charge anything which states an offense. Evidentiary hearings on the motion to dismiss are expected to be held in November before Judge Nichol in South Dakota.

(William Kunstler and Mark Amsterdam)

(4) UNITED STATES v. ZIMMERMAN (AIRLIFT CASE)

Dr. William Zimmerman, a young anti-war activist from Boston, has been charged along with six other people with crossing state lines with intent to commit a riot, interfering with federal officers, and conspiracy to interfere with federal officers as a result of his alleged participation in an airlift of food and medical supplies to the occupiers of Wounded Knee. The government does not allege that anything other than food and medical supplies were parachuted into Wounded Knee, so that the only crime charged amounts to providing food and medicine to starving people.

Over a dozen pre-trial motions have been filed, including motions to change the venue of the case from South Dakota to Boston, motions to dismiss on several grounds including the constitutionality of the anti-riot act and bad faith prosecution, and other motions relating to the motives of the government in prosecuting someone for attempting to aid the struggle of the American Indians for their civil rights.

The judge has not yet ruled on any of the motions and the prosecution is not expected to reach a trial stage for one year.

(Mark Amsterdam)

(5) PEOPLE v. H. RAP BROWN

After a lengthy trial, the jury in the trial of H. Rap Brown and his three co-defendants was hopelessly hung on the charge of attempted murder. However, all defendants were convicted of robbery in the first degree and other crimes and Brown was sentenced to a term of five to fifteen years in a state prison. Following his conviction, it was discovered that the two key detectives involved in the case had been under departmental investigation on serious charges for more than three years and one had been indicted for perjury in Bronx County. A motion for a new trial based on the withholding of this information is still pending before the trial judge.

(William Kunstler)

(6) PEOPLE v. CARLOS FELICIANO — After being acquitted in Bronx County on similar charges, Carlos Feliciano was brought to trial in New York County under an indictment accusing him, among other things of attempting to bomb the General Electric Building in February of 1970. Although the defense was prevented from introducing evidence as to the Bronx trial, which would have shown that one police officer had accused others involved of perjuring themselves against Mr. Feliciano, the jury, after long deliberation, acquitted him of the main charges of attempted arson and reckless endangerment in the first degree. He was convicted, however, of three charges of possessing explosives and one charge of possessing a weapon as a misdemeanor, and sentenced to four years in prison. This conviction will, of course, be appealed.

(William Kunstler)

(7) PEOPLE v. JOHN HILL — This a murder indictment growing out of the Attica rebellion of September, 1971. John Hill and Charles Pernasalice, who is represented by Ramsey Clark, have been jointly charged with homicide in connection with the death of a guard. Both young men have been released on $10,000 bail and we are presently awaiting decisions on a number of pre-trial motions including one seeking to dismiss because of selective prosecution.

(William Kunstler)

(8) UNITED STATES v. BANKS and BANKS v. HOLDER — Arthur Banks, a black actor and playwright, is presently serving a five year prison term for draft evasion at the U.S. Penitentiary at Terre Haute, Indiana. After a peaceful protest by several hundred black inmates over the treatment of one black prisoner, Banks was maced in his cell and put into segregation for allegedly striking two of the guards who had maced him. In addition, he was indicted for striking a third, which indictment has been pending since December 19, 1972. When he attempted to obtain the services of William M. Kunstler as his counsel in the trial of the latter indictment, a judge of the District Court refused to permit the latter to represent him. A writ of mandamus was unanimously granted by the Court of Appeal for the Seventh Circuit ordering the District Court to permit Kunstler to appear for Mr. Banks, but the effective date of the writ was delayed four months when the U.S. Government, the American Bar Association and 21 so-called prestigious Indiana attorneys applied for a rehearing en banc. When their petition was final denied, Mr. Justice Rhenquist stayed both Banks trial and the writ of mandamus in order to give respondents time to apply for a writ of certiorari to the Suprem Court. In addition, two petitions for writs of habeas corpus because of the inhumane conditions of Banks' imprisonment are pending in the District Court and Court of Appeals.

(William Kunstler, Rhonda Copelon, William Cunningham)

(9) STATE v. FRANK SMITH — This case arose out of the rebellion at Rikers Island in February, 1972 in which 300 inmates attempted to make known the inhumane conditions in the prison. Originally, 4 men went to trial on charges of reckless endangerment and possession of prison contraband. This case was known as the "Rikers Island 4." Frank Smith was one of the four men who were convicted without the presence of their lawyer (William Kunstler). This case is presently being appealed by the Center and will be argued before the New York Court of Appeals sometime this winter.

Frank Smith, however, is about to undergo the ordeal of another trial resulting from the same rebellion. The charges consist of assault on two corrections officers and possession of prison contraband. Some of the issues which were raised in the pretrial motions involve bad faith prosecution (many groups of interested citizens and lawyers attempted to argue that the case should be dismissed, but the arguments were not allowed by the court), the constitutionality of the statutes involved, and double jeopardy. These motions were denied and the case is expected to go to trial in the fall.

(10) STATE OF NEW JERSEY v. RONALD CARTER

After consultation with Center staff members and his Atlanta attorneys, Ronald Carter, Chairman of the Georgia State Chapter of the Black Panther Party, turned himself over to Georgia authorities for extradition to New Jersey where he was charged with violating the New Jersey firearms act. The charge stemmed from 1972 when he and three other companions were arrested enroute to Washington, D.C. for an African Liberation Day Rally.

On October 17, 1973, Carter was acquitted by an all-white jury in less than two hours.

(J. Otis Cochran with Carl Broege)

(11) 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 appeal of the conviction was lost in the Second Circuit Court of Appeals, and Yoruba is now serving a two year sentence.

(Michael Ratner)

(12) UNITED STATES v. BENJAMIN CRUZ

Benjamin Cruz was indicted for refusing induction into the Armed Forces. Attorneys at the Center filed a number of pretrial motions. We moved to (1) dismiss the indictment for the reason that the "draft" laws cannot be constitionally applied to Puerto Rico, (2) dismiss the indictment because the jury which indicted the defendant excluded young people and Puerto Ricans, (3) dismiss the indictment on the ground that Cruz is being selectively prosecuted because of his political views and (4) disclose electronic surveillance.

Before the motions were ruled on or the trial took place, the government dropped the prosecution. It is felt that the prosecution was abandoned so that the government could avoid disclosure of illegal electronic surveillance.

(Michael Ratner with Jesse Berman)

CRIMINAL APPEALS

(13) CHICAGO CONSPIRACY SUBSTANTIVE APPEAL (DELLINGER v. UNITED STATES)

This is the appeal from the convictions under the federal anti-riot act ("Rap Brown Act") 18 U.S.C. 2101-2 growing out of the demonstrations at the Democratic National Convention in 1968. Center attorneys Arthur Kinoy and Doris Peterson and Center cooperating attorney Helene