(42) SANCHEZ v. BARON

This is a federal class action brought under the Civil Rights Law (42 U.S.C. 1983) 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 then argued that the case was moot. Judge Jacob Mischler (E.D.N.Y.), however, held that the lawsuit could continue as a class action.

Plaintiffs served defendants with interrogatories concerning their policies relating to admission of male and female students to all classes.

In the meantime, the New York State Legislature passed a bill barring discrimination in education (with the exception of physical education classes).

In light of this new law, all parties agreed to a dismissal of the lawsuit. As part of the agreement, however, the School Board was given the responsibility of distributing to every junior and senior high school student a notice, prepared by plaintiff's attorneys, informing them that sex-based discrimination was unlawful and that they could seek legal assistance if they believed they were being discriminated against.

(Nancy Stearns with Alan Levine and Bruce Ennis)

(43) DANIELSON v. BOARD OF HIGHER EDUCATION

This is a class action suit, brought under 42 U.S.C. 1983, for declaratory and injunctive relief against a maternity leave rule of the New York City Board of Higher Education. The Board refused to grant leave to a father for purposes of child care, though such leave is available to the mother. The plaintiffs are both faculty members of the City University of New York. Federal District Court Judge Constance Baker Motley (S.D.N.Y.) ruled that if plaintiffs could prove that the leave in question was for purposes of child care, rather than recovery from childbirth, that such leave could not be denied to the father. The Court also set for trial the question of whether the mother could be denied her sick leave pay for the days following childbirth.

Following this ruling, the Board charged its policies regarding child care leave for men and utilization of sick leave for childbirth. Male employees may now take six months child care leave (with extensions possible) and women may use sick leave days for childbirth and recovery.

In light of these changes there has been discussion of settlement of the case. However, if the case is not settled, plaintiffs will proceed to trial on the question of whether the former leave policy was simply for the physical recovery of the mother following childbirth or whether it was for child care purposes and therefore should have been equally available to fathers.

(Nancy Stearns, Liz Schneider with Veronika Kraft)

(44) MONELL v. BOARD OF SOCIAL SERVICES

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 as a matter of 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.

Before the case reached trial, the City of New York changed its maternity leave policies, eliminating compulsory leave for all departments except the Board of Education. The Board is considering the elimination of compulsory maternity leave, but because this has not yet happened plaintiffs have motions before a magistrate to compel notice of the action to the class of plaintiffs and to compel the Board to answer interrogatories.

Should the Board actually change its policies, there will still remain the issue of past damages to the named plaintiffs and their class for past loss of wages due to the compulsory leave policy.

(Nancy Stearns, Liz Schneider, with Oscar Chase, Gregory Abbey)

(45) HESS v. LAIRD

This is an action by a Marine corporal and his wife challenging the constitutionality of the Marine Corps regulation 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. Should a wife disobey this regulation, her husband gets transferred (as Hess did), court-martialed or fined.

Center attorneys claimed that this is a denial of the wife's right to travel freely and an unlawful extension of military authority over a civilian. In addition, the order is a due process violation in that it punishes one party (the husband) for the acts of another (the wife).

The suit, brought in Federal District Court in Washington, D.C. was unsuccessful in the District and an appeal was taken to the Court of Appeals. The case was argued before Chief Judge David Bazelon and Judges Leventhal and Robinson on September 10, 1973 and a decision is expected shortly.

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

(46) ANDREWS v. DREW MUNICIPAL SCHOOL DISTRICT (AMICUS)

The Center's founding experience in groundbreaking litigation combatting race discrimination, and our more recent focus on sex discrimination and abortion are united in this case. Several black women, elementary school teachers and teachers aides, in this Mississippi school district were denied their teaching positions last spring on the basis of a policy instituted by the school superintendent barring women with out-of-wedlock children from all school pasitions, other than janitorial. These women brought an action under the federal Civil Rights Laws claiming violations of the Fourteenth Amendment's ban on race and sex discrimination and the Ninth and Fourteenth Amendments' rights of privacy and procreative liberty. The District Court for the Northern District of Mississippi issued an injunction against the policy ordering reinstatement and back wages on the grounds that the policy was unrelated to a person's qualifications and excellence as a teacher under Equal Protection principles and a prohibited discrimination on the basis of sex, notwithstanding that the superintendent claimed he would apply the policy to men if their status as unwed fathers were ever to be discovered. The state of Mississippi has appealed the decision to the Fifth Circuit. As the District Court did not specifically address the issues of privacy and race, plaintiffs cross-appealed to bring these issues before the Circuit and to stress the dangers of the policy as a device to exclude black women from teaching positions everywhere. Appellate briefs are now in preparation. The Center and the Equal Employment Opportunities Commission are participating in this case as amicus curiae.

(Rhonda Copelon with Victor McTier)

## PRISONERS' RIGHTS

(47) WALLACE v. KERN (BROOKLYN HOUSE)

In July 1972, seven indigent inmates awaiting trial in the Brooklyn House of Detention began a class action suit in Federal District Court which alleged systematic and widespread constitutional deprivations in the Brooklyn

criminal courts.

The prisoners dramatized their grievances by instituting a peaceful boycott of the Brooklyn Supreme Court and shortly thereafter lawyers from the Center, the National Lawyers Guild and the ACLU Prison Project were appointed by the Federal Court as counsel for the inmates on their suit.

The lawsuit, brought pursuant to the Civil Rights Act, challenged the unjust and inhumane treatment of poor people awaiting trial in the Brooklyn House of Detention. At issue were illegal practices that affected indigents from arrest through disposition of their criminal charges, including setting of excessive bail, lack of adequate counsel, denial of speedy trial rights, coercion in plea bargaining and lack of due process and equal protection as a result of economic status. It was the first time that a class action was initiated to challenge the administration of justice by detainees in a major urban area and has integrated the talents of lawyers, prisoners, law students and lay people in its development.

In early 1973 hearings were held inquiring into the adequacy of counsel assigned to protect the rights of indigent accused. In May, 1973, Federal District Court Judge Orrin G. Judd (E.D.N.Y.) wrote a 57-page decision that promises to have wide-spread and signigicant effects on the legal rights of indigents throughout the country. The court found that the criminal parts of the Brooklyn Supreme Court "are in a state of deep crisis" and that conditions under which assigned counsel must work were "shocking." He concluded that the representation provided by Legal Aid attorneys, who represent 75% of all felony defendants in Brooklyn, did not measure up to the Sixth Amendment standard. In addition he found that the practice of not calendaring pro se (filed by defendants themselves) motions denied detainees access to the courts. To remedy these violations he enjoined the Legal Aid Society from taking new assignments until the caseload fell below 40 felony cases per attorney and ordered the clerk to calendar and hear all pro se motions.

In June 1973, this decision was reversed by the Court of Appeals for the Second Circuit on a procedural technicality. It did not disturb the findings of the court below. Plaintiffs are now developing a petition for certiori to the Supreme Court.

In July 1973, plaintiffs had additional hearings before the court on the issue of whether speedy trials were available to indigent defendants in Brooklyn. A decision is expected shortly.

Meanwhile the suit goes on. All practices of the Supreme Court will be scrutinized by the legal team and a full trial on the merits is expected in early 1974. This lawsuit will have a profound effect on all judicial systems in urban areas and is being used as a model for similar suits in California and Indiana.

(Jim Reif with Dan Alterman and Steve Latimer)

(48) AUSTELL v. YEAGER — When some of the leadership of the Trenton State Prison negotiating committee was locked up in punitive segregation, suit was filed in Federal Court. Upon filing, the members of the committee were released. Thereafter, the case developed as a broad due process attack upon prison disciplinary procedures. The materials on this issue developed at the Center were, at this stage, turned over to lawyers in the Trenton area.

(Morton Stavis, Rhonda Copelon, with Henry Hill)

(49) SPELLER v. WAGNER, et al. — An inmate of a 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.

Pretrial discovery is under way in this case, plaintiffs taking the depositions of the staff of the hospital.

(Morton Stavis, Linda Huber with Eldridge Hawkins)

## GRAND JURY ABUSE

(50) IN RE KENNETH TIERNEY

In June, 1972, 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 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 also objected to the denial of the right to counsel insofar as the government, for the first time, refused to allow the witnesses to consult with counsel even outside the grand jury room. The five defendants went to jail for contempt and a stay or bail pending appeal was denied.

On September 13, 1972, Justice William Douglas ordered the five released on bail pending the outcome of their petition for certiorari to the Supreme Court. On January 22, 1973 certiorari was denied (Douglas dissenting). One week later, the Fort Worth Five, at the request of the U.S. Attorney in Fort Worth, were returned to jail in Texas, 1,500 miles from their homes. There they remained until Center attorneys acquired the contents of a disputed "accidental overhearing" by the government of counsel in this case and presented these contents to Justice Douglas. On August 8, 1973 Douglas again ordered that the Fort Worth Five be released on bail pending receipt of a reply from the government. Though an appeal is still pending from the denial by the District Court of a petition for a Writ of Habeas Corpus, the life of the grand jury will conclude on November 6, 1973 and any continuing litigation may be moot.

(William C. Cunningham, Doris Peterson, with Jim Reif, Frank Durkin and Paul O'Dwyer)

(51) IN THE MATTER OF A SUBPOENA SERVED UPON LEONARD RODBERG

Dr. Leonard S. Rodberg, Resident Fellow at the Institute 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 protective 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.

In June, 1972 the Supreme Court ruled that Rodberg could not be asked questions relating to his legislative duties and functioning, but could be questioned as to "other matters." The grand jury, however, never recalled Rodberg to ask about those "other matters."

(Jim Reif, Doris Peterson and Morton Stavis)

(52) 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 (9th 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 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 was 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. The case, of course, was ultimately dismissed as a result of government misconduct.

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

## CONGRESSIONAL COMMITTEES

(53) UNITED STATES SERVICEMEN'S FUND v. EASTLAND — This was a civil action to invalidate an Eastland Committee (Internal Security Subcommittee of the Senate Judiciary Committee) subpoena of the bank records of USSF, an organization which offers support to G.I. activities such as coffeehouses, and to declare the Committee unconstitutional on its face and as applied.

Plaintiff's motion for a preliminary injunction was denied in Federal District Court and again in the Court of Appeals (in Washington, D.C.). However, the Circuit Court granted an emergency stay of the enforcement of the subpoena, and the case returned to the District Court for trial on the motion for a permanent

injunction. In October, 1971 the District Court denied plaintiff's motion for a permanent injunction, but the stay of the subpoena remained in effect pending the appeal to the Circuit.

In an opinion rendered almost two years later, U.S. Court of Appeals Judge Tuttle, on August 30, 1973, reversed the District Court and held that the courts could indeed rule on the constitutionality of a Senate subpoena, in spite of the separation of powers doctrine, where First Amendment rights were at stake. The opinion, with one of the three judges dissenting, further held that USSF had shown that irreparable harm would have occurred by compliance with the subpoena; that the District Court had erred in dismissing the individual members of the subcommittee as defendants; and that the District Court had incorrectly refused to permit the questioning of the subcommittee counsel by the plaintiff regarding matters that reached beyond those of public record.

Because, during the pendency of the appeals, the emergency stay had remained in effect, USSF's bank records were never turned over to the Eastland Committee.

(Nancy Stearns, Morton Stavis with Jeremiah Gutman)

(54) UNITED STATES v. McSURELY — Alan and Margaret McSurely were convicted of contempt of Congress in June, 1970 after refusing to comply with a subpoena for all their papers by the Subcommittee of Investigations of the Committee on Government Operations of the Senate (the McClellan Committee). Prior to this the McSurelys had been engaged in organizing workers in the coal mines of Kentucky.

The appeal of the contempt conviction was argued in the U.S. Court of Appeals (Washington, D.C.) in January, 1972, and emphasized the issue of the validity of a Senate subpoena which is based on the prior illegal seizure of documents by state officials and Seante Committee staff. On December 20, 1972 the Court of Appeals reversed the contempt convictions and held that the subpoenas issued by the committee were composed on the basis of having examined illegally seized documents and that the convictions must be reversed. In a concurring opinion, Judge Wilkey held that the convictions must be reversed on the ground that the committee had failed to establish the pertinency of the subject of its legislative inquiry.

(Morton Stavis, Nancy Stearns)

## ATTACKS ON LAWYERS

(55) TAYLOR v. HAYES — Dan Taylor, an attorney in Louisville, Kentucky, represented Narvel Tinsley, Jr., one of two black men accused of killing two white police officers. On October 29, 1970, after the jury returned its verdict, Judge John P. Hayes, without notice, without specification of charges, and without permitting Taylor to either speak in his own behalf or be represented by counsel, sentenced Taylor to four and one half years in jail for contempt of court which allegedly took place during Tinsley's trial.

Judge Hayes refused bail (refusing even to make himself available to Taylor's counsel to hear a bail application). When the Kentucky Court of Appeals ordered a bail hearing, Hayes not only denied bail but denied Taylor permission to be present at the hearing. Bail finally was set by the Kentucky Court of Appeals and Taylor was released from jail.

On November 4, 1971, Judge Hayes entered an order disbarring Taylor from further practice in his court. Appeals were filed in both the contempt and disbarrment actions, and on March 23, 1973 the Kentucky Court of Appeals set aside the disbarrment order, but held that the contempt sentences should be served.

The Court further ordered that the contempt sentences should be served concurrently, rather than consecutively, which, because it involved a reduction in sentence to six months, denied Taylor the right to a jury trial.

On June 15, 1973 the Kentucky Court of Appeals denied a petition for rehearing, but stayed the contempt sentence for 90 days to allow for the filing of a petition for certiorari to the U.S. Supreme Court. The petition was filed in the Kentucky Court of Appeals asking for a further stay of the contempt sentence.

On the morning of September 17, 1973, while Taylor was in the Jefferson Circuit Court in connection with a criminal case on which he was counsel, he was, without prior notice, arrested pursuant to an order from Judge Hayes. Later that day the Kentucky Court of Appeals refused a further stay of the contempt sentence. An application to Supreme Court Justice Potter Stewart was made immediately and on September 19, 1973 he signed an order releasing Taylor on bail pending final disposition of the case by the Supreme Court. The petition for certiorari raises the fundamental issues of due process, right to jury trial in contempt proceedings, judicial disqualification in contempt proceedings, and what may constitutionally constitute a contempt.

(Doris Peterson, Morton Stavis, William Kunstler, with Robert Sedler)

(56) 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 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 the 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 was submitted, taking the position that the complaint is wholly unwarranted and that the matter should be dismissed.

Since nothing was heard from the Bar Association following the submission of a reply in 1972, it is presumed that the matter has been dropped.

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

## THE INDOCHINA WAR

(57) BOCK v. NIXON

This case was an offshoot of the Center's Brown v. Nixon litigation in the First Circuit. It was brought by local counsel in April 1972, in the U.S. District Court for the Western District of New York (Rochester) challenging the continuation of the war in Vietnam as being in violation of the Mansfield Amendmen adopted by Congress in November, 1971.

A preliminary ruling by Judge Harold P. Burke that "this Court has no jurisdiction over the President" was appealed to the Second Circuit and Peter Weiss, of the Center staff, argued the appeal at the request of local counsel.

Although the briefs and argument foreshadowed many of the constitutional questions subsequently raised in connection with the White House tapes controversy, the Second Circuit, astoundingly, affirmed Judge Burke's extremely broad jurisdictional ruling without an opinion.

(Peter Weiss)

(58) DRINAN et al. v. NIXON et al. On behalf of Congressmen Drinan, Harrington, Moakley and Studds of Massachusetts, the Center, on May 7, 1973 filed suit, in the U.S. District Court for the District of Massachusetts, to enjoin the bombing of Cambodia as lacking Congressional authorization and being in violation of the Paris Accords and international law.

On August 8, Judge Tauro dismissed the suit on the ground that the so-called "August 15th Compromise" constituted Congressional approval for the bombing until that date. The opinion, however, implied that, had a decision been rendered prior to the adoption of the compromise on July 30, it might have been in favor of the plaintiffs.

An emergency appeal was taken to the First Circuit, which convened an extraordinary sitting in Portland, Maine, on August 10, and, on the same day, rendered an opinion affirming Judge Tauro. The Circuit's opinion reaffirmed the doctrine of Massachusetts v. Laird that, where there is a clear conflict between Congress and the President as to whether a given war should or should not be fought, the courts have a duty to intervene. The Circuit did not agree with the District Judge's finding that the August 15th Compromise constituted Congressional approval of the bombing, but held that, since the courts could not read Congress' mind, there was no way to tell whether the August 15th provision was a genuine compromise or whether, as alleged by the plaintiffs, it constituted "a bowing to the naked exercise of Presidential power."

Two emergency appeals to the Supreme Court were rejected by Chief Justice Burger on August 13 and 14.

In the Drinan case, as in the parallel Holtzman case in the Second Circuit brought by the ACLU, the appellate tribunals left unresolved the novel and highly important constitutional question of whether the veto power properly applies to a piece of legislation which merely reminds the President that he is acting in excess of his constitutional powers.

In Drinan, the courts also evaded the question of whether the Federal Courts have jurisdiction over the President (he was not named as a defendant in Holtzman).

(Peter Weiss)

## MILITARY

(59) AMSTERDAM v. LAIRD A civil action to enjoin the harrassment of Okinawa-based, Center-affiliated attorney Mark Amsterdam and legal worker Carol Dudek in violation of the Fifth and Sixth Amendments. Mark and Carol were in Okinawa for almost two years providing free civilian counsel to G.I.s in their increasing conflicts with the military. The military engaged in a continuous effort to deter the two from continuing their work with G.I.s, going so far as to put them under personal surveillance, exclude them from many bases, and even post their pictures at base entrances with captions announcing that the military considered them "undesirable."

Before this case was tried, however, Mark and Carol returned from Okinawa and the suit was withdrawn by stipulation.

(Nancy Stearns and Peter Weiss with Ken Kimerling)

(60) UNITED STATES v. VANCE This is an appeal of a court-martial conviction in Okinawa for assault on an MP and resisting apprehension arising from an incident in which approximately 70 black Marines were protesting the war in Vietnam and the oppressive conditions in the military. Testimony at

the trial indicated that Vance and the other Marines charged with misconduct as a result of the incident did not start the "riot" but only responded to harassment and brutality committed by the military police.

The appeal raises issues of racism in the jury selection, the Sixth Amendment right to have compulsory process for witnesses, and other due process issues in the military context. The brief will shortly be filed before the Navy Board of Review in Washington.

(Mark Amsterdam)

(61) UNITED STATES v. WOODS — This was an appeal of a court-martial conviction of a young black Marine who was found guilty in Okinawa of involuntary manslaughter and sentenced to three years confinement. On appeal to the Navy Board of Review, the sentence was reduced to one year on a brief by the Center. Upon appeal to the highest military court, the Court of Military Appeals, the conviction was reversed and a new trial ordered. The ground for the reversal was that the guilty plea originally entered was improvident because of a good chance of a defense of self-defense.

(Mark Amsterdam and Michael Ratner)

(62) UNITED STATES v. ANDERSON — This appeal arose out of a court-martial conviction in Okinawa of a black Marine for allegedly threatening an officer by saying "I'll kill you." Among other issues, the brief raised the question of the sufficiency of the evidence since one of the government's witnesses and two defense witnesses all said on the stand that the incident did not occur. The Navy Board of Review denied the appeal.

(Mark Amsterdam, Michael Ratner and Peter Weiss)

(63) UNITED STATES v. 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 and the Court of Military Appeals refused to hear the case.

(Michael Ratner, Peter Weiss, Mark Amsterdam and Rick Wagner)

(64) UNITED STATES v. SGT. ABEL LARRY KAVANAUGH

After returning home from Vietnam where he had been a prisoner of war for five years, Larry Kavanaugh of Denver was charged by Col. Theodore Guy, an Air Force Colonel and also a former POW, with aiding the North Vietnamese by making anti-war statements while a POW. None of the charges accused Larry of doing any act which jeopardized another POW or which led to maltreatment of any other POW.

Instead of referring the charges to the local base commander, as military law requires, the Pentagon itself decided to determine whether court-martial was warranted. Since the charges were not pressed by Larry's commanding officer, but merely by another soldier, court-martial was not automatic. After an excessive delay of over a month, the charges against Larry and the other seven POWs who were charged by Col. Guy were dismissed. A few days before the dropping of charges was announced, and one day before Larry was supposed to report back to Camp Pendleton for further assignment, Larry Kavanaugh committed suicide.

A decision on whether or not to take action against the military for its culpability in Larry's suicide has not yet been made.

(Mark Amsterdam)

## MISCELLANEOUS

(65) AMERICAN COMMITTEE ON AFRICA et al. v. NEW YORK TIMES

In October, 1972, the American Committee on Africa and a number of other organizations and individuals filed a complaint with the New York City Commission on Human Rights, charging that the publication by the Times of employment advertisements for executive and academic positions in South Africa were racially discriminatory on their face. The Commission found probable cause and scheduled a hearing. The Times challenged the jurisdiction of the Commission on the ground that the proposed hearing would constitute an unconstitutional interference in the foreign affairs power of the federal executive and an abridgement of the Times' First Amendment rights.

The Commission rejected this jurisdictional challenge and set a new hearing for September 25, 1973. A few days prior to this date, the Times brought an Article 78 proceeding in New York Supreme Court to enjoin the hearing, on the same jurisdictional grounds it had previously urged upon the Commission. The case has been fully briefed an a decision by Justice Silverman is expected shortly.

(Peter Weiss, in collaboration with Roderic Boggs and Douglas Wachholz of the Lawyer's Committee for Civil Rights Under Law and Barbra Hoffman of the New York City Commission on Human Rights)

(66) HAMPTON v. CITY OF CHICAGO
JOHNSON v. CITY OF CHICAGO
BREWER v. CITY OF CHICAGO

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 the raid. All four are suits for damages and all consolidated for trial. David 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 was taken to the Seventh Circuit Court of Appeals on these issues. An Amended Complaint containing the remaining counts was filed in the District Court.

The appeal to the United States Court of Appeals for the Seventh Circuit has resulted in a reversal of the ruling of the District Court. The Seventh Circuit held that the State Attorneys Hanrahan and Jalovec could be tried for civil damages, that the other State Attorneys and police officials could be tried for conspiring to cover-up and conceal the illegal raid, and that Cook County and Chicago could be tried on the basis of diversity jurisdiction.

All of these defendants are seeking review in the United States Supreme of this ruling.

Simultaneously discovery on the part of all parties is going forward in the District Court.

(William Bender, Arthur Kinoy with David Scribner and John Hyman)

(67) DIGGS et al. v. SCHULTZ et al. This was 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 involved 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 included 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 was taken.

The Court of Appeals affirmed the decision of the District Court but, in contrast to the determination of the District Court, the appellate court acknowledged that the plaintiffs had standing to litigate the issues that were presented. The court then avoided treating the statutory and Constitutional issues by designating them political questions. A petition for a writ of certiorari was filed with the Supreme Court of the United States but was denied.

Though the case was lost, it established the broadest precedent for public interest groups claiming standing to litigate issues.

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

(68) ESCOFFREY v. CITY OF NEW YORK

Three years ago, Ms. Pearl Escoffrey filed an employment discrimination complaint with the Division of Human Rights pursuant to the relevant provisions of the New York State Human Rights Law. The Division held that there was probable cause to believe that prohibited discrimination had occurred. The Division and the City of New York signed a conciliation order by Commissioner of the Division. Ms. Escoffrey's claim has not yet been settled and a Division Representative has recently determined that there is a continuing violation of the conciliation order. Since the re-opening of Ms. Escoffrey's case, J. Otis Cochran of the Center staff has been working on the matter.

William Bender, J. Otis Cochran)