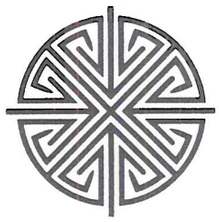


CCR

CENTER FOR CONSTITUTIONAL RIGHTS

December, 1974

Dear Friend:

In July, 1769 a letter was printed in the Public Advertiser protesting the rising prices and general economic oppression under British domination. The letter said, in part, "I believe there is a spirit of resistance in this country, which will not submit to be oppressed."

Much has changed in our country since the years before the American Revolution. But not, we believe, the spirit of resistance that fired the struggle for our independence. When that spirit of resistance brought tens of thousands of black and white Freedom Fighters into the South in the 1960's, CCR attorneys were there demanding that the law be used as an instrument of social change, rather than political repression. When that spirit of resistance filled the streets of our cities with millions of outraged citizens protesting the War in Southeast Asia, CCR lawyers were in the courts of those cities fighting to protect the very right to resist, and defending those denied that right.

Today, the spirit of resistance is again proliferating throughout the nation...resistance to spreading unemployment, rampant price increases, unconscionable corporate super-profits and the collusion of government and industry that contributes toward the severity of these problems. And, once again, the CCR will be there, with the people, fighting to insure that the law is not used to suppress, but to support, the right to resist.

Resistance, however, is a cooperative effort. Not one CCR case could ever have been fought, much less won, had you not been there with much needed financial support. We are now in the midst of a fiscal crisis which will determine whether or not the CCR will continue to exist in 1975. The outcome of this crisis rests with you. Your tax-deductible contribution <u>can</u> make the difference.

For Justice,

Bill Kunstler

William M. Kunstler

853 BROADWAY 14TH FLOOR NEW YORK N.Y. 10003 212 674 3303

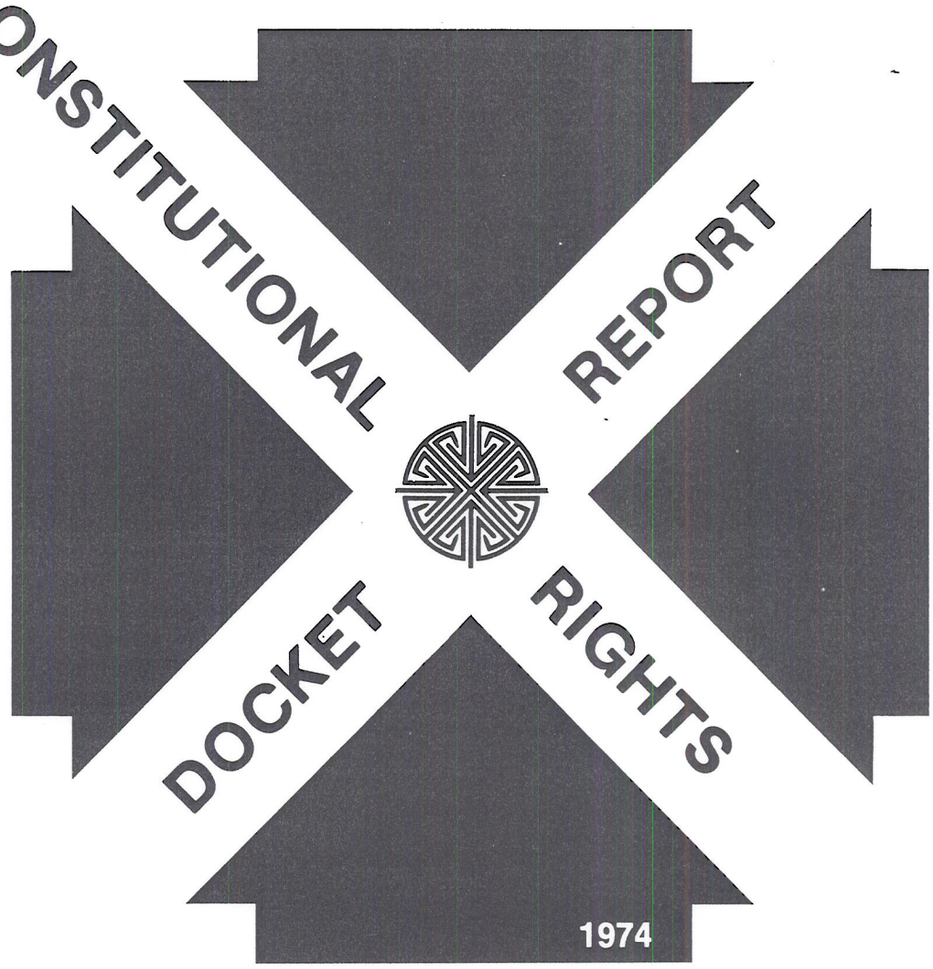
CONTRIBUTIONS TO CCR ARE TAX DEDUCTIBLE

CABLE: CENTERITES. NEW YORK

Jan 75

CENTER FOR CONSTITUTIONAL RIGHTS

"Injustice anywhere
Is a threat to
Justice everywhere"
(MARTIN LUTHER KING)



LABOR

1. UNITED STATES v. UNION NACIONAL DE TRABAJADORES, ET AL.

This case arose out of a labor dispute between the Union Nacional de Trabajadores (UNT) and the Werl Construction Company, a North American-owned enterprise operating in Puerto Rico. The UNT, which is an important pro-independence force in Puerto Rico, had struck a construction site in San Juan. Werl complained to the National Labor Relations Board (NLRB) that the strike was an unfair labor practice, and the NLRB obtained an anti-strike injunction in Federal Court against UNT. Several weeks later, after the strike had been settled, the NLRB sought criminal contempt charges against the Union and two of its officers for allegedly violating the anti-strike injunction. CCR attorneys agreed to represent the defendants on the criminal contempt charges, as the case went to the heart of the colonial relationship between the United States and Puerto Rico.

As part of the pre-trial motions in the case, CCR attorneys challenged the constitutionality of the use of English in Federal Court in Puerto Rico, and requested that the trial be conducted in Spanish. In addition, a motion for a jury trial, pursuant to a statute that provides for juries in criminal contempt cases arising from labor disputes, was also made.

Both of these motions were denied by the District Court Judge and CCR attorneys appealed to the U.S. Court of Appeals for the First Circuit, asking for a Writ of Mandamus (an extraordinary writ compelling a government official to do his/her duty) against the Judge, requiring him to grant the motions. Ten unions joined the appeal on the jury question by way of amicus curaie briefs. In addition, a second amicus brief on the jury issue was filed by the National Lawyers Guild. The Court of Appeals refused to rule on the Spanish language motion at this pre-trial stage of the proceedings, but did hold, for the first time, that a union is entitled to a jury trial in a contempt situation arising out of an alleged violation of the injunctive provisions of the Taft-Hartley Act. (The lower court in this case, and all other courts that had previously ruled on this issue, had held that the jury provision applies only to contempts arising out of the Norris-LaGuardia Act, the Act which originally contained the jury provision.)

The U.S. Court of Appeals for the Ninth Circuit recently held the opposite on the jury issue, and that decision is being appealed to the Supreme Court. CCR attorneys are filing an Amicus Curiae brief in that case. (See *Muniz v. NLRB* (Amicus) in this Docket.)

CCR attorneys also filed a major pre-trial motion asking for disclosure of illegal electronic surveillance by the government and requesting a hearing on the matter. Lengthy affidavits, by both the defendants and their counsel, were filed, which detailed the bases for their claim of illegal wiretap, including information received from individuals employed by the Puerto Rican Telephone Company that the phones of the defendants and at least one of their attorneys was tapped. The Judge denied our motion for disclosure, and CCR attorneys immediately sought a Writ of Mandamus in the First Circuit Court of Appeals to require the District Court Judge to order disclosure. In a landmark decision, the First Circuit granted the Mandamus, holding for the first time in the country that it was a proper remedy in resolving pre-trial wiretap issues. The Appeals Court also accepted the Center's argument that a mere allegation of wiretapping by a criminal defendant is sufficient to require the government to affirm or deny the existence of wiretapping. We are now awaiting the government's response to the wiretap allegations.

Other major pre-trial motions that have been filed include a motion to dismiss based on the inapplicability of the Taft-Hartley Act to the nation of Puerto Rico, (this motion directly raises the question of the illegal colonial domination of Puerto Rico by the United States), and a motion to dismiss for bad faith prosecution, based on the claim that UNT is being attacked for its militant support of Puerto Rican independence, rather than for any violation of law.

As to the criminal trial itself, it may have to await the outcome of the Supreme Court's final determination of the jury issue, as well as the resolution of the wiretapping question.

(Nancy Stearns, Liz Schneider, Mark Amsterdam, with David Scribner)

GOVERNMENTAL MISCONDUCT

4. 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.

A tremendous amount of time and effort have 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 defendant City of Chicago and Cook County, as well as to defendant 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.

The defendants sought review by way of writ of *certiorari* in the Supreme Court of the United States. The Supreme Court denied *cert* thereby leaving the complaint essentially intact as originally filed in the District Court.

A massive program of pretrial discovery was initiated to prepare the case for trial. Important revelations of the role of the FBI in planning the raid have been uncovered, the deposition of the FBI informant has been taken showing the critical details of the FBI involvement in this indictment.

The District Court has also entered broad discovery orders allowing revelation to the plaintiffs of the records of the three grand juries, federal and state, which have considered the underlying events. A series of depositions of the defendants are underway. Requests for production of documents, demands for admissions and interrogatories, have been filed and answered and several motions to compel additional discovery have now been submitted. It is anticipated the case will be ready for trial by early summer 1975.

(William Bender, Morton Stavis, Arthur Kinoy with Jeff Haas)

5. BRIGGS, ET AL. v. GOODWIN, ET AL.

Lawyers from the CCR, on behalf of the VVAW "Gainesville 8" defendants (who were acquitted of conspiring to disrupt the Republican National Convention in 1972), have filed suit against Guy L. Goodwin of the Internal Security Division of the Justice Department, as well as two United States Attorneys and an F.B.I. agent.

We charge Goodwin, who was widely condemned as the man who travelled the country running political grand juries such as those that indicted the Berrigans, the Camden 28 and the Gainesville 8, with having committed perjury by swearing, under oath, that there were no agents or informers in the defense camp of the eight veterans. Subsequently, the fact that one of the individuals that Goodwin swore was not an agent or informer turned out to have been a paid F.B.I. informer for months before the veterans were even indicted, was revealed.

Our suit charges that Goodwin lied as to this fact in order to insure a steady flow of "inside" information regarding defense strategy right up to the time of trial, and demands that a special prosecutor be appointed to secure indictments against Goodwin and any other involved parties for every violation of law they may have committed in connection with the prosecution of this case. In addition, the suit demands that the veterans be reimbursed for the complete cost of their legal defense and compensated for the fourteen months of hell that they were maliciously and intentionally put through by the government.

In June, 1974, plaintiffs sought to take Goodwin's deposition. The government moved to stay the deposition and have the lawsuit transferred to Florida so that Judge Arnow, who presided over the criminal trial, would have jurisdiction, particularly over its motion to dismiss. Judge Aubrey E. Robinson of the District Court for the District of Columbia, who now has the case before him, granted the stay but ordered the government to file its motion to dismiss before him prior to his ruling on the transfer motion. The government's motion to dismiss, based on a claim of quasi-judicial immunity, and its motion to transfer were denied by Judge Robinson on November 20, 1974, and we will now move forward with Goodwin's deposition.

(Nancy Stearns, Doris Peterson, Morton Stavis, Cameron Cunningham, Brady Coleman and Phil Hirschkop.)

6. UNITED STATES SERVICEMAN'S FUND v. INTERNAL REVENUE SERVICE

The United States Serviceman's Fund (USSF) is an organization which has for years supported services (such as coffee houses and newspapers) to G.I.s as an alternative to the jingoistic propaganda that soldiers are barraged with by the Armed Forces media.

As a result of its activities, which were no more than the free exercize of the First Amendment right to support a differing political point of view, the Internal Revenue Service revoked USSF's tax-exemption. CCR lawyers immediately initiated a federal lawsuit charging the government with manipulating the supposedly independent IRS in order to attack the Administration's "enemies," a charge that is well supported by Watergate-revealed information.

Rather than litigate the question in court, the IRS quickly reversed its position and reinstated USSF's tax-exemption, conceding, in effect, the validity of our charges. But more important then our victory in this particular case was the fact that we were there in the first place to stand up and fight for the Constitution, to demand that the only permissible standard that the IRS can be guided by is an accounting standard, not a political one.

Recent disclosures in the press regarding the use of the IRS as a political weapon indicate the importance of the CCR's early attack on this practice.

(Nancy Stearns, Peter Weiss, Mark Amsterdam with Mitch Rogovin)

WIRETAPPING

7. KINOY v. MITCHELL

This is a civil action by CCR attorney Arthur Kinoy and his daughter, Joanne Kinoy, for damages and injunctive relief for electronic surveillance conducted in violation of the Fourth Amendment and 18 U.S.C. Section 2520.

Unlike what occurs in a criminal proceeding, the government did not affirm or deny wiretapping. Rather they moved to dismiss the action, which motion was denied by the District Court in July 1971. Subsequently, the government, in answering the complaint, denied "illegal and unconstitutional surveillance" of Arthur Kinoy, thus initially refusing under a claim of executive privilege to disclose the existence of surveillance.

Finally, on May 25, 1973, spurred by plaintiffs' discovery efforts, the government, on the basis of a partial search of agencies and indices, repudiated its answer and admitted that Arthur Kinoy had indeed

been overheard by electronic means 23 times on alleged national and foreign security surveillances conducted without a court order, and dating back to 1951.

After this admission, plaintiffs sought discovery with respect to the authorizations, logs and other evidence derived from the surveillance, as well as with respect to the scope of the government's search in determining the extent of the surveillance (the 23 admitted surveillances are but the tip of the iceberg of actual surveillance of Kinoy).

The government has successfully held up discovery for more than a year by filing a motion for summary judgment which urges, among other things, that the Court hold that warrantless electronic surveillance for so-called foreign security purposes is legal, and that based on *selected information* that it *submitted secretly to the court*, the surveillances in this case are of that variety. The government also insists on the completely untenable position that *United States v. United States District Court* (in which attorney Kinoy won an 8-0 decision from the Supreme Court that warrantless national security violates not only the wiretap statute but also the 1st and 4th Amendments) should not be applied to surveillance situations before its decision—a position that would elevate the Watergate bugging, among others, to the realm of legality.

CCR attorneys have filed extensive papers in opposition to the government's positions—papers which argue strenuously for the right of full discovery and for the inapplicability of the Executive's claimed privilege from having to disclose the nature and contents of its surveillance activities. In support of these arguments, information derived from discovery in the *Dellinger v. Mitchell* case and received under protective order, was recently filed with the court by way of exposing the misrepresentations and fallacies inherent in the government's position.

(Rhonda Copelon, Arthur Kinoy, with Jeremiah Gutman and Michael Ratner)

8. DELLINGER v. MITCHELL

This is a suit under the Fourth Amendment and 18 U.S.C. § 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 plaintiff's 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 the Supreme Court's decision in the "wiretap" case. The plaintiffs opposed the stay. The court ordered that the trial go forward.

The government sought to oppose all of the plaintiffs' discovery by asking the court to decide several important questions *ex parte* (without the presence of all parties) and *in camera* (in chambers). These questions include the issue of the retroactivity of the *Keith* decision, the good faith of the Attorney General, the Director of the FBI in conducting the wiretaps, the question of possible immunity of government officials and the legality of some of the surveillance under the statute and pursuant to a foreign security exception to the Fourth Amendment.

On January 10, 1974, the District Court ruled that the plaintiffs were entitled to the bulk of the discovery which they sought and the Court rejected the government's notion that litigation could go forward without revelation of the facts to the plaintiffs. Materials have begun to be disclosed revealing the inner workings of the national security wiretap program, its enormous breadth, and the substantial interferences the program caused on the First and Fourth Amendment rights of large numbers of citizens.

The Court's earlier protective order was modified to allow revelation of these materials to other courts considering national security wiretap problems and to permit access to these materials by legal assistants and experts for purposes of analysis to prepare the case for trial.

On the issue of foreign security electronic surveillance the Court has sustained the government's

claims of executive privilege made to avoid disclosures.

Detailed analysis of materials is now underway to prepare this case for trial.

(William Bender and Morton Stavis)

9. BERRIGAN v. KLEINDIENST

This is a civil action for damages arising out of the admission of unlawful national security electronic surveillance during the Harrisburg trial. The suit has been filed in the Eastern District of Pennsylvania and discovery demands were served. The government attempted to avoid answering the complaint by relying on a restrictive protective order that had been entered in the underlying Harrisburg criminal trial. Plaintiffs sought to have this order modified in the criminal case unsuccessfully and thereupon appealed to the U.S. Court of Appeals for the 3rd Circuit. The 3rd Circuit remanded to the District Court handling the civil action and suggested that the protective order was no longer timely and in any event if the government chose to invoke the order to avoid the civil litigation the remedy would be default against the governmental defendants.

In this regard motions have been filed and the Court's ruling is awaited.

(William Bender with Jack Levine)

10. SINCLAIR v. KLEINDIENST

This is a civil action for damages on behalf of John Sinclair, Lawrence "Pun" Plamondon and John Waterhouse Forrest arising out of the admission of national security surveillance in the criminal case which became *United States v. United States District Court*. The action was filed in both the District of Columbia and the Southern District of New York in order to obtain personal jurisdiction over all of the defendants. The separate actions have been consolidated in the D.C. District. This suit names Clyde Tolson as a party defendant in his capacity as the executor of the estate of the late J. Edgar Hoover. Plaintiffs' discovery has been filed. In this case the government moved for dismissal and for judgment on the pleadings. Substantial briefs were prepared and exchanged, the motions argued and the issues are now pending decision in the District Court.

(William Bender)

FIRST AMENDMENT RIGHTS

11. 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.

In the Spring of 1974, the Eastland Committee, represented by private counsel (the same firm now representing Nixon) filed a petition for *certiorari* to the U.S. Supreme Court. That petition was granted in October, 1974 and the case is likely to be argued in January, 1975. It has been consolidated with the cases of the Progressive Labor Party, National Peace Action Coalition and People's Coalition for Peace and Justice, which also obtained stays of bank record subpoenas issued by HISC.

(Nancy Stearns, with Jeremiah Gutman)

12. BERRIGAN v. SIEGLER

This is a civil action challenging the right to withhold permission of parolees to travel where it is violative of their First Amendment rights and done for political purposes.

Fathers Dan and Phil Berrigan, while on parole from their prison sentences, sought permission of the U.S. Board of Parole to accept an invitation to travel to Hanoi. Emergency application was made to the U.S. District Court, which denied permission. On the Following day, the Circuit Court reversed, but Chief Justice Berger in turn stayed the ruling of the Circuit Court.

The case was finally argued before the Circuit Court which recently decided it. The action of the Parole Board was sustained in a two-to-one decision. No further appeal was taken.

(Morton Stavis, Doris Peterson)

13. DOMESTIC SATELLITE CASES

The Network Project, a research collective working in the area of communications policy, has been challenging the FCC's decision to approve a number of petitions from such corporate giants as Western Union, AT&T, RCA and Hughes Aircraft, for the construction of domestic satellite communications facilities, without any provisions for public access or "public dividends." CCR lawyers, believing that this policy raises important First Amendment problems, has assisted the Network Project in preparing petitions to deny some half dozen domestic satellite licenses. Some of these petitions are still under consideration, while others have been dismissed by the FCC and are being appealed to the U.S. Court of Appeals in Washington, where the case was argued on December 6, 1974.

Since the initiation of the case, the Network Project's worst fears have been confirmed: the one corporate applicant which had offered to make a small part of its facilities available to the public has, for all practical purposes, dropped out of the picture.

(Peter Weiss with Andrew Horowitz and Morton Hamburg)

WOMEN'S RIGHTS

14. KLEIN v. NASSAU COUNTY MEDICAL CENTER

This is an affirmative civil rights action brought on behalf of several indigent pregnant women who were denied abortions in the spring of 1972 in accordance with a policy to perform no abortions at the facility, which is the only public hospital serving the county.

The pretext for this policy was a regulation issued by the New York State Commissioner of Social

Services excluding women who wish the so-called "elective" abortion from reimbursement under Medicaid. In spite of the State's position that the regulation was not restrictive of abortions, a three-judge Federal Court in the Eastern District of New York unanimously enjoined enforcement of the regulation. As this decision pre-dated the U.S. Supreme Court's decision holding abortion to be a constitutional right, the Court based its injunction on the theory that both abortion and childbirth are elective options and that to provide Medicaid reimbursement and hospital services for the latter and not the former is to unconstitutionally coerce the indigent to bear children.

The State appealed the injunction to the Supreme Court which remanded the case, without a hearing, for reconsideration in light of the Supreme Court's decisions recognizing abortion as a fundamental right. The Court issued an interim conference memorandum indicating its view that the restrictive policy is unconstitutional.

Though restrictive policy has been largely abandoned throughout the State, the government insists on maintaining it on the books as it provides a handle to anti-abortion oriented communities to encumber a poor woman's access to abortional services.

Summary judgment will be sought to clear the regulation off the books, to invalidate the hospital's refusal to service available non-county residents and minors without their parents consent. The hospital has voluntarily abandoned the requirement of spousal consent.

(Rhonda Copelon, Nancy Stearns, with Burt Neuborne and Jerome Seidel)

15. DOE v. ISRAEL

This case arose out of the CCR's original challenge to the constitutionality of the Rhode Island abortion statutes. After waiting for the Supreme Court to render its now famous abortion decision, a three-judge federal court held those statutes unconstitutional, in conformity with the Supreme Court's decision. Immediately thereafter, the State Legislature passed a new abortion statute declaring a fetus to be a human being with full constitutional rights from the moment of conception. CCR lawyers, on behalf of pregnant women, challenged this attempt to get around the Supreme Court decision.

After a hearing, a Federal District Court Judge declared the new statute unconstitutional. The State and several "right to life" groups appealed to the First Circuit which, on November 15, 1973, upheld the lower court. The States' petition for *certiorari* to the Supreme Court was denied on May 13, 1974.

(Nancy Stearns, with Jan Goodman, Dick Zacks, and Charlie Edwards)

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

A petition to deny the license renewal of WABC-TV, brought on behalf of the New York Chapter of the National Organization of 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 in that WABC-TV (a) does not consult with women or women's groups regarding 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.

Following the filing of the petition, a series of negotiations with the station, lasting three months, was entered into. These negotiations failed to produce a satisfactory solution, particularly with respect to balancing the one-sided programmatic presentation of the role of women in society. WABC-TV has filed a Response to the petition, and Center attorneys have filed their Reply, which covers the legal and factual insufficiencies in the station's position.

To date, the F.C.C. has issued no decision on the petition, despite the fact that 2-1/2 years of the three-year license renewal period in question has already expired.

CCR lawyers are now pursuing an appeal in the U.S. Court of Appeals for the District of Columbia based on (a) that the FCC's failure to act is equivalent to a denial of the petition and a granting of the license, and (b) that on the basis of the extensive documentation provided to the FCC, it is precluded, as a matter of law, from finding that the licensee was operating in the public interest and is therefore required to hold a hearing on the petition.