On appeal, the petition against WABC-TV is consolidated with a similar Petition filed by a coalition of women's groups in the Washington, D.C. area against the NBC station WRC-TV.

(Rhonda Copelon, Nancy Stearns, Elizabeth Schneider, with Janice Goodman, Deborah Biel, Judith Hennessee and Joan Nicholson)

17. LOW MEMORIAL DAY CARE CENTER v. WHALEN

Day care is an issue which is central to the lives of millions of women and men in this country, both as a key to breaking out of sex-stereotyped roles which are at the heart of sex-based discrimination, and because without day care, women, who are the primary child-raisers in this country, cannot work.

New York City, which provides more than 50% of the day care services in the country and has had a reasonably progressive day care structure in which both working and welfare women are integrated into the system, has recently attempted to regress to a "welfare only" system of daycare. This attempt took the form of an imminent cut-off of funds which would have effectively denied day care rights to working women.

CCR lawyers responded to the imminent cut-off of funds by filing a federal civil rights action seeking declaratory and injunctive relief against a threatened restrictive fee and eligibility schedule which would have stopped thousands of working women from receiving day care services. A number of plaintiffs in this lawsuit had previously been welfare recipients, and testified to the fact that if day care were not available to them they would have to go back on welfare. Legal arguments in the suit included the right to a fair hearing under the Social Security Act, and the sex-discriminatory nature of terminating day care services to working women.

A temporary restraining order was obtained against the new restrictive fee and eligibility schedules, but a preliminary injunction was denied. In the meantime, however, the City and State negotiated an agreement which, because of the issues raised in our suit, substantially narrows the class of people who would be affected by new regulations. CCR lawyers are now studying the impact of this agreement on the future of the suit.

(Elizabeth Schneider with Janet Benshoof)

18. 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.

The Court of Appeals for the D.C. Circuit reversed the District Court's decision which had granted summary judgment to the government. It held that the government had the burden of factually demonstrating that the combat readiness of Marines was enhanced by prohibiting wives from visiting their Marine spouses for over 60 days.

The case finally went to trial in August of 1974. We presented only one witness, a Marine Corps attorney, who testified regarding the harmful effects on Marine Corps morale of the 60 day rule. He detailed the extensive use of drugs and alcohol that resulted from the rule and the adverse effect the rule had on marriages.

The government's chief witness was the Commandant of the Marine Corps, General Cushing. One of his positions was that the wives of Marines were little girls who could not handle their own affairs if left in Japan on their own. It was also brought out on examination that all of the other services had combat

ready troops in the Pacific and had no need for the 60 day rule. By the end of his testimony it was clear that we had won the case.

The judge did not even wait for briefs, but ruled in our favor from the bench and declared the 60 day rule unconstitutional.

The government is apparently still enforcing the rule, claiming that it will do so until the appeal, which they have filed, is decided. We plan to go back to the District Court for an injunction and expect to win the appeal.

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

19. DANIELSON v. BOARD OF HIGHER EDUCATION

This was 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 changed 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.

Because of these changes in the By-Laws of the Board of Higher Education, the case was settled by stipulation in February, 1974.

(Nancy Stearns, with Veronika Kraft and Carol Libow)

20. MONELL v. BOARD OF SOCIAL SERVICES

Originally, this class action by employees of the New York City Board of Education and the Department of Social Services challenged the compulsory maternity leave policies of both departments. These practices forced women to leave their jobs after seven months of pregnancies, and lose their pay at that point, regardless of their physical ability to continue working. Before the case reached trial, the Board changed its policies, eliminating compulsory maternity leave.

The plaintiffs are now litigating the question of back pay for themselves and the class they represent. More than 100 teachers, responding to notices of the change in policy, have claimed that they were placed on leave while still capable and desirous of working.

The case was put before a Magistrate, where the Board and the Department of Social Services claimed immunity from monetary damages and alleged that plaintiffs could not recover under Title VII because Title VII was not made applicable to municipal agencies until after the named plaintiffs were put on leave. On September 19, 1974 the Magistrate issued a Report and Recommendation granting plaintiffs' motion for damages. Exceptions to his ruling have been filed with the District Judge, who has not yet ruled.

(Nancy Stearns, with Oscar Chase and Gregory Abby)

21. EDWARDS v. HEALY (AMICUS CURIAE BRIEF)

CCR attorneys filed a brief *Amicus Curiae* (friend of the court) in this case which is now pending before the U.S. Supreme Court. The case itself challenges the arcane requirement of Louisiana Law that women sign up as volunteers for jury service in order to be called, whereas men are automatically summoned.

The Center's purpose in filing the brief is to educate the Court as to the true scope of the problem of differential treatment for potential women jurors. The brief canvassed for the Court the variety of sex-

based and/or child-related excuses and exemptions provided by the federal jury plans and state statutes. Concerned that the Court, in invalidating the volunteer system at issue, might approve any of those provisions, we demonstrated how they all set up a double-standard for jury service between women and men. From information learned litigating a jury challenge in the "Gainesville 8 Conspiracy" case, we demonstrated to the Court that child-care does not and should not automatically constitute a hardship excuse. In Florida, half of the women who claimed an excuse based on child-care were, in fact, employed and would not have been taken from child-care responsibilities. The CCR's brief urged that equal protection and due process require that child-care should be treated as an excuse from service only when such service would create an actual hardship on the individual.

(Rhonda Copelon)

22. ANDREWS v. DREW MUNICIPAL SCHOOL DISTRICT (AMICUS CURIAE BRIEF)

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 positions, 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 Amenments' 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 calimed 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 have been filed and the decision of the Court is expected shortly.

(Rhonda Copelon with Victor McTier)

CRIMINAL CASES

23. UNITED STATES v. BANKS AND MEANS (WOUNDED KNEE)

After an 8-1/2 month trial, Chief Judge Fred J. Nichols of the Federal District Court of South Dakota dismissed all of the remaining charges against Russell Means and Dennis Banks, the two leaders of the American Indian Movement occupation of Wounded Knee, on grounds of governmental misconduct. Six charges had been dismissed earlier for reasons of legal insufficiency and the failure of the prosecution to present enough evidence to warrant submission to a jury.

During the course of the trial, Judge Nichols found, among other things, that the FBI had altered or suppressed key documents, committed illegal electronic surveillance, and had probably persuaded law enforcement officials in River Falls, Wisconsin, to drop rape and sodomy charges proferred against the government's star witness. Moreover, he stated from the bench that the special agent in charge of the Minnesota Division of the FBI (which covers three states, including So. Dakota) had perjured himself on the witness stand. At one point the Judge took the unprecedented step of impounding all FBI files when it was discovered that many important documents, crucial to the defense, had been suppressed, and altered versions submitted to the Court. In addition, the Court pointed out that the prosecution had presented one witness who claimed he had observed the defendants commit incriminating acts in Wounded Knee at a time when he was, himself, a prisoner in the Pine Ridge Reservation Jail.

During deliberations, after the jury had already voted 12-0 to acquit both defendants of the con-

spiracy charge, one juror became seriously ill and, though the defendants were willing to accept an 11 juror verdict, the government refused to do so on the ground that the jury was about to find the defendants not guilty on all charges. At this point, Judge Nichols stated that he had had enough and dismissed the entire prosecution with the comment that the government had "polluted the waters of justice."

The government appealed Nichols' dismissal and, recently, the U.S. Court of Appeals for the Eighth Circuit affirmed Judge Nichols' dismissal of the charges. Efforts are now being made to win the dismissal of all the Wounded Knee prosecutions based on the fact that the government's inability to present enough evidence to win a conviction against the two leaders of A.I.M. during an 8-1/2 month trial suggests strongly that its case would be even less adequate against the remaining Wounded Knee occupiers.

(William M. Kunstler with Mark Lane and Kenneth Tilsen)

24. 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 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 nor has the prosecution responded to the substance of any of the motions. The government, however, has recently offered to drop all criminal charges if the defendants pay a civil fine. Negotiations with the prosecution in regard to this offer are continuing.

(Mark Amsterdam)

25. PEOPLE v. JOHN HILL

This is 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.

Motions to change the venue (location) of the trial to New York City have been denied. Consequently, it is expected (at this writing) that a lengthy and in depth *voir dire* (examination of potential jurors) will take place in hopes of overcoming what is believed to be a high level of prejudice against the Attica inmates in the Buffalo area.

The trial began on November 18, 1974, and is expected to continue for several months.

(William M. Kunstler)

CRIMINAL APPEALS

26. PEOPLE v. H. RAP BROWN

After a lengthy trial, the jury in the trial of H. Rap Brown and his three codefendants 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 was made before the trial judge, and has been denied.

In July, 1974, CCR attorneys filed a motion to vacate the conviction based on documents, revealed as a result of a Freedom of Information Act suit brought by a journalist, detailing the existence and activities of CO-INTEL-PRO, the FBI's program of surveillance, harassment and other misconduct against black "nationalist," "new left" and other groups.

The FBI now officially concedes that Brown had been a target of CO-INTEL-PRO activities, and New York Supreme Court Judge Fraiman has ordered the FBI to disclose any electronic surveillance of Brown or face an evidentiary hearing on the matter. Amidst much outrage over such unconstitutional government activities as CO-INTEL-PRO and the infamous Huston Plan, a number of other lawyers and groups are using the CCR's CO-INTEL-PRO motion as a model for their own litigation. CCR attorneys believe that Brown's convictions must be overturned based on governmental misconduct which even Attorney General Saxbe has conceded was grossly improper.

(Elizabeth Schneider and William Kunstler)

27. 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.

An appeal was taken to the New York State appellate Division, which upheld the conviction. At present, Feliciano remains free on bond pending his application for leave to appeal to the New York State Court of Appeals.

Prior to his conviction, Feliciano had served 16 months in pre-trial detention, simply because he was to poor to raise bail. If he must ultimately go to jail he will, in effect, be subjected to a double punishment for the following reason; that, whereas parole eligibility normally begins after service of one-third of a sentence, pre-trial detention time is not credited toward the first third ("front") of a sentence, but the last third ("back"). Consequently a person who has received a three-year sentence and has spent a year in pre-trial detention, still must serve the first year of his/her sentence before becoming eligible for parole. As a result, that person ends up serving 2/3 rather than 1/3 of their sentence before parole eligibility begins. Our intention, co-incident with the appeal, is to attack the constitutionality of this practice.

(William M. Kunstler)

28. STATE v. CRUZ

Pancho Cruz was convicted in December 1971 of possession of firebombs. He was accused by Assistant D.A. John Fine (who was also responsible for the persecution of Carlos Feliciano) of being a member of the Puerto Rican revolutionary group, MIRA, although no proof to this effect was introduced at his trial. The D.A. also accused him of participating in the bombings of department stores and theaters in the New York area although no proof of this was introduced at trial. As a result of the prejudicial comments of the D.A., however, Pancho was convicted and sentenced to 7 years confinement. Since his trial, he has become an important figure in the drive for Puerto Rican independence.

The Center is appealing the conviction on many different grounds, including the constitutionality of the statute defining bombs and the statutory presumption that everyone in an automobile is presumed to know all the contents of that auto, even if the person (as was Pancho) was just a passenger. Other

grounds include prosecutorial misconduct, illegal search and seizure, illegal wiretap, and violation of *Miranda* rights (which require the police to inform an arrested person of his/her legal rights).

A motion for a new trial was denied by the same judge who sentenced Pancho and the Appellate Division has affirmed the conviction.

The New York Court of Appeals, in a landmark decision, affirmed Pancho's conviction but at the same time set down the procedures under which the prosecution must reveal the existence of electronic surveillance. No longer will the prosecution be able to legally hide behind a shield of in-court oral denials; now affidavits are required after searches of the relevant agencies have been made.

However, the opinion is quite restrictive on the amount of "proof" a defendant must show to obtain this information from the prosecution, and it was on this ground that the conviction was upheld. A petition for *certiorari* will shortly be filed before the Supreme Court.

(Mark Amsterdam)

29. UNITED STATES v. CAMIL

Six of the Gainesville Eight defendants and one supporter, Frank Hall, were convicted of contempt during a pre-trial hearing in the Gainesville Eight Case. The appeal was argued February 5, 1974, before Circuit Judges Simpson, Godbold and Ingraham of the Fifth Circuit, on July 17, 1974. They unanimously reversed the convictions and dismissed the case. They ruled that the failure of Federal District Judge Arnow to certify that he saw or heard the conduct constituting the alleged contempt, and the failure of his contempt order to recite the facts, precluded consideration of defendants' appeal on the merits. By the time this appeal was heard, all defendants in the Gainesville Eight case had been acquitted by the jury on all counts.

(Doris Peterson, Morton Stavis, Nancy Stearns, with Larry Gross, Cam Cunningham, Brady Coleman and Larry Turner)

30. UNITED STATES v. TORRES and VEGA

Two Puerto Rican migrant workers who are members of the Puerto Rican Socialist Party were charged in 1970 with possession of Molotov cocktails during a riot in the city of Hartford. They were convicted in 1971, but when the community became involved with the case, a local reporter found new evidence showing that the two men were not guilty. On the basis of the new evidence, the Center was successful in obtaining a new trial for the men. In April 1973, the two men were re-tried and found guilty in spite of eye witness testimony to the effect that they did not possess or attempt to throw any Molotov cocktails. The all-white jury took only 15 minutes to reach their verdict.

The case was appealed to the Court of Appeals for the Second Circuit on the grounds that the jury composition denied the defendants a fair trial. Other issues related to the refusal of the trial judge to sustain a challenge for cause against 8 members of the jury panel who admitted belonging to groups which intentionally excluded non-whites, the constitutionality of the Firearms Act, a self-incriminatory as well as extremely vague statute.

Despite the overwhelming strength of their position, the conviction was upheld by the Circuit Court in an opinion marked by inaccuracy and sloppy thinking. A petition for *certiorari*, based on the right to challenge for cause jurors who belong to segregated clubs or organizations, was denied. The men are presently serving their prison terms.

(Mark Amsterdam)

31. VIRGIN ISLANDS v. GEREAU, ET AL.

This is an appeal from the convictions of five Black men for allegedly murdering eight North Americans at a Rockefeller owned golf resort in the Virgin Islands.

The convictions were upheld by the Third Circuit Court of Appeals, but at least one aspect of the appeal, involving an allegation of jury tampering, was remanded to the District Court for a hearing. After

that hearing, the District Court reaffirmed its original finding that there was no jury tampering. This issue will remain part of the petition for certiorari to the U.S. Supreme Court. Other issues contained in the petition include the torture-induced "confessions" of several of the defendants, the credibility of prosecution witnesses, and the denial of defendants' motion for the trial judge to remove himself from the case for lack of impartiality.

(William M. Kunstler with Margaret L. Ratner)

32. 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 raised issue of extreme racism in the jury selection, the Sixth Amendment right to have compulsory process for witnesses, and other due process issues in the military context. Shortly after argument of the appeal before the Navy Board of Review in Washington, the conviction was reversed on the grounds that the testimony of the MP's did not (because of their lack of credibility) establish the offense. The government chose not to appeal the reversal since oral argument disclosed that the government would have lost on even further grounds which were not reached in the Board's opinion.

(Mark Amsterdam)

33. 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, and the case was not pursued further.

(Mark Amsterdam, Michael Ratner and Peter Weiss)

34. UNITED STATES EX REL. YANES v. MALCOLM

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

(William M. Kunstler, Rhonda Copelon with William Schaap on the habeas corpus *petition; Mark Amsterdam on the appeal.)*

35. 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 inhuman 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. After all the pretrial motions were denied, Smith accepted a guilty plea in exchange for time already served.

(Mark Amsterdam)

36. COMMONWEALTH OF VIRGINIA v. WANSLEY

Thomas Wansley, who had been serving a life sentence for an alleged rape in 1962, was granted a writ of *habeas corpus* by the Federal District Court for the Eastern District of Virginia on the grounds of tainted evidence and prejudicial pre-trial publicity. The Court of Appeals for the Fourth Circuit reversed the granting of the writ of *habeas corpus,* and our petition for *certiorari* to the Supreme Court was denied. Wansley is currently confined at a work camp in Virginia, and a petition to the Governor for an unconditional pardon or commutation of sentence will be filed shortly.

(William M. Kunstler, with Philip Hirschkop)

INTERNATIONAL AFFAIRS

37. STATE OF NEW YORK v. DANNY WHITE, ET AL.

In May, 1974, a group of Mohawk Indians established a settlement (Ganienkeh, or Land of the Flint) in upstate New York on land that belonged to them under the Treaty of 1784 between the United States and the Six Nations Confederacy (of which the Mohawks are one). New York State had recently purchased the land to be part of a State park.

In October, 1974, the State filed an action in Federal District Court to resolve the question of the conflicting claims to ownership of the land. In its papers, the State recognized that the Treaty of 1784 gave the land to the Six Nations, but claims that a subsequent 1797 treaty provided for the relinquishment of the land by the Mohawks. The Mohawks vigorously contest the validity of the latter treaty. An answer to the State's claim is due in December, 1974.

In the past month, harassment of the residents of Ganienkeh has increased, with passers-by shooting into the Mohawk camp. On October 28, 1974, two whites were injured by gunfire returned from the Mohawk camp after the campsite was fired upon. That night, State Police demanded to question witnesses and alleged participants in the shootings. The residents of Ganienkeh have taken the position that the proper way of resolving the matter is under the Canandagua Treaty of 1794 which establishes the procedures to be followed when an Indian is injured by a non-Indian or vice versa.

Although the Bureau of Indian Affairs initially took the position that the Treaty was invalid, on November 22, 1974, the Commissioner of Indian Affairs sent a formal complaint concerning the shooting incidents to the Grand Council of the Six Nations, the governing body of the Iroquois Nations pursuant to the Treaty. The Grand Council has responded to that letter, setting forth its position on how the shooting incidents should be resolved, and has also sent a formal complaint to the President regarding violence directed at the residents of Ganienkeh by United States' citizens, asking the U.S. government to investigate the matter and see to it that the violence and harrassment stops. The Grand Council also asked the United States to take whatever action necessary to terminate the federal action regarding the land dispute, with respect to the case of *New York* v. *White,* et al., based on the fact that the suit is against the Six Nations

ATTACKS ON LAWYERS

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

The remand contempt trial of the seven "Chicago Conspiracy" defendants and their two attorneys, William M. Kunstler and Leonard Weinglass, on the then remaining 52 specifications of contempt, ran from October 29, 1973 until December 6, 1973. The trial took place before Federal Judge Edward Gignoux, and resulted in either the dismissal of or acquittal on all but 13 contempt specifications. Weinglass, John Froines, Rennie Davis, Tom Hayden and Lee Weiner were discharged completely, while Kunstler, Abbott Hoffman and Jerry Rubin were convicted of two counts of contempt each and David Dellinger was convicted of seven. Yet, even while finding the latter four defendants guilty, Judge Gignoux concluded that in view of judicial and prosecutorial misconduct during the original trial he would impose no sentences whatsoever. Hence, the celebrated and often tumultuous Chicago Conspiracy Case, which had yielded 175 contempt citations against 10 defendants, resulted in 13 contempt convictions against four defendants and the refusal to impose any sentences.

Nevertheless, CCR attorneys appealed the 13 contempt convictions to the U.S. Court of Appeals for the Seventh Circuit, which, on September 6, 1974, affirmed those convictions. On October 2, 1974, CCR attorneys petitioned for a rehearing before the full Circuit or, in the alternative, before the same panel. The Court denied that petition, and we are about to appeal to the U.S. Supreme Court.

(Morton Stavis and Doris Peterson)

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

During the course of the trial of *People v. Baker*, William M. Kunstler was interviewed on a radio talk show where he stated certain facts and expressed certain opinions. Despite the fact that the matter was fully reviewed by the trial judge and despite the fact that he took no action whatever against Mr. Kunstler, subsequently the chief counsel of the Grievance Committee of the New York City Bar Association asked Mr. Kunstler to "explain" his action in the light of 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 with Paul O'Dwyer)

43. EFFORT OF THE GRIEVANCE COMMITTEE OF THE NEW YORK CITY BAR ASSOCIATION AGAINST WILLIAM M. KUNSTLER BECAUSE OF HIS CONVICTION IN THE CHICAGO CONTEMPT CASE

Following the conviction of William M. Kunstler in the Chicago contempt case of two citations for contempt, the Grievance Committee of the Association of the Bar of the City of New York initiated disciplinary proceedings before the Appellate Division of the State of New York. As a result of a protest made to the President of the Association of the Bar and its Executive Committee, the proceedings were withdrawn when it was pointed out that the conviction was pending on appeal. That appeal is still pending.

(Morton Stavis, Doris Peterson, Peter Weiss)

which, as a sovereign state, is immune from suit, and that their nation does not consent to be sued, and, finally, that a land dispute between nations must be settled in an international forum or through diplomatic negotiations.

A motion to dismiss raising those same arguments will be filed in the federal action on behalf of the individual defendants.

CCR lawyers have participated in negotiations with State Troopers in an effort to insure that the State and federal government follows the 1794 Treaty, and are working closely with the Grand Council regarding the shooting incidents and the land disputes. We are also coordinating visits to Ganienkeh by other attorneys so that, for the immediate future, there will be continuous legal assistance available in case of an emergency.

(Nancy Stearns, William M. Kunstler, Doris Peterson, Mark Amsterdam, with Tim Coulter)

38. 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 government, and an abridgement of the Times' First Amendment rights.

Both the Commission and the New York County Supreme Court rejected this jurisdictional challenge preliminarily and, following extensive hearings in January, 1974, the Commission, on July 19th, handed down a landmark decision holding that, although the advertisements were for employment in a foreign country, the Times, in publishing them, was "aiding or abetting discrimination" in New York City. The Times appealed to the Supreme Court of New York County and Justice Helman reversed the Commission, adopting the Times foreign affairs argument but rejecting its First Amendment argument. His decision will be appealed to the New York State Appellate Division in the near future.

(Peter Weiss with Michael Davis, Douglas Wacholz and Barbra Hoffman)

39. CHILE AND THE CIA

Following the recent disclosures of the successful efforts of the CIA and other public and private U.S. agencies to "destabilize" the government of President Salvador Allende, the CCR was requested by representatives of the Chilean leadership in exile to examine the possibility of litigation based on these revelations. Considerable research has been done and a complaint has been prepared.

Earlier in the year, the CCR sponsored two legal-observer missions to Chile, one by Ramsey Clark and New York Criminal Court Judge William Booth, the other by Professor Oliver Rosengart of New York University. The purpose of the missions was to attend the trials of members of the Allende government and to investigate and report on the state of human rights under the Junta.

(Peter Weiss, Nancy Stearns, Doris Peterson, Morton Stavis)

40. SOUTH AFRICAN NATURALIZATION CASE

CCR lawyers are currently representing a South African couple who have lived in the United States for eight years and whose naturalization is being delayed far beyond the normal time. This delay is due to the couple's activities, prior to their departure from South Africa, in opposition to the racist regime ruling that country. The case dramatizes the double standard regularly employed by the U.S. government in dealing with refugees from fascist, as opposed to socialist, countries. If the problem cannot be solved at the administrative level, litigation will be instituted.

The CCR is also advising another South African being denied entry to this country for similar reasons.

(Peter Weiss in collaboration with Goler Butcher)

44. 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 disbarment actions, and on March 23, 1973, the Kentucky Court of Appeals set aside the disbarment 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* was granted by the Court and argued on March 18, 1974. The petition raised such fundamental issues of due process as the right to a jury trial in contempt cases, judicial disqualification in contempt proceedings, and what constitutes a contempt under the constitution. On June 26, 1974 the Supreme Court reversed Taylor's contempt conviction, ruling that Taylor had been denied due process when the judge summarily sentenced him for contempt of court without giving him notice of the charges against him or a reasonable opportunity to be heard. The case has been returned to the State Court for a new trial before a different judge. That trial is scheduled to begin on January 2, 1975.

(Doris Peterson, Morton Stavis, with Robert Sedler)

MISCELLANEOUS

45. WALLACE v. KERN (BROOKLYN HOUSE OF DETENTION)

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.

After a series of hearings, United States District Court Judge Orrin Judd issued an injunction against the Legal Aid Society for failing to provide adequate counsel because of overburdened caseloads and against the State Supreme Court for refusing to calendar motions submitted by the defendants themselves when their lawyers wouldn't do so.

The Justices and Legal Aid Society appealed the injunction to the United States Court of Appeals, which reversed on jurisdictional grounds and refused to consider plaintiffs' motion to reconvene the case before the entire court. The U.S. Supreme Court refused to hear the case, deciding not to grant a petition for *certiorari*. Justice Douglas dissented.

Plaintiffs next conducted hearings into allegations that since the State could not provide speedy

trials to incarcerated defendants that it violated their Sixth Amendment rights. The District Court issued another injunction ordering defendants to be tried within 7-1/2 months after arrest or be paroled pending trial in order to reduce the oppressive legal and psychological effects of pretrial incarceration. The government again appealed, got a stay of execution of the injunction, and the case was reversed by the Court of Appeals for the Second Circuit in July 1974. A motion to reconvene the panel was again denied and a petition for *certiorari* is being prepared.

In July 1974, plaintiffs conducted a thorough trial with respect to how the bail system discriminates against pretrial detainees unable to purchase their freedom, delving into statistical studies, expert testimony and official documentation to establish their case. Post-trial memoranda are now being prepared to aid the court in establishing some procedures that assure adequate bail determination, better interviewing facilities, better production of detainees for court dates by the Department of Correction, to assure that more people spend less time in jail. A decision on these claims is expected in early 1975 and the case should go up to the Supreme Court, as it is the first of its kind involving the premise that federal courts have sufficient power to inquire into state court practices when there have been constitutional violations.

CCR is regularly being informed of cases, based on *Wallace v. Kern*, being brought in other urban areas. As an outgrowth of this case, CCR is sponsoring the production of a Legal Manual for Pretrial Detainees, which will include not only discussions of detainees' rights, but a variety of "how to" chapters for detainees filing their own actions.

(Dan Alterman, Steve Latimer, John Boston, Mike McLaughlin, Mike Bell, Merle Ratner and Art Reed)

46. IN RE KENNETH TIERNEY

In June, 1972, eleven Irish Americans were subpoenaed to appear before a grand jury in Forth Worth, Texas, investigating the alleged shipment of arms to the IRA in Northern Ireland. CCR 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 of 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 CCR 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. However, before any further actions could be taken by the government, the life of the grand jury concluded and the litigation was rendered moot.

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

47. CREOLE DOLL CASE

In July, 1974, the CCR was contacted on behalf of Ms. Laetta La Cour, a Creole woman from Cloutierville, Louisiana. Ms. La Cour had, at her own expense, designed and developed a Creole doll suitable for manufacture by a local OEO-sponsored handicraft project. The doll proved so successful that it was officially adopted by the Louisiana Bicentennial Commission. Subsequently, the regional OEO project fired Ms. La Cour and her co-workers, opposed her application for a design patent and sought to move the manufacture of the doll to another community. CCR attorney Peter Weiss flew to Louisiana and addressed a community meeting in Cloutierville, offering to represent Ms. La Cour in her conflict with the OEO project. At this point, the OEO dropped its opposition and renounced all claims to the doll. The CCR

has put Ms. La Cour and her co-workers in touch with experts in cooperative production and distribution methods and attempts are under way to continue the manufacture of the doll on a cooperative basis for the benefit of the local community.

(Peter Weiss)

48. APPLICATION OF BEVERLY AND CHAMBERS

Beverly and Chambers are members of Vietnam Veterans Against the War who were named, in the Gainesville 8 case, as unindicted co-conspirators or, in other words, part of the alleged 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 denied by the trial judge. An appeal was taken to the Fifth Circuit Court of Appeals, oral argument was had in February, 1974, and no decision has, as yet, been rendered.

(Jim Reif)

49. BILLICK v. DUDLEY

A monumental victory was achieved when the U.S. District Court for the Southern District of New York ordered expunged the records of some 86 young persons who were arrested on alleged drug charges in 1966 only to have the charges against them dismissed for lack of evidence the following day. The District Court's broad order directed, among other things, that the records of the Criminal Court of the City of New York be expunged insofar as reference to these charges was concerned. Prior to the institution of litigation the Police Department had voluntarily agreed to expunge any records in its possession relating to the arrests of the young people. The Corporation Counsel of the City of New York failed to appeal this decision, which is now the law in the District.

(William Kunstler with Margaret Ratner)

EDUCATION

The sharing of skills and technical expertise acquired through the varied litigation done at the CCR is considered a responsibility that is co-equal with the litigation itself. This sharing process takes many forms.

A. Distribution of Legal Papers.

Major constitutional litigation is complex and multifaceted, often involving the preparation of many briefs, memoranda, and motions for a single case. Frequently, CCR lawyers discover that one or more particular issues in a case have never been fully explored or have never been approached from a progressive political/legal perspective. Consequently, much of the legal work prepared at the CCR involves either a depth of exploration and/or a creative affirmative approach that makes it extremely useful to scores of other attorneys throughout the nation. As a result of the distribution of such documents as this Docket Report, the CCR Annual Report, and the CCR Docket Update, numerous requests for legal material are made to us. We attempt to comply with these requests as promptly as possible, as we understand that it is in this way that the effects of our work spread to places and situations that we could never otherwise reach.

B. Lecture Tours and Conferences.

CCR lawyers are frequently asked to appear at law schools and legal gatherings to discuss particular legal issues in which they have developed expertise. One CCR attorney recently travelled to cities in

the Mid- and Southwest lecturing legal groups on the latest approaches to wiretap law and legal ways to combat the rampant use of illegal electronic surveillance by the government. The trip, which was sponsored by the National Lawyers Guild, offered the opportunity to educate hundreds of legal people as to the remedies available for resisting the wholesale disregard for the Fourth Amendment by the government.

CCR lawyers have spoken, and continue to speak, at legal conferences on such diverse subjects as women's rights, attacks on lawyers, governmental misconduct, and other fundamental constitutional issues.

C. Teaching.

During the past year, three CCR staff attorneys and two CCR volunteer attorneys taught at least one course each at law schools in the metropolitan area. Though this has often imposed a severe burden on the individuals who both teach and carry major CCR caseloads, the chance to educate hundreds of law students as to the creative, affirmative and socially productive alternatives available to them in their future practice of law is considered a priority. Courses that have been taught by CCR lawyers include constitutional law, women's rights and constitutional litigation in which the students actively participate in actual cases.

In addition, law school professors and instructors from around the country regularly use CCR case materials in their own classes.

D. Law Review Articles and Other Publications.

Because of its time consuming nature, the preparation of major articles has not received special attention at the CCR, although there has been a marked increase in such work in 1974 over previous years. Articles that have been written by CCR staff attorneys during the past year include: "The One-Sided Sword: Selective Prosecution in Federal Courts," 6 Rutgers Camden Law Journal 1, (Summer, 1974); "Pretrial Confinement in the Military—Rights and Realities," 1 New England Journal on Prison Law 34, (Spring, 1974); "Legal Considerations: Reproductive Control," *Gynecology and Obstetrics*, McGraw-Hill (to be published) and "Prostitution: Sexist Justice," *Guild Notes*, Vol. 3, No. 5, 1974.

It is hoped that in the future, CCR lawyers will be able to expand the number of such articles that they are able to produce.