CCR

April, 1976

CENTER FOR CONSTITUTIONAL RIGHTS

Dear Center Contributor,

We are pleased to enclose your copy of the Center's 1975-76 Docket Report. Sorry it is late, but without your help over the past few months, we would not have been able to publish the Docket at all. Your support is especially appreciated because it enabled us to concentrate on the urgent legal issues confronting our clients.

As shown by your support of CCR, you know that government abuse of your constitutional rights continued to rise in 1975. A quick glance at our caseload will confirm the importance of our work in fighting these injustices.

Our financial crisis almost did to CCR what no repressive government policy or action could ever hope to accomplish: Lack of funds almost closed the Center forever. But now, with your continued support, we stand ready to redouble our efforts in defense of the Constitution.

You can share our pride in the scope and depth of the work described in the Docket Report. However, we cannot live on the triumphs of the past. CCR is currently involved in over fifty vitally important cases. Our legal and educational services are duplicated nowhere else in this country. We have the ability, skill, and, as our staff's recent two months without salary reflect, the commitment to fight and win these cases. Yet, we need your continued financial support to press ahead.

> Each time the Center goes to court, it faces the best financed legal staff in the nation -- the U.S. Government -- financed with your tax dollars.

It is precisely because most people in this country can no longer afford the sky-high price of justice, that we ask you to take affirmative action to make the Center financially strong again . . . strong enough so that no worthy case is refused only because of lack of funds.

CCR has no one else to turn to -- no big foundations, no corporations, certainly no government grants -- just friends like you.

Please renew your support of the Center for Constitutional Rights. Your contribution is tax-deductible. While you can't control your tax dollar, every dollar given to CCR goes solely toward the pursuit of justice and your constitutional freedoms.

Morton Stavis

Morton Stavis
Volunteer Staff Attorney

Gratefully,
Nancy Stearns

Nancy Stearns
Staff Attorney

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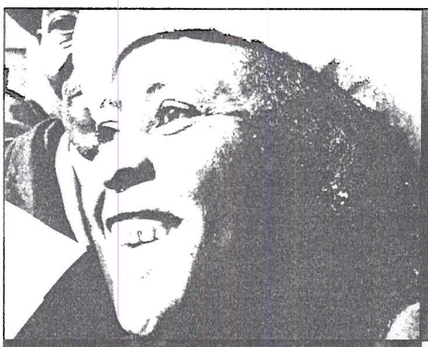
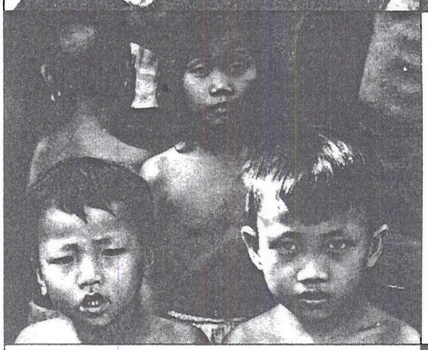
Center for Constitutional Rights

DOCKET REPORT





HOW TO READ DONALD DUCK

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CCR

The Center for Constitutional Rights Mourns the Death and Rejoices in the Life of its President and Co-founder Benjamin E. Smith

To him who lived it and to those who benefited from its commitment, a short life spent in the struggle for justice is worth a thousand long lives spent in the defense of the system.

1927-1976

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Constitutional Rights
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Women's Rights

1. Douglas *et al. v.* Holloman, *et al.*

Each year in New York City, thousands of women are sterilized without their consent or because they have been frightened or coerced into consenting. Statistically, Black and Puerto Rican women have been the chief victims of this mass sterilization campaign in an apparent effort to "control" the population of these oppressed segments of society. (A similar situation exists with respect to Chicanas in California and the Southwest, and American Indians in the Mid- and Northwest.)

Attorneys at CCR, in conjunction with women's groups, developed a comprehensive Sterilization Guidelines and Consent Form which should go a long way toward insuring that all sterilizations performed in City Hospitals are the result of knowing and voluntary agreement by the women who choose to have them. After many meetings with the sub-committee of Chiefs of Ob/Gyn Services of City Hospitals, a final set of guidelines and consent forms were agreed upon and passed by the Board of the Health and Hospital Corporation, and went into effect Nov. 1, 1975.

These guidelines incorporate and strengthen the protections included in the State and federal guidelines. Perhaps the most important aspect is the imposition of a 30-day waiting period between the time a woman is fully informed of the risks and benefits of sterilization, and told of alternate birth control techniques, and the time the operation is performed. This 30-day period allows her to truly think through whether she wants this irreversible operation performed. Another important provision prohibits obtaining consent immediately before, during, or after abortion or childbirth because they are such stressful periods.

In January, 1976, a lawsuit was filed by several prominent OB/Gyn's from New York City teaching hospitals, challenging the constitutionality of New York City's guidelines as well as State and federal guidelines, claiming they interfere with the doctor's right to practice medicine and a patient's right to be sterilized.

CCR attorneys, working with the Rutgers Constitutional Litigation Clinic, have intervened in the action on behalf of women and groups concerned about the problem of involuntary sterilization, in an effort to have the guidelines upheld and loopholes removed.

(Rhonda Copelon, Nancy Stearns with Nadine Taub)

2. Drew Municipal School District *v.* Andrews

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. Five Black women, elementary school teachers' aides in a Mississippi school district, were denied teaching jobs in the spring of 1972 on the basis of a policy instituted by the school superintendent barring parents of out-of-wedlock children from all positions, other than janitorial. Two of 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 to privacy and procreative liberty. The District Court for the Northern District of Mississippi ruled for the plaintiffs on the grounds that the policy was unrelated to a person's qualifications and excellence as a teacher, and constituted sex discrimination, even though the superintendent claimed he would apply the policy to men if their status as unwed fathers were ever to be discovered. On appeal, the Fifth Circuit affirmed unanimously on the narrower irrationality. The United States Supreme Court granted the school board's petition for *certiorari* and the Center, which entered the case as *amicus curiae*, is now acting as co-counsel for the teachers. Rhonda Copelon and Victor McTeer shared the oral argument in the Supreme Court on March 3, 1976. A decision is awaited.

(Rhonda Copelon, Victor McTeer, Liz Schneider, Morton Stavis and Nancy Stearns)

3. Klein *v.* Nassau County Medical Center

This is an affirmative action brought on behalf of several indigent pregnant women who were denied abortions in the spring of 1972 at the Nassau County Medical Center, the only public hospital in the county.

The pretext for the refusal to perform abortions was a regulation issued by the New York State Commissioner of Social Services excluding the so-called "elective" abortion from reimbursement under Medicaid. In spite of the State's position that the regulation did not restrict 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 unconstitutionally coerces the indigent to bear children.

This victory was appealed by the State 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 District Court issued an interim conference memorandum indicating its view that the restrictive policy is unconstitutional, and in March, 1976, again issued an injunction invalidating the regulation statewide. In doing so, the Court rejected the State's contention that the regulation should be understood as requiring only an unreviewable doctor's certification that

the abortion was medically indicated, or could be sustained as such.

Although the restrictive policy had been largely abandoned, the State insisted on maintaining it on the books to provide a handle for anti-abortion oriented groups to encumber a poor woman's access to abortional services. This was demonstrated by evidence of differentially restrictive enforcement practices in different parts of the state.

The hospital has voluntarily abandoned most of their restrictive policies, however, a motion for summary judgment is still pending to invalidate its refusal to perform abortions for non-county residents. And the State has said it will appeal once again.

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

4. People *v.* Mandel, *et al.*

In a recent case in Queens, Center staff attorneys represented the complaining witness in a rape case. They successfully urged the District Attorney to submit a motion (prepared by Center attorneys) to bar evidence of the complainant's prior sexual conduct and prior medical records from the trial. They were with the complainant throughout the trial, representing her interests and protecting her privacy, in a successful attempt to avoid what some rape victims have called a "second rape" — the brutal assault on a woman's privacy during a rape trial. Center attorneys have also prepared a seminar to teach other women attorneys how to handle these situations. Funds are currently being sought for this program.

(Rhonda Copelon, Liz Schneider, Nancy Stearns)

5. N.O.W. *v.* Federal Communications Commission, WABC-TV and WRC-TV

In May, 1972, CCR lawyers filed a Petition to Deny the License Renewal of WABC-TV with the Federal Communications Commission (FCC) on behalf of the National Organization for Women (NOW). Shortly thereafter, women attorneys in the District of Columbia filed a similar petition challenging WRC-TV, the NBC affiliate in D.C. The petitions were based on the sytematically distorted image of women presented by the stations; their discriminatory hiring practices; and their failure to consult with women's groups about women's programming. After the FCC refused to rule on the petitions for more than 2½ years (the license itself is only good for three years), CCR attorneys went to the United States Court of Appeals for the District of Columbia, claiming that the FCC's inaction was equivalent to renewing the license. With astounding speed, the Court ordered the FCC to make a ruling within sixty days. The FCC handed down its belated decision in 1975, virtually ignoring the massive factual case presented, and denying NOW a hearing on their petitions.

The decision of the FCC has been appealed to the United States Court of Appeals for the District of Columbia. Briefs were filed last summer.

The Equal Employment Opportunities Commission (EEOC) has filed *amicus* briefs on behalf of NOW in both cases. In WRC-TV, the EEOC had made a finding of discrimination. Though the EEOC process was not used in WABC-TV, the EEOC brief urges a full hearing in both cases because of the evidence of sex discrimination in employment.

In response to the EEOC brief, the FCC moved and was permitted to reconsider its decision on WRC-TV's employment practices. Over NOW's opposition, the FCC accepted WRC's updated employment statistics. On February 18, 1976, the FCC issued its supplemental decision rejecting EEOC's finding of discrimination, and ruling that WRC-TV's recent employment practices satisfied the public interest standard. The FCC thus denied the petition and renewed WRC-TV's license, subject only to improved posting of job openings. Supplemental briefs challenging this disposition are being prepared for the Court of Appeals.

(Rhonda Copelon, Nancy Stearns, with Nancy Stanley, Janice Goodman and Gladys Kessler)

6. Monell, *et al.* *v.* Department of Social Services, *et al.*

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 pregnancy, 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, but permitting voluntary childbirth leave for women, as well as voluntary child care leave for women and men.

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 it 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 were filed with the District Judge, who dismissed the case for lack of jurisdiction. Argument was held in the United States Court of Appeals for the Second Circuit in December, and we are awaiting a decision.

(Nancy Stearns with Oscar Chase and Gregory Abbey)

7. 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 appealed the case, but while the appeal was pending, the Marine Corps rescinded the 60 day rule. Therefore, spouses of Marines serving in the Western Pacific may travel freely and stay as long as they like

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

8. Low Memorial Day Care Center *v.* Whalen

Day care is an issue 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) 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.

Since the suit was filed, a new federal law governing day care has been passed, and the case is now moot. CCR attorneys will be working with others in the day care field to determine the impact of this new law on day care in New York City.

(Liz Schneider with Janet Benshoof)

9. Commonwealth of Massachusetts *v.* Edelin (*Amicus*)

Having failed in their attempt to destroy the right to abortion by asserting fetal rights, the anti-abortion forces turned to new tactics to obstruct a woman's ability to obtain safe, legal abortions. One tactic, of which Dr. Kenneth Edelin was the target, is to institute manslaughter or murder charges against doctors performing abortions late in the second trimester. Dr. Edelin was convicted of manslaughter for having performed an abortion, and his conviction is on appeal to the Supreme Judicial Court of Massachusetts.

On this appeal, CCR filed an *amicus curiae* brief in conjunction with the National Jury Project (NJP), (See p. 21). The brief focused on two questions not addressed by the parties or the other *amici:* First, both the grand jury which indicted Dr. Edelin and the trial jury which convicted him, were unconstitutionally and illegally selected because women were deliberately not summoned for service in the same proportion as men; and second, Dr. Edelin was denied a fair trial by jury because words frequently used by anti-abortion forces, which bring to mind childbirth, rather than abortion, were continually and deliberately used to describe the operation Dr. Edelin performed. Through a survey designed by the NJP, we demonstrated that the use of words such as "baby boy" and "child" conditioned the jurors to believe what the Supreme Court has rejected — that the fetus is a human being. This inflamed, prejudiced and distracted the jury from the issue of whether an abortion was performed.

(Rhonda Copelon and Nancy Stearns with the National Jury Project)

10. Planned Parenthood of Central Missouri *v.* Danforth (*Amicus*)

In this case, the Supreme Court will decide a series of questions crucial to the right to abortion, which it left open in its decisions in *Roe v. Wade* and *Doe v. Bolton*. Among these is the question of spousal consent, or more accurately, whether states may allow spousal veto of the woman's decision to have an abortion.

The District Court upheld the spousal veto provision on the grounds that a husband has an interest in operations which affect reproduction and that his veto preserves family harmony. In December, CCR attorneys filed an *amicus curiae* brief tracing these rationales back to the common law doctrine of "coverture", which held that the wife is the property of the husband, and that his total control over her life and activities are essential to marital harmony and divinely ordained. The brief discusses the spousal consent provision as an imposition of involuntary servitude on women.

(Rhonda Copelon, Nancy Stearns with Alice Price and Barbara Brown of the Women's Law Project, Philadelphia)

11. Liberty Mutual Insurance Company *v.* Wetzel
Gilbert *v.* General Electric Company (*Amicus*)

Unbelievable as it seems, the Supreme Court ruled (in a footnote) last term that discrimination based on pregnancy is not sex discrimination within the meaning of the Fourteenth Amendment. These cases present to the Supreme Court the question of whether discriminatory treatment of women workers with respect to pregnancy constitutes impermissible sex discrimination within the meaning of Title VII of the Civil

Rights Act, which was designed to advance equal employment opportunities for women.

The cases are critical to women, as pregnancy discrimination takes many forms, including refusal to hire, forced leave with loss of seniority and the right to reinstatement, exclusion from paid sick leave, health insurance benefits and disability insurance. Together with feminist organizations, CCR attorneys filed an *amicus* brief in the United States Supreme Court, demonstrating historically and actually how discrimination based on pregnancy is central to maintaining women as marginal, second-class citizens in the work force, analyzing the impermissible impact of pregnancy-based discrimination on the liberty to procreate and the bogus nature of the claim that it is too expensive to cover pregnancy on the same basis as other temporary disabilities in a company's benefit plan.

(Rhonda Copelon with Wendy Williams of Equal Rights Advocates, San Francisco)

Criminal Justice

12. United States *v.* Delfin Ramos

Delfin Ramos is a carpenter. He lives in Puerto Rico and has an average income of $25.00/week. He is also an active supporter of and organizer for Puerto Rican independence and a member of the Puerto Rican Socialist Party.

In December, 1974, local Puerto Rican police broke into his home, ransacked it for several hours, and finding nothing, departed. Two weeks later, FBI agents armed with a search warrant entered Ramos' home while no one was there, and "discovered" allegedly stolen explosives.

Ramos was charged with violating the federal Explosives Control Act. This case is the first political prosecution brought by the *federal* government in Puerto Rico since the anti-colonial upheavals of the early 1950's. Although political activists have been charged with explosive violations in the *Commonwealth* courts, the cases have all been dismissed or resulted in acquittals. Thus the *Ramos* case represents an intensification of repression conducted by the United States government against Puerto Rican activists.

CCR attorneys are representing Ramos in such a way as to expose the government's political motivations for prosecution, as well as revealing the oppressive nature of the colonial relationship itself. Among the many pre-trial motions that have been filed are a demand that the proceedings be held in Spanish, a challenge to the composition of the jury (See *Union Nacional de Trabajadores*, p. 16), and a motion setting an evidentiary hearing on FBI and CIA counterintelligence activity in Puerto Rico.

For the growing Puerto Rican independence movement, the case of Delfin Ramos symbolizes the design of the United States government to discredit its ideas and destroy its leaders. In the meantime, the resolve of the political leaders on the island not to submit to the arbitrary and repressive actions of the local federal authorities continues to grow.

(Rhonda Copelon, Liz Schneider, Nancy Stearns, William H. Schaap, with Jose Diaz Asencio and Graciany Miranda Marchand)

13. State of New York *v.* Spencer

Although it has been almost 12 years since the passage of the Civil Rights Act, racism has continued to proliferate. An anti-bussing group in Boston, known as ROAR, is one example, the case of Ormistan (Tony) and Glenda Spencer, is another. In July, 1974, the Spencer family bought a house in Rosedale, Queens, a determinedly white neighborhood. The house has been bombed twice, once before the Spencers and their three children even moved in. On New Year's Eve 1974, shortly after repairs of the firebomb damage were completed, the Spencers and their three children narrowly escaped death, when their house was pipe-bombed in the middle of the night. A note, found on the bomb's timing device read: "Nigger be warned. We have time. We will get you. Your first born first. Viva Boston KKK." After the second bombing, the Spencers requested and received 24-hour police protection. One of the guards was shot at and beaten in the Spencers' backyard.

This is the work of a self-appointed vigilante group, known as ROAR of Rosedale. They have been patrolling the neighborhood in cars, and pursuing white families who sell their houses to Blacks.

Two men were arrested and tried by federal authorities for the bombing, one, an avowed ROAR member. Despite overwhelming evidence of guilt, the two defendants were acquitted by an all white jury. ROAR demanded that the police remove the Spencers' guard and the protection was withdrawn, although threats against the Spencers continued.

Since July, 1974, the Spencer children have been chased, called ugly names, threatened with a gun and physically attacked. The family has been spat upon, cursed, hit by rocks. Garbage is regularly dumped on their lawn. Their lives have been threatened; one ROAR member told Glenda Spencer she was a "dead nigger."

After the police protection was removed, ROAR escalated their attack on the Spencers. In one incident, a crowd gathered outside their home. Afraid for his family's safety, Tony Spencer went out and closed his front gate. As he returned to the house, the person who had been charged with the bombing and been acquitted, suddenly emerged from the mob, running through the gate toward the Spencers. A policeman darted past the attacker, and astoundingly—grabbed Tony Spencer, because he had a gun—the only protection available to him after the police withdrew the guard.

Tony Spencer has been charged with possession of a weapon, reckless endangerment, and menacing. To date, the vic-

tim of a year's torment is the only person to have been arrested on this matter by local authorities.

Tony Spencer is free on bail. CCR attorneys are attempting to get the charges against him dropped and the criminals prosecuted by the local authorities. At a pretrial hearing on October 9, 1975, a spokesperson for the Queens District Attorney's office asked that the hearing be adjourned so that office could investigate all incidents of violence from the firebombing of the Spencers' house to the present. A new court date has not yet been set, and the investigation is continuing.

(Morton Stavis and Doris Peterson, with Haywood Burns of the National Conference of Black Laywers)

14. State of North Carolina *v.* Joan Little

This widely publicized case raised a variety of political/legal issues, including the question of whether or not a racially representative jury can be impanelled given discrimination against Blacks in selecting Beaufort County, North Carolina's jury pools (the group from which jurors are chosen). In addition, because of the intense racism in eastern North Carolina, the area in which the State sought to try Ms. Little, the question of whether or not a fair and impartial jury could be found was seriously in doubt.

The CCR, which over the years has acquired much expertise in these areas, was called upon to assist the defense in challenging the racial composition of the grand jury which indicted Joan Little, and in preparing the defense motion for a change of venue (location of trial to a less racially prejudicial area). Although the grand jury challenge was not successful, the venue motion was granted on the basis of documentation of overwhelming racial prejudice and presumption of guilt throughout the entire area of eastern North Carolina—a rare victory in a motion of this type.

(Rhonda Copelon with the National Jury Project, the Joan Little Fair Jury Project, Karen Galloway and Jerry Paul)

15. State of New York *v.* John Hill

The conviction of Dacajewiah, indicted as John Hill, for the murder of the only Attica guard not killed by law-enforcement personnel, is presently on appeal. In addition, there have been a number of collateral proceedings to secure the Meyer Report as well as other newly available evidence on selective prosecution, in order to include it in the *Hill-Pernasilice* record. One of these proceedings, a *mandamus* action against the Governor and the Attorney General to compel disclosure of the Meyer Report is presently pending in New York County.

(William M. Kunstler, Margaret Ratner with Jonathan Schapiro)

16. Virgin Islands *v.* Gereau, *et al.*

Five black men were convicted of the murder of eight North Americans at a Rockefeller-owned golf resort in the Virgin Islands. After the Third Circuit Court of Appeals upheld the convictions, a petition for *certiorari* was filed, on the issue of jury tampering. Two jurors had reported to the President of the Virgin Island's Senate that they had been threatened during the nine day deliberation period. This resulted in a hearing conducted by the judge who had been a witness for the prosecution during the pre-trial proceedings.

The petition for *certiorari* was denied on February 24, 1976.

(William Kunstler, Margaret Ratner, Michael Ratner).

17. State of Washington *v.* Wanrow

In August, 1973, Yvonne Wanrow, a Colville Indian, was sentenced to twenty years in prison for fatally shooting a 62-year-old known child molester, who attacked her son, and had previously raped her babysitter's 7-year old daughter, giving her VD.

During the trial, she was represented by local counsel, who also subsequently appealed the conviction, and in August, 1975, the Washington State Court of Appeals reversed the conviction, based on the illegal use of her tape recorded conversation to the police following the incident. The State, anxious that a precedent not be set against using similar tape recordings in the future, appealed the reversal to the Supreme Court of Washington.

At the Supreme Court hearing on February 23rd, CCR attorneys argued against the use of the tape recording, not only because it violated Washington law, but also because no "Miranda warning" was given. Further, they attacked the self-defense jury instruction given at trial because it applied an erroneous sex-based standard which failed to direct the jury to consider all the circumstances which led up to the shooting, from Yvonne's point of view. They argued that failure to apply the Washington requirement of individualized determinations of claims of self defense prejudiced Yvonne's case, and is especially prejudicial to women claiming self defense.

(Nancy Stearns, Liz Schneider, William M. Kunstler, with Carol Shapira)

18. United States *v.* H. Rap Brown (5th Circuit)

A motion to vacate conviction and sentence has been filed in Brown's federal criminal conviction for interstate transportation of firearms while under indictment in 1968. This motion is based on COINTELPRO disclosures (see 1974 Docket Report), and charges that the federal prosecution was initiated to destroy Brown as a leader of the Black movement. The motion also argues Brown's trial and sentence violated due process because the trial judge was determined to convict him. In a dramatic hearing in January, 1975, District Judge Fred J. Cassibry of the Eastern District of Louisiana heard testimony from witnesses concerning the trial judge's statement at a bar association meeting that he wanted to sit at Rap's trial in order to "get that nigger." The District Court ruled that although the judge had made the statement, it did not violate Brown's right to a fair trial and fair sentence, and held that an evidentiary hearing on COINTELPRO was not required. This motion is now on appeal to the Fifth Circuit, and argument has been set for early May.

(Liz Schneider with William M. Kunstler)

19. State *v.* H. Rap Brown (Supreme Court, New York)

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 COINTELPRO, 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 COINTELPRO 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 COINTELPRO and the infamous Huston Plan, a number of other lawyers and groups are using the CCR's COINTELPRO motion as a model for their own litigation. CCR attorneys believe that Brown's convictions must be overturned based on governmental misconduct which even former Attorney General Saxbe conceded was grossly improper.
(Jesse Berman, William M. Kunstler, Liz Schneider)

20. State *v.* Carlos Feliciano

Carlos Feliciano, a Vice-President of the Puerto Rican Nationalist Party, was recently unconditionally discharged from a four-year sentence he was serving for possession of a blasting cap, because the sentencing judge admitted that he had erred in not considering the fact that under present New York law, a defendant does not get parole credit for time served in pre-trial detention—here a period of almost 18 months. Feliciano's release marks the end of an enormous police effort to convict him of 41 bombings in the City of New York. In separate prosecutions in New York and Bronx Counties, he was acquitted of all charges except the possession of the blasting cap.
(William M. Kunstler)

21. United States *v.* Chambers

Japan, for obvious reasons, a nation most sensitive to issues involving nuclear weapons, has a security treaty with the United States, which while allowing for maintenance of American troops on Japanese soil (permission vigorously contested by a large segment of the Japanese population), provides that no major change in equipment or troop deployment can take place without the consent of the Japanese government.

In 1974, over the violent opposition of the inhabitants of the area, the American government decided to homeport the aircraft carrier *Midway* at Yokosuka Naval Base, near Tokyo. That June, shortly after homeporting had begun, over forty sailors, almost all Black, walked off the *Midway* and refused to return. They alleged widespread racism on board, horrendous, unsanitary and dangerous conditions, and announced there were nuclear weapons on board, in clear violation of the treaties. Most of these sailors were court-martialed. One such sailor, a Black man, was Earl Chambers.

At the trial, the defense attorney raised, among other things, the issue of the nuclear weapons, arguing that since the presence of the ship in Japanese waters was itself a violation of American and international law, the sailors could not have remained on the ship without breaking the law. This motion was denied, and the defense was not allowed to present any witnesses on it.

Despite their constitutional right to a public trial, the base commander refused to allow civilians, including reporters, to enter the Naval Base. The Judge did not find this unconstitutional, however, since the courtroom itself was open!

Finally, Chambers was sentenced to one and one-half months in the brig, but worse, he was given a Bad Conduct Discharge, and a reduction in rank resulting in much lower pay. The Bad Conduct Discharge was suspended, providing Chambers "behaves" himself in the future. Chambers appealed the sentence—a right, in the military, afforded only to those whose sentence includes a discharge—to the United States Navy Court of Military Review. CCR represented him on the appeal, stressing the public trial and right to counsel arguments, as well as the right of a military defendant to raise claims of violations of treaties. The Court ruled only on the right to counsel question, but found Chambers had not been properly advised of his right to counsel, both military and civilian, and reversed his conviction on Jan. 30, 1976.
(William H. Schaap, Peter Weiss)

22. Wolff *v.* Rice (*Amicus*)

In August 1970, a patrolman in Omaha, Nebraska was killed by a bomb while making a police call. Although they had little evidence, the police got a search warrant for the home of David Rice, a Black activist, and allegedly found dynamite there. A fifteen-year-old boy admitted placing the bomb, and was arrested for first degree murder, but after implicating Rice, was charged only with juvenile delinquency. Rice, on the other hand, was convicted of first degree murder.

After his conviction was sustained in the state courts, Rice brought a *habeas corpus* proceeding in the United States District Court for the District of Nebraska. He based his claim on the use in court of evidence gained from two illegal searches and seizures. Ultimately, the District Court accepted his argument that the affidavit used to get the search warrant was defective and did not demonstrate probable cause. The Court also held that the affidavit could not be supplemented with the additional information introduced in the state suppression proceeding to make out a case of probable cause, because it was not given to the magistrate at the time the warrant was issued.

The State appealed, but the Court of Appeals for the Eighth Circuit unanimously affirmed the District Court's decision. The State then filed, and was granted a petition for *certiorari* by the Supreme Court. The two primary issues put before the Supreme Court are the use of the exclusionary rule for tainted evidence, and a defendant's right to use the federal *habeas corpus* proceeding when the Fourth Amendment protections from illegal search and seizure have been violated. Because of CCR's belief in the crucial importance of a federal forum for the review of constitutional rights, we filed an *amicus* brief, in conjunction with the National Lawyers Guild, on the *habeas corpus* question. It has become very apparent that several of the Supreme Court Justices are anxious to severely limit the scope of *habeas corpus* review of Fourth Amendment claims, thus cutting off one of the only methods of redress available to prisoners.
(William C. Cunningham S.J., Rutgers Con. Lit. Clinic)

International Affairs

23. Nguyen Da Yen, *et al. v.* Kissinger, *et al.*

As if to symbolize the criminality of the Vietnam war, one of the final acts of the U.S. Government was the mass uprooting of some 2,700 Vietnamese children allegedly considered orphans by American officials. Dubbed the "Babylift," it constituted nothing more than a final, cynical attempt by the Administration to put public relations pressure on Congress in order to win eleventh hour military aid for the Thieu regime.

CCR lawyers were urgently contacted by anti-war forces in California, where the children were being held pending adoption, to see if the Babylift and adoption of the children could be stopped. Many of the children had living parents in Vietnam, and the extended family culture of the Vietnamese does not even recognize the Western concept of being an orphan. Nevertheless, no attempt had been made to locate the families or friends of many of the children before placing them on the Babylift.

The CCR, with the assistance of California lawyers, quickly filed a class action suit on the children's behalf, seeking to reunite them with their families, and prevent the finalization of any adoptions. The new government of South Vietnam, via telegram, indicated its desire for the children's return and its commitment to assist them in rejoining their families. Initially CCR attorneys sought preliminary relief requiring the government to interview the children, photograph and otherwise identify them and immediately examine the files and make a tentative finding concerning their family status. When the federal government reneged on its initial agreement, the Federal District Court in San Francisco refused to enter a consent order which would have substantially provided the preliminary relief requested.

However, after hearing the testimony of Vietnamese-speaking people who had interviewed the children in the San Francisco Presidio as well as one Vietnamese mother seeking her child, the Court did enter an order directing the Immigration and Naturalization Service (INS) to check the files of every Babylift child; interview the children; determine whether they are eligible for adoption; and develop a plan for repatriating those whose parents wish their return. The Court only provided for review of one-third of the files, and set forth a far too lengthy timetable. As a result, both the CCR and the government appealed to the United States Court of Appeals for the Ninth Circuit (the government claiming the Court had no jurisdiction to enter any order at all). The case was heard in August by that Circuit, which, without writing an opinion, affirmed the District Court's order, adding a month to the timetable for checking records.

On November 5, 1975, the Ninth Circuit issued a remarkable written opinion, reversing its earlier one. This opinion recognizes that some of the children may be here in violation of their constitutional rights and international law; grants plaintiffs' request to review the documents of all the children; asserts the Court's right to make determinations of eligibility (hotly contested by the government); and concedes that many children were put on planes by hysterical parents who did not realize the full impact of their actions.

Meanwhile, INS has proceeded with the record checks, and according to testimony of an INS Commissioner before the House Subcommittee on Immigration, has concluded that of 1,830 children so far investigated, at least 274 are not eligible for adoption. In addition, the Commissioner indicated that INS has learned that some of the records were falsified, and acknowledged that the investigation would never have been done if not for this lawsuit.

The records examined by INS are being turned over to Masters, specially appointed by the Court, to be double checked. One of the Masters has presented several partial reports to the District Court, concluding that approximately 2/3 of the records found eligible by INS do not comply with Vietnamese law. Although the government spent 2 million dollars to bring the children to this country, they have been unwilling to spend several hundred dollars to rent an additional duplicating machine. As a result, three months after the Court of Appeals' ruling, 4/5 of the children's files had still not been duplicated and made available to plaintiffs or to the Masters.

Having established that many of the children were not properly released for adoption, in December CCR attorneys obtained the Court's agreement to send a notice to all Vietnamese refugees in this country indicating that if they are looking for children brought here on the Babylift, they should contact the Court. By late March that had still not been done. However, in late January the Court agreed to issue a tracing plan to locate families in Vietnam. Judge Williams indicated that the State Department would be ordered to request the assistance of an international agency which would be given information on the children whose files indicate they may have living parents who have not legally released them for adoption.

Both the government and three private adoption agencies, permitted by the Court to intervene in the action, opposed such a tracing plan, raising the unsupported spectre of reprisals by the Saigon government against the Vietnamese parents, although plaintiffs presented considerable evidence from persons who recently returned from Vietnam that such reprisals were extremely unlikely.

Since the case has begun, approximately a dozen Vietnamese parents or relatives of Babylift children have come forward among the refugees in this country seeking to reclaim their children. About one-half of those families have already been reunited, some in part as a result of this lawsuit. In Viet-