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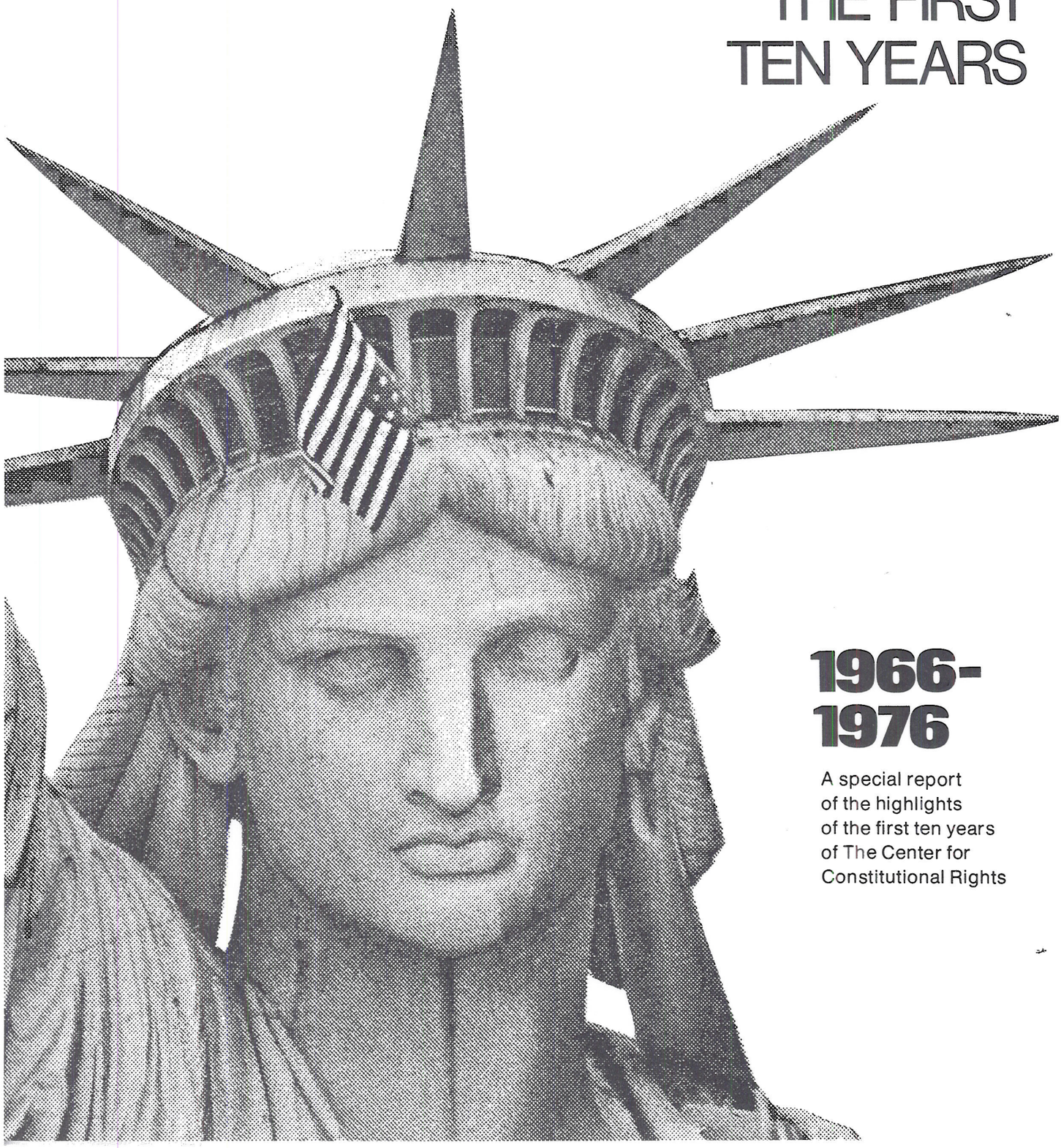
CCR

THE FIRST TEN YEARS



1966-1976

A special report
of the highlights
of the first ten years
of The Center for
Constitutional Rights

This special ten year report is dedicated to all of you, the people whose support and encouragement has made our work possible—the founders and creators of the concept of a center for constitutional rights, the cooperating attorneys scattered across the country who help us keep in touch with new legal developments, and the thousands of people who have given their money and time so generously—and to the struggle for justice, which has made us all partners in a very important historical era.

CCR Center for Constitutional Rights

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The Center for Constitutional Rights, founded in 1966 by Arthur Kinoy, William Kunstler, Benjamin Smith and Morton Stavis, was born of the Southern Civil Rights Movement and the struggles of black people in the United States for true equality. As these struggles intensified, the increasing demand for innovative legal assistance and the dearth of lawyers willing to take on controversial litigation, convinced the four attorneys of the importance of a permanent, privately funded legal center, dedicated to the creative use of law as a positive progressive force and the training of young lawyers and law students to perform those tasks. In 1966, with the help of Robert Boehm, the Center was founded.

The history of CCR is the history of the legal battles of the many social movement groups and individuals whose constitutional rights have been denied or attacked. Quite naturally therefore, the ten years of Center work are interwoven with the struggles for social change and equality that have played such an important part in the last decade.

What follows, however, is by no means an attempt to reconstruct the history of the hundreds of cases in which CCR has participated, but rather a brief survey of some of the most exciting aspects of our work, and the movements with which we have been associated.

CCR has fought repression in many guises, from local government attacks on civil rights activists in the south, to the intelligence apparatus used against anti-war and labor activists, blacks, native americans, women, and all others seeking to change American policies and structures. As movements have grown and developed, so has CCR. The government too, has grown and developed—grown less concerned about human rights, developed a greater arrogance of power. Not only has the government continued to trample the rights of those fighting for social change, but it has attempted to disguise its actions under a cloak of legality, perverting the law into an instrument of political aggression. The role of the Center has been, and continues to be, to protect constitutional rights affirmatively and aggressively.

One outgrowth of the increasing repression was the enrollment in law school of numerous "graduates" of the civil rights and anti-war movements. Center attorneys played a major role in training these law students and young lawyers, through teaching law school courses, summer internships, traveling "road shows," seminars, and the like, passing on to them their experiences of the early 1960's, encouraging and supporting their efforts to defend people's movements.

1966-67

1966 • Last poll tax outlawed; whites and federal troops attack blacks in seven cities; 358,000 U.S. troops in Vietnam; Hanoi, Haiphong bombed.

1967 • 26 killed, 1500 injured, over 1,000 arrested in Newark, New Jersey's black ghetto; 40 dead, 2,000 injured, 5,000 left homeless in Detroit when 12,700 federal troops "put down" ghetto uprising; 35,000 demonstrate at Pentagon against the war, over 645 arrested; Adam Clayton Powell denied seat in Congress; black community leaders take control of several New York City public schools.

One of the cases which exemplifies the Center's history actually predates its founding. More accurately, it is the case out of which CCR was born, *Dombrowski v. Pfister*. There, Center founders succeeded in blocking Louisiana's "anti-subversive" prosecutions against James Dombrowski, Benjamin Smith (who was to become the first president of CCR) and Bruce Waltzer. Dombrowski, Smith and Waltzer were respectively the Executive Director, Treasurer and attorney for the Southern Conference Education Fund (SCEF), an organization founded in 1938 to struggle for racial and economic equality in the south. Instead of following the traditional and time-consuming pattern of arrest-defense-appeal, CCR immediately fashioned a counter-suit in federal court challenging the criminal prosecution for its "chilling effect" on First Amendment rights. In a landmark decision, the Supreme Court struck down the unconstitutional state anti-sedition statute and halted the prosecution, thus validating a bold new legal technique of federal civil action to block unconstitutional state criminal prosecutions.

"Dombrowski suits" immediately became one of the most valuable tools for lawyers representing people's movements, as states struck back at black, anti-war and other political activists. In its first years, CCR used the "Dombrowski strategy" to combat arrests and harassment of Student Nonviolent Coordinating Committee (SNCC) workers in Alabama (*Carmichael v. Selma, Wright v. Montgomery*), Georgia (*Carmichael v. Allen*), Tennessee (*Brooks v. Briley*) and Ohio (*Burks v. Schott*); organizers against race discrimination in Massachusetts (*Landrum v. Richardson*) and Kentucky (*Baker v. Bindner*); and student anti-war demonstrators in Wisconsin (*Zwicker v. Boll*). However, in 1971, the Burger court seriously undermined this essential federal protection against abusive state prosecutions. That technique has since been supplemented by many others developed by CCR lawyers, each of which in turn has been passed on to CCR cooperating attorneys and others throughout the country who seek to use the law for social justice.

Civil Rights Movement

New techniques created by CCR's founders to effectuate the organizing work of the civil rights movement, such as the challenge to the seats of the five Mississippi Congressmen by the Mississippi Freedom Democratic Party (MFDP) in 1965, formed the seeds of the Center and its later work. The MFDP, founded by the leadership of the Mississippi black movement in 1964 because the regular Democratic Party there represented the white power structure, concentrated on representing the poor of the state, both black and white.

In the mid-sixties, southern black communities took enormous risks and put tremendous energies and resources into making their right to vote a reality, and the MFDP asked the help of the Center founders in achieving this. Federal litigation was initiated, challenging the discriminatory voter registration practices of Sunflower County, Mississippi, where Senator Eastland has a 5,000 acre plantation.

The MFDP succeeded in forcing Sunflower County to register all voters without the discriminatory literacy test. The election was held too soon after their registration to allow the new voters to participate, due to a Mississippi state law which required a 4-month waiting period after registration. The lawyers had unsuccessfully attempted to have the election postponed, but in an unprecedented decision, the Court of Appeals set the election aside and scheduled a new one (*Hamer v. Campbell*). The victory in this case established the precedent that practices leading to denial of voting rights to blacks could result in the setting aside of an election, not just an admonition.

Many of the people working with the southern civil rights movement concluded that if racism were to be eradicated in America, white civil rights workers must begin organizing in white communities. In that spirit, Alan and Margaret McSurely moved to Pike County, Kentucky to work with people whose land and lives were being devastated by strip mining and to challenge the power of the local coal operators.

The McSurelys' legal battles began in 1967 when their house was raided by Pike County police. Nearly all of their books and documents were taken and they were indicted under Kentucky's anti-sedition statute.

CCR lawyers filed a civil action on behalf of the McSurelys, and soon after the arrest, a three-judge court declared the statute unconstitutional, ordering that their documents be returned to them (*McSurely v. Ratliff*). However, while the documents were supposedly in "safekeeping" pursuant to the court order, an employee of the U.S. Senate's Government Operations Subcommittee (the McClellan Committee) examined the documents at the invitation of the State Prosecutor, xeroxed several (including love letters sent to Margaret McSurely by Drew Pearson, her former employer and a critic of Senator McClellan) and used the information so gained to draw up a Congressional subpoena for the documents.

The McSurelys refused to produce their documents and were indicted for contempt of Congress. They were convicted in June, 1971, but their conviction was reversed in December, 1972, by the United States Court of Appeals, which held that the search warrant under which the documents had originally been seized violated the Fourth Amendment, and since the subpoena was based on those illegally seized documents, it too was unconstitutional.

A civil damage action filed by the McSurelys against Senator McClellan, his aides and Pike County's Commonwealth Attorney Thomas Ratliff is still being litigated. The McSurelys' continuing efforts for legal redress are described in detail by Richard Harris in a three-part series in the *New Yorker* Magazine, "Annals of the Law" (November 3, 10, and 17, 1975) and included in his recently published book.

School Desegregation

Although the right to equal opportunity in education was theoretically established in 1954, when separate school systems for blacks and whites were outlawed (*Brown v. Board of Education*), *de facto* segregation continued. Following *Brown*, one of the most pressing questions became whether the State had an affirmative duty to take corrective action to overcome factors other than deliberate segregation. In 1966, Center lawyers brought a suit in Washington, D.C. (*Hobson v. Hansen*) to force school administrators to prevent discrimination against black and poor children, whether caused by official action or not. In a landmark decision, the judge declared such discriminatory treatment unconstitutional and further ordered an end to certain other practices such as tracking which were highly prejudicial to black teachers and pupils.

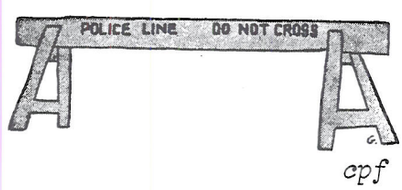
1968-69

By 1967, many northern urban blacks recognized that school desegregation did not solve the problems of providing decent education and that no effective solution would be found without community control of the schools. They succeeded in getting some degree of control in New York City, but their powers were ill-defined and limited. Furthermore, the Central Board of Education, Albert Shanker and the Teachers' Union, and the Superintendent of Schools all opposed the plan. The result was a massive educational crisis in New York City. Center attorneys acted as consultants and lawyers for two of the three demonstration school districts, I.S. 201 and Ocean Hill-Brownsville.

The school bureaucracy's resistance to community control took several forms. There were three major teachers' strikes. Center lawyers provided legal counsel when the Community Board was attacked for appointing several black and Puerto Rican principals (bypassing "normal" civil service procedures which prevented advancement of non-white school administrators), and when Union teachers brought harassing charges against four black teachers in Ocean Hill-Brownsville.

Adam Clayton Powell

When Representative Adam Clayton Powell was denied his seat in Congress after the 1966 electon, CCR lawyers and others undertook the historic challenge to the right of the House of Representatives to exclude a duly elected black representative of the people (*Powell v. McCormack*). In 1969, in the famous valedictory opinion of Chief Justice Warren, the Supreme Court upheld the fundamental right of the people to elect their own representatives and reaffirmed the duty and obligation of the court to be the ultimate guardian of the Constitution.



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The War in Vietnam

By 1969, increasing anger at the war in Vietnam and the continued denial of civil rights had developed into a massive, nationwide protest movement. The government responded violently, on many fronts. One of its primary targets was the student anti-war movement; a primary weapon, the draft. Selective Service Director Hershey issued an order to all draft boards to reclassify and make available for immediate induction all men engaged in anti-war activities previously given student deferments. The student movement responded to this obvious violation of First Amendment rights by joining in a broad-based lawsuit framed by Center lawyers, *National Student Association et al v. Hershey*, and successfully challenged such reclassification. In addition, the Center brought an action on behalf of men who had been ordered to report for induction because they had returned their draft cards to protest the war (*Bucher et al v. Selective Service System*). The success of these cases protected thousands of young men from punitive induction.

Young men in black communities generally did not have the benefit of student deferments or the sophisticated selective service counseling available to the white middle class. In an effort to provide a remedy to the mass induction of black men into the military, Center lawyers brought a suit challenging the total exclusion of black people from draft boards in black neighborhoods (*DuVernay v. United States*). DuVernay's situation was exacerbated by the fact that one of the members of his draft board was the local leader of the Ku Klux Klan. The suit was unsuccessful, however, as the courts did not consider the racial composition of draft boards relevant.

The Nuremberg defense was raised in a number of suits challenging the induction of individuals, or orders to participate in the Vietnam War, and Center lawyers played a pioneering role in amassing and attempting to introduce evidence of war crimes into judicial proceedings. In one case, *Switkes v. Laird*, they were able to keep an Army psychiatrist from being shipped to Vietnam for nine months, under what may have been the longest restraining order in history.

Chicago

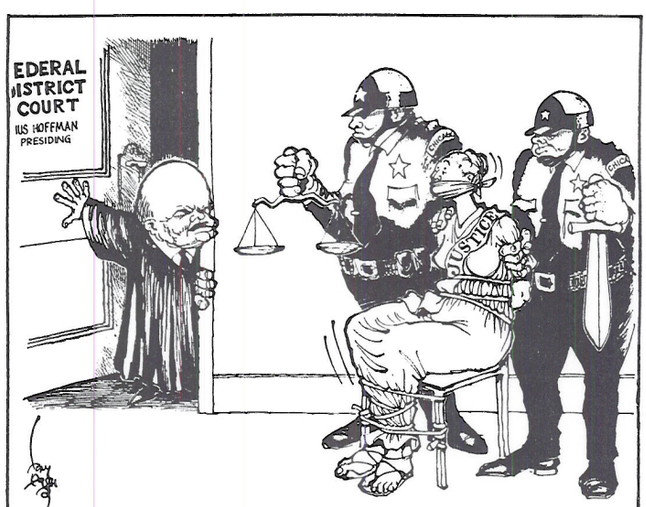
The Democratic Convention in 1968 was viewed by many as a test of the ability of our political structures to respond to the issues of the day. The war in Vietnam and the mistreatment of black, third world and poor people had been debated and fought on an unprecedented scale. When thousands of Americans sought by their presence in Chicago to assert their belief that the

1968 • Johnson announces he will not run; Mylai massacre; Martin Luther King assassinated; 15,000 demonstrate at Democratic Convention; student strikes, ghetto uprisings continue to be met with violence.

1969 • Nixon inaugurated; over 250,000 anti-war demonstrators march in Washington; Nixon appeals to "silent majority" for support; secret bombing of Cambodia begins.

convention was divorced from the people, they were exposed to the grossest forms of police barbarism, sanctioned by municipal officials. While this treatment was long familiar to the black residents of Chicago, the presence of out-of-town delegates and news media focused national and international attention on Chicago's "state of siege."

In the aftermath of the police riot, Chicago officials pressed for prosecution of the demonstrators, but the Department of Justice found no basis for prosecution. This was quickly remedied by Richard Nixon when he came to office in January, 1969. In two months, conspiracy indictments were handed down against eight persons, most of whom were leaders of protest movements.



"Keep her quiet...she's not relevant to this case!"

With the return of "conspiracy" prosecutions against political activists, a practice used extensively in the Smith Act prosecutions of the 1950's, CCR attorneys played a leading role from the outset, challenging the Justice Department's misuse of the grand jury process in conducting its investigation (*In the matter of Fruchter et al*). CCR attorneys represented several of the witnesses subpoenaed and developed techniques which are now used throughout the country to combat grand jury abuse.

Following the indictments, CCR and other attorneys prepared a battery of pre-trial motions, which formed the basis of motions used in many future political prosecutions, raising such issues as illegal electronic surveillance, the hand-picking of the judge and prosecutor for the trial, and the unconstitutionality of the anti-riot statute (*United States v. Dellinger*).

At the conclusion of the 21-week trial, which will surely be remembered as one of the major political trials of the century, producing numerous books, articles, and even a television dramatizaton, seven defendants were acquitted of the conspiracy charge, but convicted of contempt, and five were found guilty of violating the anti-riot statute. They received the maximum sentence. The eighth defendant, Bobby Seale, who had been bound, gagged and then separated from the case, was also convicted of contempt.

CCR attorneys formed the core of the defense at the pre-trial, trial and appellate stages. They prepared an awesome 550-page appeal brief, and in 1972 the Court of Appeals for the Seventh Circuit unanimously overturned the convictions, severely criticizing trial judge Julius Hoffman and the prosecuter. The contempt citations were also appealed by CCR (p. 7).

Attacks on the Black Movement

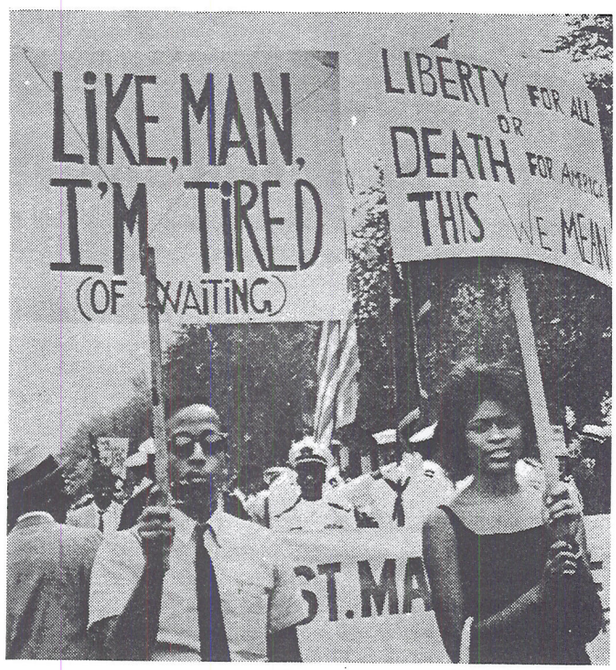
The black movement had become a major political force in the United States, and as its militancy increased, the government stepped up efforts to destroy it. Through the work of CCR and other groups it is now known that the FBI had developed a secret plan to discredit all political leaders and the movements with which they were associated. The plan, COINTELPRO (shorthand for Counterintelligence Program), consisted of fabricated prosecutions, malicious false rumors and even assassination. One of its many victims was H. Rap Brown, a SNCC Chairperson and one of the most militant and effective black leaders of the 1960's. Beginning in 1967, Brown was subjected to ceaseless harassment. He was indicted in 1967 for arson, riot, and inciting to riot when an abandoned Maryland schoolhouse was burned down several hours after he had left the state. Then, because he did not know he had been indicted for a crime which occurred in his absence, he was indicted as a "fugitive from justice" for having left the state in the first place. Two days after the indictment, he was arrested at his home in New York City for having taken a carbine (in a carrying case) on a roundtrip flight from New York to New Orleans. The gun had been given to him by a man he had just met the day before. Although it is perfectly legal to carry a long gun on an inter-state flight, it is illegal to do so while under indictment. Brown was indicted on these new charges even though he had never known the arson indictment had been issued.

Center lawyers represented Brown on all charges, consistently working to expose the viciousness of the COINTELPRO attack against him and the racism of the trial judge, who, it was dicovered seven years later, had

said prior to the trial that he was "going to get that nigger."

Finally, on September 24, 1976, after two appeals, the Fifth Circuit overturned Brown's conviction on the basis of the trial judge's remarks. The Court also ordered that if Brown were retried, the trial judge must hold a hearing to investigate the COINTELPRO claims raised by CCR lawyers.

This decision came one day after the New York State Board of Parole announced that Brown would be paroled from a separate conviction on October 21st, to enable him to begin serving his five-year sentence on the transportation of firearms conviction. Not surprisingly however, on October 21st, the government moved to dismiss that indictment, and Brown was, after nine years, a free man. Although the government used the age of the indictment as the excuse, it is obvious that the true reason for the dismissal was the government's fear of revealing the full extent of its COINTELPRO activities.



Enemies List

In 1968, the House Un-American Activities Committee issued a report recommending that "mixed communist and black nationalist elements" be placed in detention centers throughout the country should a "national emergency" occur. They also proposed that the government maintain a "security index", listing those who should be interned. Center lawyers filed a lawsuit (*Bick v. Mitchell*) on behalf of the members of the Student Nonviolent Coordinating Committee (SNCC), Students for a Democratic Society (SDS), Women Strike for Peace and the Communist Party, among others, asking that Title II of the McCarran Act (which provided for detention in concentration camps of persons who will *probably* engage in or *probably* conspire with others to engage in sabotage or espionage during war or insurrection) be declared unconstitutional.

All federal agencies steadfastly denied the existence of such a list. However, in 1975, it was revealed that the nonexistent list contained over 15,000 names at the time the suit was filed. By 1971 the list had been reduced to under 2,000 names, which were not destroyed, but placed on a "reserve index."

Attacks on Lawyers

As political prosecutions increased, activist lawyers vigorously defended their clients, which brought the lawyers themselves under attack by prosecutors, judges and bar associations. The purpose of such attacks was twofold: to create an "object lesson" to discourage other attorneys from representing political activists, and to force the lawyers to focus on their own defense, drawing energy and attention away from the civil rights and anti-war movements.

The Center has pioneered in the development of legal resistance to attacks on lawyers. In 1966, Arthur Kinoy was convicted of "loud and boisterous" conduct for his attempt to cross-examine an informer witness at a HUAC hearing. CCR lawyers, joined by bar associations, law professors, and lawyers throughout the country, came to his defense, stressing the right and duty of attorneys to vigorously plead their clients' cause. The conviction was unanimously reversed two years later (*Kinoy v. District of Columbia*).

CCR lawyers and 125 others across the country rallied to the support of another attorney, held in contempt for expressing his anger at a judge (*Cockrel v. Maher*); the Center represented a Detroit attorney (now a judge) who was charged with contempt for a vigorous cross-examination of a government witness (*In the Matter of Justin Ravitz*); and a Chicago attorney, cited for contempt during a controversial anti-draft case for disobeying a judge's order not to talk about it publicly (*United States v. Chase, Chase v. Robson*).

Louisville attorney Dan Taylor was held in contempt after a criminal trial, not allowed a lawyer, denied a hearing, not told the charges against him and thrown in jail without bail (*Kentucky Bar Association v. Taylor, Taylor v. Hayes*).

1970-71

William Kunstler and Leonard Weinglass were charged with 38 counts of contempt and summarily sentenced to a total of 4 years, and 20 months in prison respectively, for their vigorous advocacy of the Chicago 8 case. CCR attorneys successfully persuaded the Court of Appeals that is was trial judge Julius Hoffman and the federal prosecutors who had acted improperly during the trial. The bulk of the charges were reversed and all of the penalties vacated. However, each citation for contempt, no matter how spurious, puts a lawyer in jeopardy of disbarment.

Women's Rights

In the early 1970's, the growing women's movement focused much of its energy on women's struggles to control their reproductive lives. Although groups had lobbied for abortion reform for many years, the courts had not been used as an avenue for eliminating restrictive abortion laws.

In late 1969, CCR filed the first affirmative challenge to restrictive abortion laws from a woman's perspective, naming as plaintiffs hundreds of women who had been injured by New York State's anti-abortion statute (*Abramowicz v. Lefkowitz*). Constitutional objections to criminal abortion laws had been raised by doctors and abortion counselors, but the woman's point of view had been peculiarly absent from the courts.

In January, 1970, CCR lawyers, working with other women lawyers, conducted public depositions in which women told of the dangers and agonies they endured when forced by unwanted pregnancies to seek illegal abortions, have children out of wedlock, drop out of school, lose jobs and suffer other disruptions of their lives.

The New York suit served as a model for many others across the country, in which thousands of women confronted the courts with details of how denial of abortion violated their most fundamental rights (e.g. *Abromowitz v. Kugler*).

Following the liberalization of New York's abortion laws in 1971, administrative State rules were promulgated, barring Medicaid reimbursement for so-called elective abortions. The Center successfully challenged this arbitrary denial of equal protection to poor women (*Klein v. Nassau County Medical Center*). The experience gained in this case was later used to defeat the federal government's attempt to do the exact same thing on a nationwide basis through the passage of the Hyde Amendment in 1976 (p. 20).

In Connecticut and Rhode Island, Center lawyers joined with local counsel to challenge state abortion laws, and when the federal court struck down the restrictive statutes (*Abele v. Markle*, *Women of Rhode Island v. Israel*) the state legislatures reenacted nearly identical restrictive laws; they too, after further litigation, were declared unconstitutional.

These repressive responses to women's victories in the courts reflected the increased efforts of anti-abortion forces to halt the successful challenges to restrictive abortion laws. In New York, a Fordham Law School professor (unmarried) brought a lawsuit in which he sought to be appointed guardian of every fetus in New York City, and to have New York's new liberal abortion law declared unconstitutional (*Byrn v. New York City*

1970 • Chicago 7 acquitted of conspiracy; four Kent State University students shot by National Guard during anti-war demonstrations, nationwide student strike closes more than 200 universities; 20,000 women march down Fifth Avenue demanding equality for women.

1971 • Over 200,000 in Washington and 156,000 in San Francisco demonstrate against the Vietnam War; 12,614 protestors arrested in Washington; Pentagon Papers published; more than 1,000 state troopers storm Attica prison, 10 guards and 33 inmates killed; Vietnam Veterans Against the War occupy the Statue of Liberty for two days; New York abortion statute liberalized.

Health and Hospital Corporation). The Center intervened in the suit, representing New York women and women's organizations concerned with the right to abortion, and together with attorneys for the Health and Hospital Corporation successfully defended the new abortion law.

CCR lawyers not only represented individual women and women's groups throughout the country in affirmative challenges to restrictive abortion laws, but also successfully represented a young Florida woman in the appeal from her conviction for manslaughter for having had an abortion (*Wheeler v. Florida*).

The Center also worked closely with the growing number of women lawyers challenging restrictive abortion laws across the country. Although none of CCR's abortion cases were heard by the Supreme Court, the concepts developed in these cases were fundamental to the Court's ruling in 1973, declaring anti-abortion laws unconstitutional and stating that the right to choose whether to have a child is a fundamental constitutional right.

But the Supreme Court's ruling left many problems unresolved. The Center's recent and current dockets reflect the continuing attempts of anti-abortion groups to deny women the right to choose and force them to bear unwanted children (p. 20).

Denial of reproductive freedom is but one aspect of women's oppression, and Center lawyers played a leading role in the development of litigation strategies aimed at making equality for women a reality, and combatting sex role stereotyping, which would achieve liberation for men as well.

In 1971, Center lawyers brought a class action lawsuit against the Board of Higher Education for denying fathers the right to child-care leave, although such leave was available to mothers. During the litigation the Board changed its policy and today allows men or women to take 6-months child care leaves. The suit also forced the Board to permit women to use sick leave days for child birth and recovery (*Danielson v. Board of Higher Education*).

In another suit, CCR challenged the constitutionality of the compulsory maternity leave policies of the New York City Board of Education and the Department of Social Services (*Monell v. Department of Social Services & Board of Education*). Their policies effectively penalized women for bearing children, requiring them to go on leave at the end of the seventh month of pregnancy, and lose pay and seniority at that point, regardless of their ability and desire to continue working. Again, before the case reached trial, the agencies changed their policies, however, the hundreds of women forced to stop working prior to the policy change are still litigating the issue of back pay.