CABLE: CENTERITES, NEW YORK

CENTER FOR CONSTITUTIONAL RIGHTS

Fall, 1973

Dear Friend:

The attached Center Docket Report contains descriptions of all our current cases. We have allotted more space than usual to the "Gainesville 8 Conspiracy Case" not only because of its complexity, but also because it so clearly demonstrates the despicable methods and frightening goals of the Nixon Justice Department.

One would have thought, after having failed to obtain convictions in so many celebrated conspiracy trials (Spock, Chicago, Berrigan, Russo-Ellsberg, Gainesville, etcetera) the Administration would have perceived how deeply offensive these political persecutions are to the American public. Unfortunately, we can only answer this by pointing out that the Center must now prepare for the defense of American Indians in yet another conspiracy case, growing out of the events at Wounded Knee. Among the pending charges is one of conspiracy to violate the anti-riot act, flowing from the airlifting of food and medical supplies to the sick and starving people occupying that historic town! We look forward to still another victory in the courts. But at what price - in time, in money, and in personal anguish for the defendants and their families? (Please read the attached Sunday New York Times article by Russell Baker.)

At a time when the vast investigative machinery of the Justice Department should be focused on rooting out the pervasive corruption in our government, the President of the United States, in an act of indescribable arrogance, fired Special Prosecutor Archibald Cox and disbanded his task force. Yet, simultaneously, the Justice Department is pressing its attack against a group of people who, in desperation, attempted to dramatize the plight of the Indian Nation. Such is justice under Richard Nixon.

We are outraged, as we know you are. But our outrage will, as always, take the form of defending the constitutional rights of that ever-growing list of "enemies". You have supported us in the past. Please contribute again now. Our need is very great - as is the threat to our liberty.

For Justice,

The Center Staff

The Center Staff

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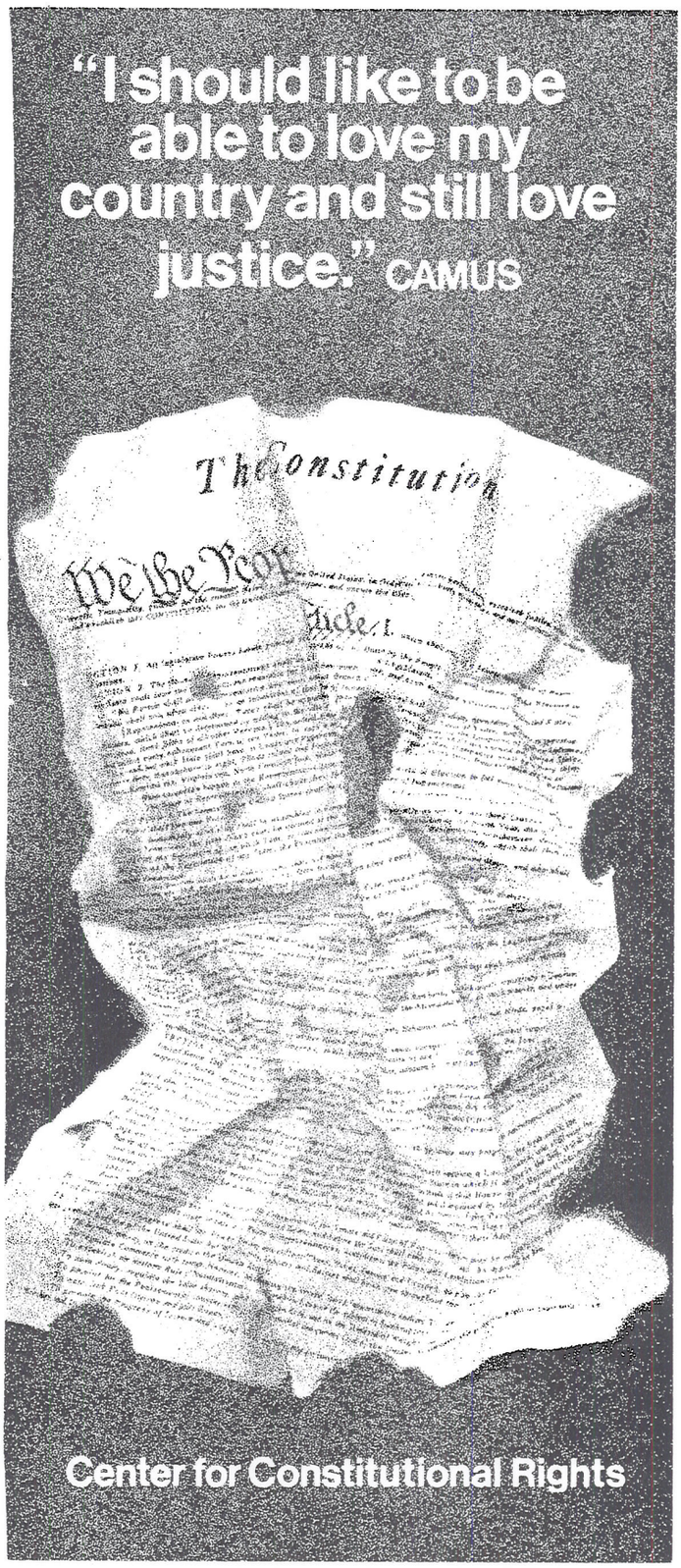
DOCKET REPORT 1973



(1) UNITED STATES v. BRIGGS, et al., a.k.a. "THE GAINESVILLE 8 CONSPIRACY CASE" - The "Gainesville 8" case was a major undertaking by Center attorneys from its inception in July, 1972 to its conclusion in August, 1973. The Center legal staff included Doris Peterson, Morton Stavis, Nancy Stearns (for most of the case), Jim Reif for much of the grand jury and pre-trial work and Rhonda Copelon for the attack on the jury selection system. In addition, Center attorneys worked in closest cooperation with other attorneys on the case, namely Cameron Cunningham and Brady Coleman of Austin, Texas and Larry Turner of Gainesville, Florida.

On July 7 and 8, 1972 twenty-three leaders of Vietnam Veterans Against the War from around the country were subpoenaed to appear before a federal grand jury in Tallahassee, Florida at 9:30 a.m. on July 10th, the opening day of the Democratic National Convention in Miami Beach. VVAW had obtained permits for peaceful demonstrations in Miami Beach during that week.

Center attorneys responded immediately by traveling to Florida to represent the subpoenaed VVAW leaders. Numerous motions were filed on their behalf and a civil action, VVAW v. KLEINDEINST, was instituted to stay the subpoenas. Among the first of many motions that were filed was a motion for the government to disclose which of the grand jury witnesses represented by Center attorneys and counsel associated with them were government informers. Guy Goodwin, a United States Attorney from the Internal Security Division of the Justice Department, was required by the Court to take the witness stand and make such disclosure. Goddwin responded by denying, under oath, that any of the witnesses represented by the defense attorneys were informers for the government. One of those witnesses, Emerson Poe, appeared at the trial thirteen months later as a government witness and testified that he had been a government informer during the entire period he was a VVAW member, dating back to well before the time he was subpoenaed.

On July 13th four VVAW members were summarily held in contempt for refusal to answer questions before the grand jury. These contempts were reversed by the Fifth Circuit Court of Appeals for failure to grant a contempt hearing. Such a hearing was quickly scheduled and the four were again held in civil contempt and jailed. Again the contempts were reversed, this time on the grounds that the government's denial of electronic surveillance of the attorneys was inadequate. The government did not file any further denials.

Also on July 13th the rest of the grand jury witnesses were released from their subpoenas, after having been detained in Tallahassee for four days, without being asked anything more than their names. Simultaneously, the Democratic National Convention passed a resolution condemning the Tallahassee grand jury investigation of the Veterans. That evening, in an extraordinary nightime session, the grand jury indicted six members of VVAW. (Several months later the grand jury, in a superceding indictment, added another Veteran and John Briggs, a VVAW supporter, as defendants. Briggs had previously been held in civil contempt for refusing to testify before the grand jury, but after an appeal was filed the government had the contempt vacated and, instead, indicted him).

Seven of the defendants were charged with conspiracy to disrupt by violent means the Republican National Convention in Miami Beach, which was to occur the following August. In addition to being charged with conspiracy, one of the defendants, Scott Camil, was charged with teaching and demonstrating the use of an incendiary device and with possession of an unregistered destructive device. The eighth defendant, Stan Michelson, was charged with being an accessory after the fact and with misprision (concealment) of a felony.

Pre-trial Stage - A full set of pre-trial motions and memoranda was presented. The following describes only the more unusual of them:

Defense Motion to Recuse - The first major motion sought the recusal (removal) of Judge David L. Middlebrooks on the grounds of bias toward the defendants and their attorneys which emerged during the grand jury proceedings and the arraignment. Judge Middlebrooks presided over the grand jury which indicted the eight and ruled on the contempt proceedings which occured during the grand jury, denying bail to all of those he found in contempt. Following the issuance of the second indictment Judge Middlebrooks granted defendants' motion and he was replaced by Judge Winston E. Arnow, Chief Judge of the Northern District of Florida.

Motion to Strike Grand and Petit Jury Array - The composition of both the grand and petit juries was challenged on numerous grounds including the exclusion of blacks and the underrepresentation of women because of a provision for automatic

excusal for women with children under ten years of age. Defendants were granted the right to examine the jury rolls in detail and presented testimony concerning the underrepresentation of blacks, but their motion to strike was denied.

Motion for Disclosure of Electronic Surveillance - There were several motions and hearings regarding the disclosure of electronic surveillance, and memoranda were filed challenging the adequacy of the government's denial of surveillance. Following disclosures made during the Watergate Hearings concerning possible surveillance of VVAW, defendants unsuccessfully tried to present some of the relevant Watergate facts to the Court. These facts set forth in detail the links between Watergate and the Briggs indictment. In the course of the electronic surveillance hearing the government successfully moved to quash the subpoenas of numerous Justice Department and former Justice Department officials subpoenaed by the defense.

Motion to Dismiss and for Hearing with Respect to Bad Faith Prosecution - From the outset, defendants took the position that the charges against them were brought in bad faith and for political purposes. The initial bad faith motion dealt primarily with the timing of the grand jury, the indictments and the arraignments to coincide with the national political conventions and the Presidential election, as well as the reasons the government sought to destroy VVAW. As with the motion for disclosure of electronic surveillance, the Watergate Hearings and trial disclosed numerous apparent connections between that event and the VVAW prosecutions, but the Court refused to permit the defense to prove those connections.

Motion for Hearing with Respect to Governmental Misconduct - Hear again, Watergate led us to re-examine events which had transpired since the grand jury and to request hearings to uncover connections between governmental misconduct exposed in the Watergate investigation and such behavior in the Briggs case. The Center filed lengthy motions for hearings with respect to such misconduct as the break-in at the office of attorney Carol Scott the day after the grand jury subpoenas were served and the removal of only one item - Ms. Scott's file on Scott Camil (pertaining to another case on which she had represented Camil). Again, the Court refused to admit even the possibility of such connections.

Opposition to the Court's Suggestion that Defense Attorneys Pay Costs of Hearing Regarding Break-in - Having rejected defense testimony regarding the break-in of Attorney Scott's office, the Court then held a hearing to determine whether defense attorneys should be required to pay the costs of the earlier hearing. Defense attorneys opposed any such ruling and an amicus brief, written by Helene E. Schwartz, was filed on our behalf by the National Lawyers Guild, the National Emergency Civil Liberties Committee and the American Civil Liberties Union. Defense attorneys were not required to pay the costs of the hearing.

Motion for Disclosure of Agents and Informers in the Defense Camp, Motion for Disclosure of Agents and Informers (in general) - Because of the well-known government infiltration of VVAW we sought to determine who, if anyone, that was in any way connected with the defense camp was an agent or informer. Such information was necessary in order to preserve the confidentiality of the lawyer-client relationship and to protect against disclosure of our trial strategy. Two motions were filed in this regard, the first mentioned above, and the second, a motion for a general disclosure of those agents and informers who related in any way to the prosecution of the defendants. In response to the first motion, the government submitted numerous documents to the Court in camera (in chambers) which we believe contain the identities of agents and informers. Although a number of such persons surfaced as government witnesses during the trial, we believe that many more still remain undisclosed.

Opposition to Moving the Trial to Pensacola - Although the trial was on the Gainesville docket from the time of the indictment, Judge Arnow, who sits in Pensacola, sought to move the trial to his home division. He was supported in this by the government. The defendants opposed such a move for a variety of reasons including the fact that the population of the Pensacola Division (and therefore a Pensacola jury) is composed primarily of persons in, employed by or retired from the military, or dependents or spouses of such persons, or those who rely on the military for their livlihood. Defendants' memos also deal with the question of the right to be tried in the Division where indicted and the question of pre-trial publicity affecting the place of trial.

Opposition to Imposition of a Gag Order - Several months prior to trial, Judge Arnow raised the possibility of imposing a gag order on defendants and their attorneys. Defendants filed memoranda opposing such an order (which was eventually imposed on the eve of trial). The order ultimately entered was far more restrictive than that originally contemplated, and included a gag on any person "acting in concert with" the defense, and prohibited anyone but attorneys and pro se (acting as one's own counsel) defendants from talking with witnesses or prospective witnesses. Defendants filed a petition(for mandamus)with the Fifth Circuit challenging the constitutionality of the order (which also limited demonstrations) and asking that it be revoked. The Circuit read Arnow's order as permitting defendants represented by counsel to interview witnesses, but otherwise refused to rule on the constitutional issues. Here again the National Lawyers Guild, the Emergency Civil Liberties Committee and the American Civil Liberties Union filed briefs amicus curiae (friend of the court) opposing the gag order. In addition, a petition was filed by the Miami Herald, ten Florida newspapers (all affiliates or subsidiaries of the New York Times), and the Reporters Committee for Freedom of the Press challenging the legality of the gag order.

Application of Beverly and Chambers - Beverly and Chambers are VVAW members who were named by the government as "unindicted co-conspirators", or, in other words, part of the 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 the appeal of the denial of the application by the trial judge is scheduled for oral argument in the Fifth Circuit Court of Appeals shortly.

Other Motions Filed (partial list):

For Suppression of Evidence
For Bill of Particulars
For Discovery and Inspection (including material such as the Gemstone files)
To Inspect and Copy Grand Jury Minutes
To Proceed In Forma Pauperis (as a poor person) and for Daily Transcript
To Conduct Individual Voir Dire (questioning of prospective jurors)
For Pre-trial Hearing on Conspiratorial Agreement
To Dismiss Indictment on Grounds of Unconstitutionality of Statutes
To Dismiss for Failure to Apprise Defendants of Nature of Charges
For Hearing with Respect to Illegal Mail Interceptions
To Intervene in Contempt Hearings of CBS-TV for Violation of Ban on Sketching in Courtroom
Opposition to Ban on Demonstrations and Order of Sequestration
Requested Voir Dire Questions
Requested Charges to the Jury

The Trial

On July 31, 1973 the trial began in Gainesville, Florida. Three of the defendants appeared as their own counsel and the rest were represented by a team of six attorneys, including three from the Center.

During jury selection, while the defense was meeting to determine how to exercize its pre-emptory challenges, two F.B.I. agents were caught in a telephone closet which was connected to the defense office by a vent. They had with them a suitcase full of electronic equipment. A hearing was granted by the Judge who, consistent with his indulgent attitude toward the prosecution throughout the case, elected to accept the story of the two agents that they were merely checking the F.B.I.'s own telephone lines in the building!

The government, during the trial, relied almost entirely on an array of undercover agents and informers for the F.B.I., the Dade County Police and the Florida Department of Law Enforcement. They included William Lemmer who, the defense showed, had a long history as an agent provocateur; Charles Becker, an F.B.I. agent and one of the original unindicted co-conspirators who, evidence revealed, had set up the Gainesville meeting at which the government claimed the "conspiracy" was hatched, and who was a best friend of one of the defendants;

Louis Anchill, an informer for the Florida Department of Public Safety, who had sworn he would "get" Scott Camil for accusing him of being precisely what he was - an informer; Emerson L. Poe, an F.B.I. informer who had developed a close friendship with Camil and who exploited Camil's trust of him to attend defense committee meetings, acquire the mail box combination to which legal mail was sent, and to extract defense strategy information by inviting Camil to "work on the case" at his home; and an undercover agent named Koehler who had lived in defendant Alton Foss' home for a period prior to the Democratic National Convention and who admitted on the witness stand that he had never heard any discussion of a plan to disrupt the Republican or any other convention, nor had he heard any mention of the use of automatic weapons or explosives which are listed in the indictment.

Lemmer, Becker and Poe all held high offices in VVAW and enjoyed, until their exposure, the trust of the membership. Yet they were as inept as witnesses as they had been deceitful as friends, frequently being forced into admissions that contradicted the government's theory of the case. And, of course, the detestable nature of the very function they were performing for the Justice Department was not lost on the jury.

There were gross instances of prosecutorial misconduct during the case and continuing right up until the verdict was delivered. Just before the trial began, the prosecution belatedly turned over a list of twenty-five persons who it thought might have exculpatory evidence (evidence indicating the innocence of the defendants). Jencks Act material (prior statements) regarding government witnesses, so crucial to cross-examination, was not turned over to the defense in compliance with the law (44 pages of Lemmer's prior statements were produced after the defense had rested!). News reports revealed that one of the prosecution witnesses was, at the time of his testimony, under investigation by the government (and has since been charged with four counts of grand larceny by the State of Florida), yet this information was hidden from the defense. And, after the verdict, one of the jurors informed the defense that the prosecution was coaching its witnesses, through the use of hand signals, while they were testifying.

At the end of the government's case the defense decided to put on only one technical witness and then rest, "letting the prosecution's case collapse of its own weight" as the Nation magazine of October 1, 1973 put it. The jury, which had been sequestered for the major portion of the trial, took less than four hours to acquit all of the defendants on all of the charges.

CRIMINAL CASES

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

The appeal in the contempt cases was argued on February 9, 1972, before Circuit Judges Fairchild, Cummings and Pell of the Seventh Circuit. On May 11, the Seventh Circuit unanimously reversed the ten contempt convictions imposed by Judge Julius Hoffman on the eight defendants and on the two defense attorneys. Seven of the contempt specifications against Bill Kunstler were dismissed outright. All of the other contempt specifications against the defendants and the two attorneys were reversed and remanded to the District Court for further proceedings before another Judge. The Court found that Judge Hoffman was personally embroiled with the defendants and the attorneys and should not have sat on these cases; that he should not have proceeded summarily against either the defendants or the attorneys; and that on remand appellants are entitled to jury trials unless the judge to whom the case is referred decides that the maximum sentence should be six months total for an appellant on all remaining specifications against him.

After reversal of the contempt convictions in May 1972, the government pressed the case for retrial. Appointment of a new judge being required, it appeared that almost all of the federal judges in the Chicago area were disqualified since most of them had filed a motion before the Seventh Circuit supporting Judge Hoffman. Ultimately, Chief Justice Burger of the United States Supreme Court designated Judge Edward T. Gignoux of Maine to try the case.

Motions were made to dismiss and to compel the government to disclose wiretapping. After denial of these motions, mandamus petitions were filed with the Seventh Circuit, without success. The government in papers filed with the District Court Judge agreed to limit maximum prison sentences to six months and thereby, over the opposition of the defendants, obtained the denial of a jury trial. The case is now set for trial October 29.

The parallel case of contempt against Bobby G. Seale was dropped by the government because in that case the Circuit Court required that the government, as a condition to retrying the contempt case, reveal its illegal wiretapping. The government chose to drop the case rather than make such revelation.

(Morton Stavis and Jim Reif)

(3) UNITED STATES v. RUSSELL MEANS

Russell Means is one of the national leaders of the American Indian Movement (AIM) who spearheaded the recent incident at Wounded Knee. As a result of the impoverished conditions on Indian reservations, with their high rate of unemployment, lack of decent housing, widespread malnutrition and lack of medical care, the problems of the American Indian have become a focus of concern for much of the American public.

Means is charged with 11 counts arising out of the Wounded Knee incident. The Center has recently filed a motion to dismiss based on several different grounds including the constitutionality of the statutes involved, bad faith prosecution, prejudicial pretrial publicity and failure to charge anything which states an offense. Evidentiary hearings on the motion to dismiss are expected to be held in November before Judge Nichol in South Dakota.

(William Kunstler and Mark Amsterdam)

(4) 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 to the occupiers of Wounded Knee. The government does not allege that anything other than 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 and the prosecution is not expected to reach a trial stage for one year.

(Mark Amsterdam)

(5) PEOPLE v. H. RAP BROWN

After a lengthy trial, the jury in the trial of H. Rap Brown and his three co-defendants 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 is still pending before the trial judge.

(William Kunstler)

(6) 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. This conviction will, of course, be appealed.

(William Kunstler)

(7) PEOPLE v. JOHN HILL — This 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 and we are presently awaiting decisions on a number of pre-trial motions including one seeking to dismiss because of selective prosecution.

(William Kunstler)

(8) UNITED STATES v. BANKS and BANKS v. HOLDER — Arthur Banks, a black actor and playwright, is presently serving a five year prison term for draft evasion at the U.S. Penitentiary at Terre Haute, Indiana. After a peaceful protest by several hundred black inmates over the treatment of one black prisoner, Banks was maced in his cell and put into segregation for allegedly striking two of the guards who had maced him. In addition, he was indicted for striking a third, which indictment has been pending since December 19, 1972. When he attempted to obtain the services of William M. Kunstler as his counsel in the trial of the latter indictment, a judge of the District Court refused to permit the latter to represent him. A writ of mandamus was unanimously granted by the Court of Appeal for the Seventh Circuit ordering the District Court to permit Kunstler to appear for Mr. Banks, but the effective date of the writ was delayed four months when the U.S. Government, the American Bar Association and 21 so-called prestigious Indiana attorneys applied for a rehearing en banc. When their petition was final denied, Mr. Justice Rhenquist stayed both Banks trial and the writ of mandamus in order to give respondents time to apply for a writ of certiorari to the Suprem Court. In addition, two petitions for writs of habeas corpus because of the inhumane conditions of Banks' imprisonment are pending in the District Court and Court of Appeals.

(William Kunstler, Rhonda Copelon, William Cunningham)

(9) 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 inhumane 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. These motions were denied and the case is expected to go to trial in the fall.

(10) STATE OF NEW JERSEY v. RONALD CARTER

After consultation with Center staff members and his Atlanta attorneys, Ronald Carter, Chairman of the Georgia State Chapter of the Black Panther Party, turned himself over to Georgia authorities for extradition to New Jersey where he was charged with violating the New Jersey firearms act. The charge stemmed from 1972 when he and three other companions were arrested enroute to Washington, D.C. for an African Liberation Day Rally.

On October 17, 1973, Carter was acquitted by an all-white jury in less than two hours.

(J. Otis Cochran with Carl Broege)

(11) UNITED STATES v. PABLO (YORUBA) GUZMAN

Yoruba is a draft resister who is a member of the Young Lords Party. He refused induction on the grounds that the draft law does not apply to Puerto Rico and that he would not serve in a colonialist army. He was convicted in the District Court, the Judge denying, in a long opinion, Center attorney's contention that the jury was illegally constituted because of age and race exclusions.

The appeal of the conviction was lost in the Second Circuit Court of Appeals, and Yoruba is now serving a two year sentence.

(Michael Ratner)

(12) UNITED STATES v. BENJAMIN CRUZ

Benjamin Cruz was indicted for refusing induction into the Armed Forces. Attorneys at the Center filed a number of pretrial motions. We moved to (1) dismiss the indictment for the reason that the "draft" laws cannot be constitionally applied to Puerto Rico, (2) dismiss the indictment because the jury which indicted the defendant excluded young people and Puerto Ricans, (3) dismiss the indictment on the ground that Cruz is being selectively prosecuted because of his political views and (4) disclose electronic surveillance.

Before the motions were ruled on or the trial took place, the government dropped the prosecution. It is felt that the prosecution was abandoned so that the government could avoid disclosure of illegal electronic surveillance.

(Michael Ratner with Jesse Berman)

CRIMINAL APPEALS

(13) CHICAGO CONSPIRACY SUBSTANTIVE APPEAL (DELLINGER v. UNITED STATES)

This is the appeal from the convictions under the federal anti-riot act ("Rap Brown Act") 18 U.S.C. 2101-2 growing out of the demonstrations at the Democratic National Convention in 1968. Center attorneys Arthur Kinoy and Doris Peterson and Center cooperating attorney Helene

E. Schwartz wrote "Conspiracy On Appeal," the 500-page brief challenging the lawfulness of the convictions based on a variety of issues, including the gross inadequacy of the voir dire conducted by Judge Hoffman, the blatantly antagonistic behavior of Hoffman toward the defense, the use of illegal electronic surveillance, and the constitutionality of the anti-riot act itself.

The appeal was argued before the U.S. Court of Appeals for the Seventh Circuit on February 8, 1972 and, in November, 1972, the Court unanimously overturned the convictions (though it upheld the constitutionality of the anti-riot act by a vote of 2-1). After several weeks the Justice Department chose not to pursue the substantive charges any further.

(Arthur Kinoy, Doris Peterson, Helene E. Schwartz, with the help of many other attorneys)

(14) UNITED STATES v. EQBAL AHMAD, et al. This was the so-called Berrigan Conspiracy Case -- a federal indictment in Harrisburg, Pa., of six, then eight anti-war activists on charges of conspiracy to kidnap Henry Kissinger, blow up heating systems in government buildings in Washington, D.C., and break into draft boards. Sending letters, both "threatening" and "contraband" into and out of a federal prison was also charged. There were seven "unindicted co-conspirators," from whose number Father Daniel Berrigan was dropped in the superseding indictment.

On April 5, 1972, the jury in the Federal District Court for the Middle District of Pennsylvania, returned a verdict that they were unable to reach a unanimous decision on counts 1 through 3 -- the kidnapping and conspiracy charges leveled against seven defendants who were then on trial -- nor were they able to arrive at a verdict on counts 2 and 3 which then remained outstanding against Father Philip Berrigan and Sister Elizabeth McAllister for sending communications threatening to kidnap Henry Kissinger through the United States mails. The remaining seven counts, relating to the sending of letters, resulted in a finding of guilty by the jury and so Sister McAllister faced a total miximum punishment of 30 years, and Father Berrigan faced a total miximum confinement of 40 years. The defense made motions following the trial for judgments of acquittal on counts 1 through 10 under Federal Rule of Criminal Procedure 29, and those motions were denied.

The defense also conducted a hearing and appeal on the electronic surveillance the government had admitted. (The judge had ruled that this could take place only after the trial.) At that hearing, an FBI agent testified under oath that they had indeed conducted a tap of the subject (who must remain nameless) from November 24, 1970 to January 6, 1971, six days before the return of the indictment in this case. More amazingly, he said under oath that the purpose of the electronic surveillance was to "investigate this case." By his testimony, therefore, he admitted to the commission of a crime prohibited by 18 U.S.C. §25.

In September, 1972 Philip Berrigan was sentenced to two years on his convictions and Sister Elizabeth McAllister was sentenced to one year, pending the outcome of her appeal. Berrigan was paroled in January, 1973, and on June 27, 1973 the Third Circuit Court of Appeals reversed all of the convictions except one minor one (attempting to send a letter out of jail) against Berrigan. The government declined to appeal this decision to the Supreme Court.

(William C. Cunningham, William Bender, with Ramsey Clark, Paul O'Dwyer, Leonard Boudin, Tom Menaker and others)

(15) UNITED STATES ex rel ROBERT RICE v. LEON J. VINCENT Rice, one of the original Harlem Six, petitioned the U.S. District Court for the Southern District of New York for a writ of habeas corpus because of (1) the recantation by the chief witness against him and (2) the discovery that the fingerprint found at the scene of the crime and attribute

to him had been designated to be of no value for more than a year prior to his first trial. When the application for a writ was granted, the District Attorney of New York County applied for a stay thereof pending an appeal, which stay was granted by the U.S. Court of Appeals for the Second Circuit. The District Judge's order setting bail for Rice in the sum of $10,000 was also stayed by the Court of Appeals. Argument on the appeals from the order granting the writ and setting bail are scheduled to be held on October 19.

(William Kunstler)

(16) 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 requires 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 case is presently before the New York Court of Appeals and a brief will be filed there in the fall.

(Mark Amsterdam)

(17) 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 is presently being 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 relate 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. The two men have also successfully passed lie-detector tests, indicating their innocence, and this information will be presented to the Second Circuit Court of Appeals. The brief is expected to be filed in October.

(Mark Amsterdam)

(18) PEOPLE v. PRESTON LAY, et al. — A petition for a writ of certiorari on behalf of the only two remaining defendants in this case, which was known as the conspiracy to kill-a-cop-a week case, was denied by the Supreme Court and they are presently serving short sentences in state prisons.

(William Kunstler with Larry Rabinowitz)

(19) UNITED STATES v. GLICK

In December 1970, eight young resisters who call themselves "The Flower City Conspiracy," were found guilty by a federal jury in Rochester, New York, of breaking into and taking records from the Rochester offices of the Selective Service System, United States Attorney, and the Federal Bureau of Investigations.

John Theodore Glick was one of these defendants. They were sentenced to terms varying in length from 9 months to 18 months -- Glick receiving 18 months. Their bond was revoked, and they began their sentences immediately. Glick, representing himself, had his appeal dismissed, but later reinstated by the Second Circuit when the Court discovered his trial transcript had not reached him until July, 1971. By that time, Glick had been included as one of the eight defendants in the superseding indictment returned in Harrisburg, Pennsylvania, on April 30, 1971. Notice of appearance was filed for Glick; his release on bond ($10,000) pending appeal in United States v. Glick was obtained on October 1, 1971.

A motion was filed in the Second Circuit asking the Court to order the trial judge in his case to hold a hearing and place on the record whether he communicated with the jury during their deliberations, in the absence of defense counsel and the defendant; and, if so, the nature and extent of those communications. The motion was based on the affidavit of a newspaper reporter who interviewed two of the trial jurors the day after their verdict.

At a hearing ordered by the Second Circuit into this matter Judge Burke, the judge in Glick's case, admitted communicating to the jury during its deliberations but maintained the view that it in no way influenced the jurors. The District Court denied Glick a new trial after the haring and the appeal went back to the Second Circuit.

On June 29, 1972, the Court of Appeals unanimously reversed Glick's conviction. Much of the research for this appeal was borrowed from the Center's Chicago Conspiracy Appeal briefs - and when the Seventh Circuit finally reversed those convictions, one authority it cited in support of its decision was the Second Circuit's opinion in Glick!

(William Cunningham with Paul O'Dwyer)

(20) 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 has announced its intention to appeal this decision to the U.S. Court of Appeals for the Second Circuit.

(William Kunstler with Margaret L. Ratner)

(21) NEW JERSEY v. BOBBY LEE WILLIAMS

Defendant was shot by a policeman from the Plainfield Police Department immediately before the policeman died at the hands of an angry crowd that reacted to the wanton shooting of Williams. Williams was subsequently indicted for inciting to riot, assault with intent to kill, and assault on a police officer. The incitement count was nolle prossed after the statute was attacked by motion as unconstitutional.

Williams was acquitted of assault with intent to kill, and the jury hung on the charge of assault with a dangerous weapon (given to the jury as a "lesser included offense" of the charge of assault with intent to kill).

The primary constitutional issue in this case, raised both on appeal in the state court and in the federal courts by way of habeas corpus proceedings, is the legality of the intentional sealing of Williams' indictment for a period of more than eleven months. The issue of the alleged violation of Williams' Sixth Amendment speedy trial rights was pursued in the New Jersey Supreme Court and thereafter in renewed habeas corpus proceedings in the New Jersey District Court, the United States Court of Appeals for the 3rd Circuit and the Supreme Court of the United States. The habeas proceedings were unsuccessful. After serving a short sentence, Bobby Lee Williams was released from incarceration.

(William Bender and William Kunstler)

(22) 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 is now being challenged on appeal in the state courts.

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

(23) COMMONWEALTH OF PENNSYLVANIA v. THOMAS WANSLEY

Mr. Wansley, who had been serving life imprisonment for rape and related crimes allegedly committed in 1962, was granted a writ of habeas corpus by the United States District Court for the Eastern District of Virginia on the grounds of prejudicial pre-trial publicity and tainted evidence. Mr. Wansley is presently free on $10,000 bail while decision is awaited in an appeal by the Commonwealth to the U.S. Court of Appeals for the Fourth Circuit.

(William Kunstler and Philip J. Hirschkop)

(24) STATE v. KEATON

Three young black men were charged and convicted of murder in Florida and sentenced to death. The Center undertook a substantial part of the appeals work. The convictions were based primarily upon confessions extorted by trickery after several days of intensive questioning. The defendants had been refused counsel and the right to speak to relatives. This, as well as the constitutionality of the death penalty, was a major point of the appeal.

After defendants were convicted, three other persons, unknown to the defendants were charged by the same District Attorney who prosecuted the defendants with the exact same crime! This too became a key appellate point. In the summer

of 1973 the Florida Supreme Court reversed the convictions and dismissed the indictments.

(Jim Reif with Margaret Ratner, Paul Ross and Kent Spriggs)

F I R S T A M E N D M E N T

(25) UNITED STATES SERVICEMEN'S FUND v. INTERNAL REVENUE SERVICE

This suit by the United States Servicemen's Fund alleges that USSF's tax exemption was revoked as a result of pressure from the White House to "get" the political enemies of the Nixon administration. The complaint alleges taht USSF was singled out for revocation because its views on the war and the military were opposed to those of the administration (The IRS revocation letters to USSF show that IRS was concerned with First Amendment activities.). The complaint further alleges that USSF was the subject of illegal wiretapping and burglaries.

The complaint was filed in Federal District Court in the District of Columbia and the government has moved to dismiss the complaint as being barred by an anti-injunction statute. We have replied by showing that in similar cases where the constitutionality of a regulation is in question or the constitutionality of the revocation process itself is under attack, the anti-injunction statute has no effect. A ruling on the government's motion to dismiss is expected sometime in late September.

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

(26) BERRIGAN v. SIEGLER

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

Fathers Dan and Phil Berrigan, while on parole from their prison sentences, sought permission of the U.S. Board of Parole to accept an invitation to travel to Hanoi. Emergency application was made to the U.S. District Court, which denied permission. On the following day, the Circuit Court reversed, but Chief Justice Burger in turn stayed the ruling of the Circuit Court. The case is now proceeding on a non-emergency basis, as the time limit for acceptance of the invitation has passed, and is again pending before the Circuit Court.

(Morton Stavis, Doris Peterson)

(27) DOMESTIC SATELLITE CASES

The Network Project, a research collective working in the area of communications policy, has been challenging the FCC's trend toward deregulation of the airwaves and, in particular the FCC's decision to approve a number of petitions from such corporate giants as Western Union, AT&T, RCA and Hughes Aircraft, for the construction of domestic satellite communications facilities, without any provisions for public access or "public dividends."

The Center, believing that this policy raises important First Amendment problems, among others, has assisted the Network Project in preparing petitions to deny some half dozen domestic satellite licenses. Some of these petitions are still under consideration. Others have been dismissed by the FCC and notices of appeal have been filed with the U.S. Court of Appeals for the District of Columbia

(Peter Weiss in collaboration with Andrew Horowitz and Gregory Knox of the Network Project and attorneys Richard Ottinger and Morton Hamburg)

(28) JEANNETTE RANKIN BRIGADE v. CAPITOL POLICE

This was an action challenging the constitutionality of a federal statute prohibiting demonstrating, walking or standing in groups on Capitol grounds. On appeal of a denial of a three-judge court, the Court of Appeals (Judges Fahy and Burger) held that the case was not moot, that the First Amendment issue was not insubstantial, and that a three-judge court should be convened. Judge Bazelon dissented on the ground that the Court of Appeals should declare the statute unconstitutional on its face, thus making remand unnecessary. See 421 F.2d 1090 (D.C. Cir. 1960). On remand, cross-motions for summary judgment were made and the case was argued in July 1971, before the three-judge court.

This is the same statute used to arrest approximately 990 Mayday supporters assembled on the steps of the Capitol in May 1971, to hear anti-war speeches by United States Congresspeople. Congresswoman Abzug and Congressman Dellums joined as parties plaintiff to complain of these subsequent Mayday arrests. The three judge Federal District Court, in May 1972, declared the statute to be unconstitutional, enjoined its enforcement and refused to accept the government's proposed saving contruction of the statute.

On June 8, 1972, the government filed a notice of appeal signifying its intention to appeal this decision directly to the United States Supreme Court.

A motion to affirm the decision of the three-judge Federal District Court was prepared and filed and the motion resulted in the dismissal of the government's appeal with an affirmance of the judgment below.

(William Bender, Morton Stavis with Lawrence Speiser)

W I R E T A P P I N G

(29) KINOY v. MITCHELL

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

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

Finally, on May 25, 1973, spurred by plaintiffs' discovery efforts, the government, on the basis of a partial search of agencies and indices, repudiated its answer and admitted that Arthur Kinoy had indeed been overheard by electronic means 23 times on alleged national and foreign security surveillances conducted without a court order.

The government is presently filing motions to attempt to avoid liability and production of the Attorney General's authorizations, the logs and other evidence derived from the surveillance. The government will urge, among others, the novel position that United States v. United States District Court (in which the Court agreed in an 8-0 decision with defense counsel Arthur Kinoy that warrantless national security surveillance violates the wiretap statute and the First and Fourth Amendments) should not be applied to invasions before its decision, a position which would sweep the Watergate bugging within its protective "cover."

In addition to defeating the government's unfounded claims of legality and privilege for these executive-ordered surveillances, we are also seeking to uncover the full scope of surveillance of the Kinoys, as the search conducted by the government is admittedly and facially inadequate.

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

(30) DELLINGER v. MITCHELL — This is a suit under the Fourth Amendment and 18 U.S.C. §2520, for damages and injunctive relief for electronic surveillance of the Chicago Eight, and nine anti-war and black liberation organizations. In connection with the Chicago Conspiracy trial and the trial of Muhammad Ali for refusing to submit to induction, Clay v. United States, 430 F. 2d 376 (5th Cir. 1970, rev'd on other grounds, 403 U.S. 698, 1971), the Justice Department again admitted surveillance without a warrant and made the same national security argument as above. This lawsuit was instituted not only to vindicate Fourth Amendment rights, but as a means of preventing interference with plaintiffs' First Amendment activities. After notices for depositions, interrogatories and requests for admissions were served, the District Court granted defendants' motion to stay all proceedings until final disposition of the Chicago Eight trial and appeal. On appeal, the District of Columbia Court of Appeals unanimously held the stay invalid and remanded to the District Court for further proceedings.

On remand, the government again sought a stay of trial pending the Supreme Court's decision in the "wiretap" case. The plaintiffs opposed the stay. The court ordered that the trial go forward.

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

(William Bender, Arthur Kinoy, William Kunstler)

(31) SINCLAIR v. KLEINDIENST — This is a civil action for damages on behalf of John Sinclair, Lawrence "Pun" Plamondon and John Waterhouse Forrest arising out of the admission of national security surveillance in the criminal case which became United States v. United States District Court. The action has been filed in both the District of Columbia and the Southern District of New York in order to obtain personal jurisdiction over all of the defendants. This suit names Clyde Tolson as a party defendant in his capacity as the executor of the estate of the late J. Edgar Hoover. Plaintiffs' discovery has been filed and we are awaiting the government's answers or motions in opposition to discovery.

(William Bender)

(32) BERRIGAN v. KLEINDIENST — This is a civil action for damages arising out of the admission of unlawful national security electronic surveillance during the Harrisburg trial. The suit has been filed in the Eastern District of Pennsylvania, discovery demands have been served and the discovery issues are presently being litigated.

(William Bender with Jack Levine)

WOMEN'S RIGHTS

(33) A PETITION TO DENY THE LICENSE RENEWAL OF WABC-TV

A petition to deny the license renewal of WABC-TV, brought on behalf of the New York Chapter of the National Organization of Women (NOW), was filed with the Federal Communications Commission on May 1, 1972. Based on extensive monitoring studies conducted by NOW, the petition charges massive violations of FCC regulations in that WABC-TV (a) does not consult with women or women's groups regarding women's programming; (b) presents a distorted and one-sided image of women; and (c) employs a smaller percentage of women than any other local television station.

Following the filing of the petition, a series of negotiations with the station, lasting three months, was entered into. These negotiations failed to produce a satisfactory solution, particularly with respect to balancing the one-sided programmatic presentation of the role of women in society. WABC-TV has filed a Response to the petition, and Center attorneys have filed their Reply, which covers the legal and factual insufficiencies in the station's position. The Reply calls for an FCC hearing to review the policies and practices of WABC-TV regarding the allegations in the petition. We are awaiting a decision by the FCC.

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

(34) KLEIN v. NASSAU COUNTY MEDICAL CENTER

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

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

The injunction was appealed to the Supreme Court which has recently remanded the decision to the District Court for reconsideration in light of the Supreme Court decision on abortion. We are now developing the factual record showing the restrictive effect of the Medicaid regulation. The hospital is performing abortions regularly now, although not for non-county residents which is a major legal issue to be decided on the remand.

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

(35) BYRN v. NEW YORK CITY HEALTH AND HOSPITALS CORPORATION

In an attempt to invalidate the New York law permitting abortions, a Fordham University law professor sought and obtained appointment by the Queens County Supreme Court as guardian ad litem for all fetuses about to be aborted in municipal hospitals. Judge Francis Smith entered a preliminary injunction against all municipal hospital abortions pending the outcome of the

litigation, and granted a motion for several pregnant women and the Womens Health and Abortion Project to intervene as defendants in the action.

An appeal was taken to the Appellate Division which ruled that the injunction was improperly granted and dismissed Prof. Byrn's complaint. Byrn appealed to the New York State Court of Appeals, which also rejected his contentions. He was unsuccessful in obtaining a further stay pending his appeal to the U.S. Supreme Court. On February 26, 1973 the U.S. Supreme Court dismissed his appeal for want of a substantial federal question.

(Nancy Stearns, Rhonda Copelon, Janice Goodman and Kenneth Norwick)

(36) WOMEN OF RHODE ISLAND v. ISRAEL
ABORTION COUNSELING SERVICE v. ISRAEL

These consolidated cases are both §1983 (civil rights) actions challenging Rhode Island's abortion statutes (including one that prohibits abortion counseling). After the District Court judge denied a preliminary injunction, a three-judge court was convened (Judges Coffin, Pettine and Wyzanski) to hear a request for a temporary restraining order on behalf of a pregnant woman in November, 1971. The court was unable to reach a decision before the time passed when the plaintiff needed an abortion. Therefore, she obtained an out of state abortion and the court held the application for the t.r.o. moot.

On the merits, the court witheld decision until the Supreme Court had ruled in Roe v. Wade and Doe v. Bolton, and then held the Rhode Island statutes unconstitutional in conformity with those decisions. Immediately thereafter, the State Legislature passed a new abortion statute declaring a fetus to be a human being from the moment of conception with full constitutional rights under the Fourteenth Amendment.

After a hearing, Federal District Court Judge Pettine declared the new statute unconstitutional in an action brought by pregnant women (Doe v. Israel). The State, as well as "right to life" groups sought a stay pending appeal to the First Circuit. A temporary stay was granted but then dissolved by the First Circuit following oral argument on June 6, 1973. The case is presently pending in the First Circuit.

(Nancy Stearns with Janice Goodman, Richard Zacko and Charles Edwards)

(37) WOMEN OF THE COMMONWEALTH v. QUINN

This is a class action brought by more than 100 Massachusetts women to challenge the State's restrictive abortion law. A three-judge court was convened and the judges assigned were the same as in the Rhode Island case (see above). Following the Supreme Court's abortion decisions, the Massachusetts law was held unconstitutional.

(Nancy Stearns, Kathleen Allen, Helen Gray, Judy Schatzow Remcho)

(38) ABELE v. MARKLE

This case arose, in 1971, as a federal civil action challenging the constitutionality of Connecticut's abortion statute. After the statute was struck down by a three-judge federal court, Gov. Meskill reconvened the State Legislature which passed a new and even more restrictive abortion statute.

In response, a motion was filed before the original three-judge court asking that they enforce their original injunction by enjoining the new statute, and that they hold Governor Meskill in contempt for violation of their original injunction.

Though the contempt order was denied, the court held the new law, which purported to grant Fourteenth Amendment rights to the fetus, unconstitutional and, on Sept. 20, 1972, enjoined its enforcement. In holding the statute unconstitutional, the court held that women have a constitutional right to an abortion up to the time of viability - the same cut-off period later adopted by the Supreme Court in its landmark abortion decisions (Roe v. Wade and Doe v. Bolton).

The State again appealed and sought a stay of the injunction which was granted by the Supreme Court in October, 1972. After the Supreme Court's abortion decisions, the two Abele cases (old and new laws) were remanded to the three-judge court, on April 26, 1973, once again declared the statutes unconstitutional and enjoined their enforcement.

(Nancy Stearns with Catherine Roraback, Katherine Emmett, Marilyn Seichter, Barbara Millstein, Ann Hill and many other women attorneys)

(39) POE v. NORTON — A suit on behalf of pregnant women challenging the denial of abortions by the Connecticut Department of Social Services. A temporary restraining order was granted by the District Court prohibiting the Department from denying further abortions. The State of Connecticut conceded that should the three-judge once again hold the abortion law unconstitutional in the remand from the Supreme Court in Abele v. Markle, that this suit would be rendered academic. The three-judge court did so rule in April, 1973.

(Nancy Stearns, with Catherine Roraback, Ann Hill, Katherine Emmett and Marilyn Seichter)

(40) IN THE MATTER OF SHULMAN (AMICUS) — Amicus (friend of the Court) brief filed on behalf of New York City Chapter of National Organization for Women (NOW) in action by doctor challenging constitutionality of New York City Department of Health regulation that requires the filing of a fetal death certificate which includes the name and address of the woman following the performance of an abortion.

The requirement had been held unconstitutional by Judge Spiegel in the Supreme Court and the Health and Hospital Corporation and the New York City Department of Health appealed to the Appellate Division.

The amicus brief argued that abortion is a fundamental right under the First, Ninth and Fourteenth Amendments and that abortion patients are entitled under the right to privacy, to anonymity in their determination to have an abortion.

The briefs were submitted prior to the abortion decisions by the Supreme Court in Doe v. Bolton and Roe v. Wade though the argument followed those decisions.

The appellate division reversed Judge Spiegel and remanded in light of Roe and Doe (although it is not clear how or why they came to that conclusion which appeared to be in direct conflict with those decisions).

On remand Judge Spiegel once again held the requirement unconstitutional.

(Nancy Stearns and Janice Goodman. Miles Jaffe is attorney for plaintiff Shulman.)

(41) WHEELER v. FLORIDA — This is an appeal from the conviction of a 23 year old woman for the "crime" of abortion/manslaughter. The defendant was convicted on July 13, 1971 for having had an abortion. In October, 1971 she was sentenced to two years probation provided she marry the man with whom she was living or leave the state to live with her family.

In February, 1972 the Florida Supreme Court held the State's abortion law unconstitutional. Following this ruling, the case was remanded to the felony court of records and the conviction was vacated on October 4, 1972.

(Nancy Stearns)

(42) SANCHEZ v. BARON

This is a federal class action brought under the Civil Rights Law (42 U.S.C. 1983) on behalf of Junior High School women denied admission to shop class solely because of their sex. After the action was filed, the school admitted the named plaintiff to the shop class and then argued that the case was moot. Judge Jacob Mischler (E.D.N.Y.), however, held that the lawsuit could continue as a class action.

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

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

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

(Nancy Stearns with Alan Levine and Bruce Ennis)

(43) DANIELSON v. BOARD OF HIGHER EDUCATION

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

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

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

(Nancy Stearns, Liz Schneider with Veronika Kraft)

(44) MONELL v. BOARD OF SOCIAL SERVICES

This is a class action by employees of the New York City Board of Education and the Department of Social Services challenging the constitutionality of compulsory maternity leave practices of both departments. In each case the department as a matter of practice, requires that a pregnant woman go on leave at the end of seven months pregnancy without regard to whether or not she is physically capable of continuing her work.

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

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

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

(45) HESS v. LAIRD

This is an action by a Marine corporal and his wife challenging the constitutionality of the Marine Corps regulation prohibiting wives of corpsmen from visiting husbands stationed in the Western Pacific (not Vietnam) more than once during a tour of duty, or for longer than 60 days. Should a wife disobey this regulation, her husband gets transferred (as Hess did), court-martialed or fined.

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

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

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

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

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

(Rhonda Copelon with Victor McTier)

PRISONERS' RIGHTS

(47) WALLACE v. KERN (BROOKLYN HOUSE)

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

criminal courts.

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

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

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

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

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

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

(Jim Reif with Dan Alterman and Steve Latimer)

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

(Morton Stavis, Rhonda Copelon, with Henry Hill)

(49) SPELLER v. WAGNER, et al. — An inmate of a New Jersey State Mental Institution for the criminally insane was found strangled to death in his cell. Although prison officials have claimed that the inmate committed suicide, the nature of the strangulation has led an independent

pathologist to view it as presumptively homicidal. On behalf of the family of the decedent, a suit was filed against officials of the New Jersey Correctional System, including the doctors and guards responsible for decedent. The issues include not only the nature of death but the question whether the State had the right to incarcerate the defendant (an alleged sex offender) for ten years, on the theory that he needed specialized mental treatment, without, in fact, giving him any such treatment.

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

(Morton Stavis, Linda Huber with Eldridge Hawkins)

GRAND JURY ABUSE

(50) IN RE KENNETH TIERNEY

In June, 1972, eleven Irish Americans were subpoenaed to appear before a grand jury in Fort Worth, Texas investigating the alleged shipment of arms to the IRA in Northern Ireland. Center attorneys raised the issue of electronic surveillance and charged that immunity is meaningless because foreign governments, in this case the British government are not bound to honor such immunity. We also objected to the denial of the right to counsel insofar as the government, for the first time, refused to allow the witnesses to consult with counsel even outside the grand jury room. The five defendants went to jail for contempt and a stay or bail pending appeal was denied.

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

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

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

Dr. Leonard S. Rodberg, Resident Fellow at the Institute for Policy Studies in Washington, D.C., and personal staff assistant to Senator Mike Gravel, was subpoenaed to appear before the Boston grand jury investigating the Pentagon Papers. A motion to quash the subpoena was denied, although a protective order prohibiting the questioning of Dr. Rodberg regarding Senator Gravel's reading of the Pentagon Papers into the Congressional Record was entered by the Federal District Court. Senator Gravel appealed the decision and the Court of Appeals not only stayed Rodberg's subpoena but stayed the entire grand jury proceeding pending its decision of Gravel's appeal. The government cross-appealed from the District Court's protective order.

In its decision of January 7, 1972, the Court of Appeals broadened the protective order entered by the District Court, ruling that Dr. Rodberg could not be questioned about anything he did or learned about in the course of the performance of his duties as Senator Gravel's aide. The Court, however, refused to broaden the lower court's order with respect to third persons other than Dr. Rodberg who may have assisted Senator Gravel. The government appealed the decision

of the Court of Appeals as affording too much protection to Dr. Rodberg and third parties, and Senator Gravel appealed it arguing that it did not provide enough such protection. Certiorari was granted, the cases consolidated, oral argument was expedited.

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

(Jim Reif, Doris Peterson and Morton Stavis)

(52) RUSSO v. BYRNE — This case grew out of the charges pending against Anthony Russo and Daniel Ellsberg in Los Angeles in the widely publicized Pentagon Papers case.

When Russo refused to testify before the grand jury on June 23, 1971, the government immediately moved the District Court for an order compelling him to give evidence pursuant to 18 U.S.C. §2514, which provides for immunity from prosecution. When Russo still refused at this point to testify, he was held in civil contempt, which judgment was affirmed by the Court of Appeals. In re Russo, 448 F.2d 369 (9th Cir. 1971). When a stay was denied, Russo v. United States, 404 U.S. 1209 (1971), Russo was committed to jail. After being incarcerated for 46 days, Russo agreed to testify upon the condition that he be provided with a transcript of his grand jury testimony. The District Court approved this condition and ordered Russo released from jail. However, when he appeared outside the grand jury room, ready to testify, Russo was refused entry by the U.S. attorney who informed him that he would not allow Russo to testify upon the condition already approved by the District Court because he deemed the Court's order to be unlawful; and this despite the fact that the government had not even sought to appeal that order. The refusal to allow Russo to testify was solely on the part of the government, not the grand jury which was not even consulted on the question. The District Court thereupon ruled that in light of Mr. Russo's willingness to testify and the government's refusal to provide him with a transcript, Russo was purged of contempt. In re Russo, Misc. No. 1821 (C.D. Cal. 1971). The government never appealed this ruling, but instead, indicted Mr. Russo (along with Dr. Ellsberg, charged in an earlier indictment) in a superseding indictment returned in December, 1971).

Center attorney Jim Reif worked on one aspect of the case -- whether, in light of the fact that the government, not the grand jury, made the decision not to allow Russo to give evidence, Russo was entitled to the immunity from prosecution he undoubtedly would have received had he been allowed to testify. The District Court denied a motion to dismiss the indictment against Russo, and a petition for writ of mandamus was denied by the Court of Appeals. The case, of course, was ultimately dismissed as a result of government misconduct.

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

CONGRESSIONAL COMMITTEES

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

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

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

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

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

(Nancy Stearns, Morton Stavis with Jeremiah Gutman)

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

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

(Morton Stavis, Nancy Stearns)

ATTACKS ON LAWYERS

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

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

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

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

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

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

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

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

During the course of the trial People v. Baker, William Kunstler was interviewed on a radio talk show where he stated certain facts and expressed certain opinions. Despite the fact that the matter was fully reviewed by the trial judge and despite the fact that he took no action whatever against Mr. Kunstler, subsequently the chief counsel of the Grievance Committee of the New York City Bar Association asked Mr. Kunstler to "explain" his action in the light of the Rules of Professional Conduct of the American Bar Association. Important constitutional questions are involved, including the freedom of attorneys to make public the issues in their cases, and the discriminatory pursuit of a defense attorney representing unpopular defendants when no action is taken against district attorneys who regularly use the media to shape public opinion about cases they are prosecuting. A strong reply was submitted, taking the position that the complaint is wholly unwarranted and that the matter should be dismissed.

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

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

THE INDOCHINA WAR

(57) BOCK v. NIXON

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

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

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

(Peter Weiss)

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

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

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

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

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

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

(Peter Weiss)

MILITARY

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

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

(Nancy Stearns and Peter Weiss with Ken Kimerling)

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

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

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

(Mark Amsterdam)

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

(Mark Amsterdam and Michael Ratner)

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

(Mark Amsterdam, Michael Ratner and Peter Weiss)

(63) UNITED STATES v. POPLIN — David Poplin was stationed on Okinawa, attached to the 7th Psychological Operations Group, when he refused an order that he felt constituted a war crime. He was not charged with disobeying an order. Instead, he was subjected to seven months of petty harassment by the officers and men of his unit. This treatment culminated in Poplin's going AWOL. He was apprehended, tried and convicted. The sentence was suspended and he was ordered, over his pleas and objections, to return to his old unit. At that time, he decided that he would not cooperate with the military system in any way. Almost immediately upon his return he was charged with failure to salute and report, being out of uniform, refusal of an order to see a certain officer, and attempted escape during a short period of incarceration. He was convicted and sentenced to nine months imprisonment. The appeal brief was filed in December 1971, raising three issues: that the charges are largely duplicative; that returning Poplin to the unit that had harassed him for seven months constituted a gross abuse of discretion; and that the activities carried on by the 7th Psychological Operations Group are violative of international law agreements. The Poplin case was lost in the Court of Military Review and the Court of Military Appeals refused to hear the case.

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

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

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

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

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

(Mark Amsterdam)

MISCELLANEOUS

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

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

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

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

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

These lawsuits, together with Clark v. City of Chicago, were filed on behalf of those injured in the police raid on the Black Panthers in Chicago in December, 1969, and on behalf of the survivors of Fred Hampton and Mark Clark who were murdered in the raid. All four are suits for damages and all consolidated for trial. David Scribner has committed himself to work on behalf of the Center as general counsel in this litigation.

A tremendous amount of time and effort have already gone into the investigation, accumulation and analysis of the facts surrounding the raid. It is apparent that only through these lawsuits can the community be made aware of the true facts in what is believed to be a planned murder which was part of a larger plan to exterminate the Panthers and their supporters.

Another step that was taken is the filing of an application in the

District Court on behalf of the survivors to expunge the report of the federal grand jury which, in declining to find violations of the civil rights of Hampton, Clark and the survivors by the police raiders, engaged in a vitriolic, gratuitous and illegal attack on the Black Panther Party and its members.

The District Court granted the state's motion to dismiss as to the defendants, City of Chicago and Cook County, as well as to the defendants, State Attorneys, Mayor and Police Hierarchy. The District Court also denied the Grand Jury Report Petition and an appeal was taken to the Seventh Circuit Court of Appeals on these issues. An Amended Complaint containing the remaining counts was filed in the District Court.

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

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

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

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

(67) DIGGS et al. v. SCHULTZ et al. This was a federal civil action seeking declaratory and injunctive relief to prevent the importation from Zimbabwe (Southern Rhodesia) of metallurgical chromite and other materials. Importation of these substances is barred by United Nations Security Resolutions and Presidential Orders. Since the passage of the Byrd Amendment, defendants Union Carbide and Foote Mineral have started importing metallurgical chromite and other materials into the United States under a General License allegedly authorized by the Byrd Amendment.

This case involved the allocation of power between Congress and the Executive in dealing with our treaty obligations; the manner in which Congress may or may not abrogate solemn international commitments; and the binding effect upon the courts of the United States ratification of the United Nations Charter and of mandatory Security Council resolutions, where the United States has failed to exercise its veto. Plaintiffs in this action included all the members of the Black Congressional Caucus, Zimbabwe citizens who want to return to their homeland, writers and church people who are presently barred from entry into Zimbabwe by the illegal white government (which the United Nations' sanctions are designed to bring to an end).

Plaintiffs' motions for temporary and preliminary injunctive relief were denied without reaching the merits and plaintiffs' substantive claims. Cross motions for summary judgment were argued on May 25.

On June 19, the District Court decided the case against the plaintiffs and dismissed the action. An appeal to the Court of Appeals on an emergency basis was taken.

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

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

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

(68) ESCOFFREY v. CITY OF NEW YORK

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

William Bender, J. Otis Cochran)