CCR

April, 1976

CENTER FOR CONSTITUTIONAL RIGHTS

Dear Center Contributor,

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

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

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

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

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

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

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

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

Morton Stavis

Morton Stavis
Volunteer Staff Attorney

Gratefully,
Nancy Stearns

Nancy Stearns
Staff Attorney

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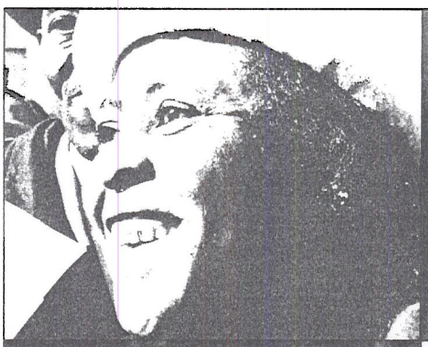
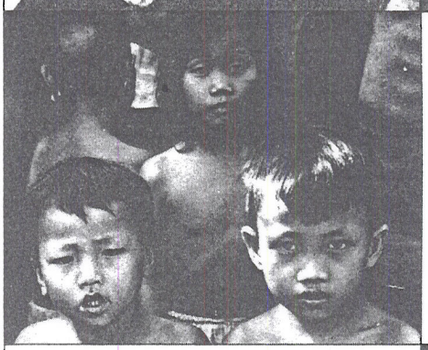
Center for Constitutional Rights

DOCKET REPORT





HOW TO READ DONALD DUCK

IMPERIALIST IDEOLOGY IN THE DISNEY COMIC

1975

CCR

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

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

1927-1976

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Constitutional Rights
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Women's Rights

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

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

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

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

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

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

(Rhonda Copelon, Nancy Stearns with Nadine Taub)

2. Drew Municipal School District *v.* Andrews

The Center's founding experience in groundbreaking litigation combatting race discrimination, and our more recent focus on sex discrimination and abortion are united in this case. Five Black women, elementary school teachers' aides in a Mississippi school district, were denied teaching jobs in the spring of 1972 on the basis of a policy instituted by the school superintendent barring parents of out-of-wedlock children from all positions, other than janitorial. Two of these women brought an action under the Federal Civil Rights laws, claiming violations of the Fourteenth Amendment's ban on race and sex discrimination, and the Ninth and Fourteenth Amendments' rights to privacy and procreative liberty. The District Court for the Northern District of Mississippi ruled for the plaintiffs on the grounds that the policy was unrelated to a person's qualifications and excellence as a teacher, and constituted sex discrimination, even though the superintendent claimed he would apply the policy to men if their status as unwed fathers were ever to be discovered. On appeal, the Fifth Circuit affirmed unanimously on the narrower irrationality. The United States Supreme Court granted the school board's petition for *certiorari* and the Center, which entered the case as *amicus curiae*, is now acting as co-counsel for the teachers. Rhonda Copelon and Victor McTeer shared the oral argument in the Supreme Court on March 3, 1976. A decision is awaited.

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

3. Klein *v.* Nassau County Medical Center

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

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

This victory was appealed by the State to the Supreme Court, which remanded the case, without a hearing, for reconsideration in light of the Supreme Court's decisions recognizing abortion as a fundamental right. The District Court issued an interim conference memorandum indicating its view that the restrictive policy is unconstitutional, and in March, 1976, again issued an injunction invalidating the regulation statewide. In doing so, the Court rejected the State's contention that the regulation should be understood as requiring only an unreviewable doctor's certification that

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

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

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

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

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

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

(Rhonda Copelon, Liz Schneider, Nancy Stearns)

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

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

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

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

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

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

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

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

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

The case was put before a Magistrate, where the Board and the Department of Social Services claimed immunity from monetary damages and alleged that plaintiffs could not recover under Title VII because it was not made applicable to municipal agencies until after the named plaintiffs were put on leave. On September 19, 1974, the Magistrate issued a Report and Recommendation granting plaintiffs' motion for damages. Exceptions to his ruling were filed with the District Judge, who dismissed the case for lack of jurisdiction. Argument was held in the United States Court of Appeals for the Second Circuit in December, and we are awaiting a decision.

(Nancy Stearns with Oscar Chase and Gregory Abbey)

7. Hess *v.* Laird

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

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

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

The Court of Appeals for the D.C. Circuit reversed the District Court's decision which had granted summary judgment to the government. It held that the government had the burden of factually demonstrating that the combat readiness

of Marines was enhanced by prohibiting wives from visiting their Marine spouses for over 60 days.

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

The government's chief witness was the Commandant of the Marine Corps, General Cushing. One of his positions was that the wives of Marines were little girls who could not handle their own affairs if left in Japan on their own. It was also brought out on examination that all of the other services had combat ready troops in the Pacific and had no need for the 60 day rule. By the end of his testimony it was clear that we had won the case.

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

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

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

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

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

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

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

A temporary restraining order was obtained against the new restrictive fee and eligibility schedules, but a preliminary injunction was denied.

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

(Liz Schneider with Janet Benshoof)

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

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

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

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

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

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

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

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

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

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

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

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

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

Criminal Justice

12. United States *v.* Delfin Ramos

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

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

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

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

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

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

13. State of New York *v.* Spencer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(William Kunstler, Margaret Ratner, Michael Ratner).

17. State of Washington *v.* Wanrow

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

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

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

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

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

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

(Liz Schneider with William M. Kunstler)

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

After a lengthy trial, the jury in the trial of H. Rap Brown and his three codefendants was hopelessly hung on the charge of attempted murder. However, all defendants were convicted of robbery in the first degree and other crimes and Brown was sentenced to a term of five to fifteen years in a state prison. Following his conviction, it was discovered that the two key detectives involved in the case had been under departmental investigation on serious charges for more than three years and one had been indicted for perjury in Bronx County. A motion for a new trial based on the withholding of this information was made before the trial judge, and has been denied.

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

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

20. State *v.* Carlos Feliciano

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

21. United States *v.* Chambers

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

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

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

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

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

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

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

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

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

International Affairs

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

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

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

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

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

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

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

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

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

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

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

nam, parents are placing missing person ads in Saigon papers looking for lost children.

In mid-February, the Court seemed to take several steps backward, ruling the case would no longer be considered a class action (it had been designated a class action for the purposes of discovery, both by the District Court and the Court of Appeals), despite the fact that the discovery has not been completed.

In addition, for two months the Court has put off considering the case of a 5-year-old child whose mother has been found here in the U.S. His mother never legally released him for adoption, but the Court intimated that it might try to force the case into state adoption court.

It seems clear that we will be forced back to the Court of Appeals if any relief is to be obtained for individual children. Meanwhile, CCR lawyers, California co-counsel, and others working on the case are trying to reach out to American adoptive parents, and urge them to come forward with kindness and speed, when and if the natural parents are found, just as they came forward and opened their homes when the Babylift children first arrived.

(Nancy Stearns, with Mort Cohen, Thomas Miller, Neil Gotanda, Dennis Roberts and Michael Davis)

24. State of New York *v.* Danny White, *et al.*

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

In October 1974, the State filed an action in federal district court to resolve the question of the conflicting ownership claims to the land. In the papers, the State recognized that the Treaty of 1784 gave the land to the Six Nations, but claimed the Mohawks relinquished the land in a subsequent 1797 treaty. The Mohawks vigorously contest the validity of that treaty, as well as the right of one nation to settle a land dispute with another nation in the domestic courts of one of the disputing parties.

On October 28, two whites were injured by gunfire returned from the Mohawk camp after the campsite was fired upon. State police have since demanded to question witnesses and alleged participants in the shootings. The residents of Ganienkeh take the position that the proper way to resolve the matter is under the Canandagua Treaty of 1794, which establishes the procedure to be followed when an Indian is injured by a non-Indian, or vice versa.

The Grand Council of the Six Nations has also sent a formal complaint to the President of the United States regarding the violence directed at the residents of Ganienkeh by U.S. citizens, asking the government to take steps to stop it. It has asked the government to terminate the federal lawsuit regarding the land dispute, based on the fact that the suit is actually against the Six Nations, which as a sovereign nation is immune from suit and does not consent to be sued; and finally, that a land dispute between nations must be settled in an international forum or through diplomatic negotiations.

In March, 1975, the United States District Court for the Northern District of New York dismissed the State's case, although not on the grounds we had argued. Rather, the Court ruled that the case should be brought in State court. The State appealed the decision, and argument was heard in November. The issues raised, aside from the jurisdictional questions, include whether Mohawks may reclaim and resettle unoccupied land, theirs by aboriginal and treaty rights; whether the validity of Indian treaties being a political question may be decided by the judiciary; and the considerations raised in the complaint to the President. In early January, the Court of Appeals affirmed the ruling of the district court that as currently drawn, the State's complaint does not pose a federal question distinguishing between actions to evict Indians from land and actions to remove a cloud from the title where Indians claim title to land presently held by non-Indians. The Court of Appeals agreed to permit the State to amend their complaint in order to come within federal jurisdiction.

Meanwhile, additional actions have been taken by local white citizens and the local District Attorney in the State courts. In one case, residents of the Big Moose area, who had unsuccessfully sought to intervene in the federal action, sued New York State officials to force them to evict the Indians. That case was dismissed by the Court as being inappropriate.

In a second action, brought by the Herkimer County District Attorney, residents of Ganienkeh have been sued for trespass. The Grand Council of the Six Nations directed the Indians not to take part in any litigation which seeks to determine the ownership of land, and therefore the validity of Indian treaties. However, a group of local white citizens, who support the Indians, Rights For American Indians Now (RAIN) have appeared as *amicus curiae* to present arguments to the Court as to why the case should be dismissed. That case, *Blumberg v. Kakwirakeron*, is still pending.

Meanwhile, the citizens of Ganienkeh have been farming (assisted by a grant for farm machinery) and continuing to develop their community. Babies have been born, and the community is growing in strength and purpose.

(Nancy Stearns with Tim Coulter)

25. 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 *New York Times* of employment advertisements for executive and academic positions in South Africa were racially discriminatory on their face. The *Times* challenged the complaint on the ground that the proposed hearing by the Commission would constitute an unconstitutional interference in the foreign affairs power of the federal government, and an abridgement of the *Times'* First Amendment rights.

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

(Peter Weiss and Michael Davis, with Douglas Wacholz and Michael Paye of the Lawyers Committee for Civil Rights

Under Law, with Ramsey Clark participating in the Court of Appeals proceedings).

26. South African Naturalization Case

CCR lawyers have assisted a South African couple in obtaining United States citizenship after many years of delay and obstruction, due to the couple's anti-apartheid activities prior to their departure from South Africa.

At the naturalization hearing, which was finally held by the Immigration Service, CCR lawyers may have set a precedent by insisting it be opened to the public (required by law, but never, or rarely, done in practice). When the prompt decision promised by the Hearing officer was not forthcoming, CCR lawyers filed a motion to calendar the case in Federal Court. This resulted in the rapid, and favorable, conclusion of the proceedings.

(Peter Weiss with Goler Teal Butcher)

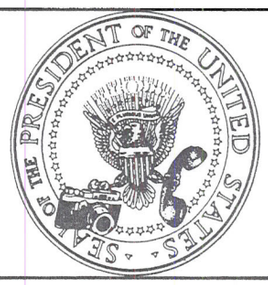
27. Baader-Meinhof

During the political turmoil of the 1970's, a group in the Federal Republic of Germany, known as the Red Army Faction (RAF) or the Baader-Meinhof "gang" (after two of the group's leaders) was charged with several anti-war bombings. They have been defended by a small group of courageous, outspoken and agressive lawyers, who have become the objects of attack by the German government.

As a result of the RAF trials, the government has enacted a frightening number of repressive laws, expressly designed to hamper the defense. An attorney is prohibited from representing more than one co-defendant; a judge may rule anything he considers to be a political statement inadmissible; an attorney may be disbarred on "suspicion" of misconduct, and required to wait a year or more for a hearing to vindicate him/herself. Three of Baader's defense attorneys were disbarred in this way; a fourth was arrested for "conspiracy," although no evidence has been presented against any of them. Another law has been proposed, which could allow a judge to be present at all attorney-client conferences if the case is ruled "political."

CCR attorneys were asked to join an international group of lawyers, representing 10 countries, in submitting legal briefs to the German courts, concerning the defendants' rights to counsel of choice and an adequate defense. After most of the RAF defendants' lawyers were removed by the court, CCR attorneys joined with several European lawyers, at the defendants' request, and asked the court to be allowed to represent them. This was denied.

(William M. Kunstler, William H. Schaap, Peter Weiss, with Ramsey Clark)



Government Misconduct

28. Kinoy *v.* Mitchell, and Dellinger *v.* Mitchell

The widespread use of illegal electronic surveillance in the name of "national security" was (and is) one of the central forms of government misconduct. Two affirmative suits were begun while John Mitchell ruled the Justice Department. Both Arthur Kinoy, a founder of the CCR, and David Dellinger, a defendant in the Chicago Conspiracy trial, alleged that they had been illegally wiretapped over the years and asked for extensive damages. The government at first denied that it had tapped Kinoy and Dellinger, but, after being pressured by our discovery efforts, repudiated its denials. Since that time, the government has been slowly forced to turn over to the plaintiffs significant portions of the surveillance records being kept on them.

However, disclosure of the records has been seriously impeded by the government's claims of executive or national security privilege. In a landmark decision in the *Kinoy* case, the District Court declared former Attorney General Richardson's claims to be facially inadequate, and ordered reconsideration by Levi. Unfortunately, Levi did not repudiate the cover-up posture of privilege which CCR attorneys are presently challenging. While the records received to date cannot be made public at this time due to strict protective orders from the courts, they reveal a massive program of surveillance and deliberate government misconduct, and completely explode the mystique of "national security." If the claims of the plaintiffs are ultimately sustained by the courts, it will serve notice on the Justice Department that it cannot flaunt the law and the Constitution with impunity.

(Rhonda Copelon, with Jeremiah S. Gutman, Michael Ratner and Lou Raveson (Rutgers law student))

29. McSurely *v.* McClellan

Since 1967, the McSurelys have been in litigation with officials of the Commonwealth of Kentucky and Senator McClellan's Committee on Government Operations. Their long travail, in which they have been represented by CCR attorneys, was recently the subject of a series of articles by Richard Harris in the *New Yorker* magazine (Nov. 3, 10, 17, 1975), focusing on the importance of their case in the area of the Fourth Amendment.

Their original prosecution in 1967 by the State of Kentucky, under the Sedition Act, was stopped by a declaration of unconstitutionality of the statute, but Alan and Margaret McSurely were convicted of contempt of Congress in June, 1970, after refusing to comply with a subpoena for all their papers from the McClellan Committee. Prior to all of 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 was based on the prior illegal seizure of documents by state officials and Senate Committee staff. On Dec. 20, 1972, the Court of Appeals reversed the contempt convictions on the grounds mentioned. In a concurring opinion, Judge Wilkey held that the convictions must also be reversed on the ground that the Committee had failed to establish the relevance of the subject of its investigation.

Since 1968, the McSurelys have been seeking damages against Senator McClellan and some members of his staff, and against Kentucky state officials, because of the illegal search and seizure and because Senate committee officials received and disseminated illegally seized documents, some of which were private and personal papers which were concededly outside the business of the committee.

On October 28, 1975, the Court of Appeals for the District of Columbia, in a 2-to-1 decision, held that the Senator and some of his staff were entitled to immunity, even if their actions were outside the scope of their duties, as long as they appeared to be "facially legislative." CCR attorneys filed a petition for rehearing *en banc*. In February, 1976, the Court of Appeals granted the petition for rehearing and vacated its prior decision. It has set the case down for reargument *en banc* on April 19.

The case may prove to be an important precedent in cases of legislators harassing private citizens for personal or political purposes of their own, having nothing to do with legislative business.
(Morton Stavis, Nancy Stearns)

30. Clavir *et al. v.* Levi, *et al.*

This case concerns the finding of an illegal tracking bug on a car owned by Judy Clavir and Stew Albert, friends of Center attorneys Bill Kunstler and Margaret Ratner. Clavir and Albert came from upstate New York to visit the attorneys in December of last year and soon after, a small electronic device called a beacon or "beeper," which emits periodic signals that can be picked up on radio frequency, was discovered under the rear bumper of the car. Clavir and Albert noticed a three-car tail which followed them as they were leaving the city. They decided to remain in the city, and while all four were having dinner at a local restaurant, two young women entered, took a flash picture of the four and left. There was also evidence of a live tap on the telephone where they were staying. The beeping device, it was later discovered, was number 107 of an apparently large number of such devices used by the police and the FBI.

On the basis of these facts and other instances of surveillance on Clavir and Albert, a federal civil rights action was filed on March 5, 1976.
(Michael Ratner, Paul Chevigny)

31. Briggs *et al. v.* Goodwin, *et al.*

CCR lawyers are representing the VVAW "Gainesville 8" defendants who were acquitted of conspiring to disrupt the Republican National Convention in 1972, in a suit against Guy L. Goodwin of the Internal Security Division of the Justice Department, as well as two United States Attorneys and one FBI agent.

We charge Goodwin, who was widely condemned as the man who travelled the country running political grand juries, with having committed perjury by swearing under oath that there were no agents or informers represented by attorneys for the VVAW subpoenees. Subsequently, it was revealed that one of the individuals who Goodwin specifically swore was not an agent or informer turned out to have been a paid FBI informer for months before the veterans were even indicted, and was a CCR client.

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

In June, 1974, plaintiffs sought to take Goodwin's deposition. The government moved to stay the deposition and have the case moved to Florida so that Judge Arnow, who presided over the criminal trial, would have jurisdiction, particularly over the motion to dismiss. Judge Aubrey Robinson of the District Court in Washington, D.C. who now has the case before him, granted the stay, but ordered the government to file its motion to dismiss before him, prior to his ruling on the transfer motion. The government's motion to dismiss, based on a claim of prosecutorial immunity, and its motion to transfer were denied by Judge Robinson in November, 1974. Subsequently, however, Robinson dismissed the two U.S. Attorneys and the FBI agent as defendants, leaving Goodwin as the only remaining defendant. CCR lawyers are appealing this dismissal to the Circuit Court. In addition, Goodwin is appealing Judge Robinson's rejection of his claim of prosecutorial immunity and refusal to dismiss him as a defendant. Pending that decision, the taking of Goodwin's deposition has been stayed.

Appeal briefs have been filed, and oral argument on the two appeals has been scheduled by the United States Court of Appeals for the District of Columbia for April 13.

The underlying reason for this suit is the need to establish as a principle that prosecutors cannot go about violating the rights of defendants, secure in the knowledge that they are immune from both civil and criminal penalties. The Justice Department controls prosecution of federal cases, and obviously is unwilling to move against members of its own department. Furthermore, it is the body that *defends* U.S. attorneys and FBI agents charged with violating the law, thus making it doubly difficult to obtain results.
(Nancy Stearns, Doris Peterson, Morton Stavis, with Jack Levine, Cameron Cunningham and Brady Coleman)

32. Southern Africa Committee *v.* Clarence M. Kelley

The Southern Africa Committee is one of several citizens' groups opposed to racism and colonialism in Southern Africa which have lately been subjected to various forms of harrassment by the FBI and the Department of Justice. A request, under the Freedom of Information Act, for the FBI's file on SAC was denied by Director Kelley on the ground that the Committee was, indeed, under active investigation by the FBI. Suit has been filed in the Southern District of New York demanding production of the files and an end to the harrassment.
(Michael Davis and Peter Weiss)

33. Speller *v.* Wagner

On March 16, 1972, after ten years of incarceration at State hospitals and prisons, Richard Speller, an inmate at the Trenton State Hospital, was found dead, an alleged suicide. The circumstances of his death were highly questionable: He supposedly drew socks around his neck (strangulation by ligature is the technical term) — practically an impossible way of effecting a suicide. Moreover, an autopsy ordered by the family revealed a fact not mentioned in the State autopsy, namely, a fractured larynx, making the alleged suicide even more unlikely. Investigation revealed that there had been a struggle with guards several hours before his death, during which Speller was subdued and moved to an isolation cell. The family has instituted suit against the medical directors of the hospital and some of the guards, claiming that Speller died as a result of deliberate or negligent action on the part of the directors of the hospital and some of the guards.
(Morton Stavis)

34. Hampton, *et al. v.* City of Chicago

This suit is the consolidation of four separate lawsuits (*Hampton, Johnson, Brewer* and *Clark* against the City of Chicago) 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 suits are for damages and consolidated for trial. After years of legal wrangling and months of pretrial motions, the 47.5 million dollar suit opened the first week in February.

The six-person jury (and four alternates) took more than two weeks to select, due to the extremely low representation of black people (only 15 out of almost 200) in the jury pool. To add injury to insult, the government defense team challenged every black person, and almost every person under 50 until the first five jurors (four white women and one white man) were selected. The sixth juror is a Black woman.

United States District Judge Sam Perry expects the trial to last three to five months. Judge Perry has consistently sought to limit plaintiffs' discovery of COINTELPRO and other government involvement in the raid.

Plaintiffs will show that COINTELPRO and FBI infiltration and disruption of the Black Panther Party and black community organizations were part of a concerted effort to "prevent the rise of a 'messiah' who could unify, and electrify the militant black nationalist movement" (quoted from FBI memo targeting several Black leaders).
(James Montgomery, Herbert Reed, Jeffrey Haas, Flint Taylor, Hollis Hill, Peter Schmeidel, with Bill Bender and Morton Stavis)

Attacks on Lawyers

35. In the Matter of David Dellinger, *et al.* (Chicago Contempt Case)

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

Nevertheless, CCR attorneys appealed the 13 contempt convictions to the U.S. Court of Appeals for the Seventh Circuit, which, on September 6, 1974, affirmed them. On October 2, 1974, CCR attorneys petitioned for a rehearing before the full Circuit, or, in the alternative, before the same panel, but the Court denied that petition. A petition for a writ of *certiorari* to the U.S. Supreme Court was filed on March 24, 1975, the Supreme Court refused to review the case.
(Morton Stavis and Doris Peterson)

36. Effort of the Grievance Committee of the New York City Bar Association Against William M. Kunstler Because of His Conviction in the Chicago Contempt Case

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

After denial of the petition for writ of *certiorari* by the Supreme Court, CCR attorneys communicated with the Executive Committee asking that it take action to prevent the Grievance Committee from acting without the Executive Committee's approval. That Committee then so directed the Grievance Committee, and no action has been brought against Kunstler in this matter to date.
(Morton Stavis, Doris Peterson, Peter Weiss)

37. Turco *v.* Monroe County Bar Association

In the case of *Arthur F. Turco, Jr. v. The Monroe County Bar Association, et al.,* CCR attorneys brought an action to prevent the disbarment of attorney Arthur Turco and to get a declaration from the federal courts that the procedure followed in New York State denying attorneys a right to appeal from disciplinary judgments against them is unconstitutional. Attorneys are the only litigants in New York courts who do not have that right.

Arthur Turco had been charged with murder while he was an attorney for the Baltimore Black Panthers. After eleven months in pretrial confinement in Maryland, Turco finally went to trial. The jury was hung in his case, and the State threatened to try him again. Rather than go through many more months of pre-trial confinement, Turco pleaded guilty to a misdemeanor, all the while stating his innocence.

After Turco returned to New York to resume the practice of law, he was disbarred by the New York Appellate Division which took as fact all the unproven allegations of the Maryland prosecutor. His disbarment was stayed by a United States District Court judge after the CCR challenged the constitutionality of the procedure by which Mr. Turco was disbarred. Mr. Turco is continuing to practice law, although the Bar Association has made a motion to dismiss his complaint. Briefs were filed and the motion argued. We are now awaiting a decision.

Simultaneously with the above proceeding, CCR attorneys attempted to get the U.S. Supreme Court to review Mr. Turco's disbarment, but on October 6, 1975, they denied a petition for a writ of *certiorari*. The case will continue to be litigated in the U.S. District Court for the Western District of New York.

(Morton Stavis and Doris Peterson)

38. Taylor *v.* Hayes

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

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

On November 4, 1971, Judge Hayes entered an order disbarring Taylor from further practice in his court. Appeals were filed in both the contempt and disbarment actions, and on March 23, 1973, the Kentucky Court of Appeals set aside the disbarment order, but held that the contempt sentences should be served. The Court further ordered that the contempt sentences should be served concurrently, rather than consecutively, which, because it reduced the sentence to six months, denied Taylor the right to a jury trial.

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

On the morning of September 17, 1973, while Taylor was in the Jefferson Circuit Court in connection with a criminal case on which he was counsel, he was, without prior notice, arrested pursuant to an order from Judge Hayes. Later that day the Kentucky Court of Appeals refused a further stay of the contempt sentence. An application to Supreme Court Justice Potter Stewart was made immediately and on September 19, 1973, he signed an order releasing Taylor on bail pending final disposition of the case by the Supreme Court. The petition for *certiorari* was granted by the Court and argued on March 18, 1974. The petition raised such fundamental issues of due process as the right to a jury trial in contempt cases, judicial disqualification in contempt proceedings, and what constitutes a contempt under the Constitution. On June 26, 1974, the Supreme Court reversed Taylor's contempt conviction, ruling that Taylor had been denied due process when the judge summarily sentenced him for contempt of court without giving him notice of the charges against him or a reasonable opportunity to be heard. The case was returned to the State Court for a new trial before a different judge.

At the remand hearing, Judge Robert H. Spraggens dismissed five of the eight contempt charges. Taylor was convicted on the remaining three, but as no sentence was imposed, no appeal was taken.

(Doris Peterson with Robert Sedler)

Grand Juries

39. In re Martha Copleman

Martha Copleman, an attorney who worked with the Wounded Knee Legal Offense/Defense Committee, was subpoenaed to testify before a federal grand jury in Des Moines, Iowa, about her client, Frank Black Horse's failure to appear for trial in May of last year. A Motion to Quash has been prepared. The grounds of the motion are: (1) The subpoena threatens the right to effective assistance of counsel, not only for Black Horse, but for all Native American defendants that WKLO/DC represents; (2) requiring Copleman to testify would violate the attorney/client privilege; (3) the subpoena threatens the independence of the bar and discourages lawyers from representing political or unpopular clients. Copleman received an adjournment on her subpoena and no new date has been set. This matter is another example of the Justice Department's new boldness in attacking lawyers who represent political defendants. Copleman is one of 3 WKLO/DC lawyers recently subpoenaed to federal grand juries.

(Margaret Ratner)

40. In re Stolar (*Amicus*)

The case of Martin Stolar was an attempt by the Justice Department to use the grand jury to invade the confidential nature of a lawyer-client relationship. Attorney Stolar was subpoenaed by a grand jury for the purpose of forcing him to disclose confidential information provided to him by a client. Supporting Stolar's motion to quash the subpoenas, CCR lawyers filed an *amicus curiae* brief, which stressed the importance of an independent bar and the dangers posed by such subpoenas, i.e. the harassment and intimidation of the bar from vigorous and effective representation.

On May 22, 1975, Judge Pierce quashed the subpoena as violating the lawyer-client privilege and constituting an abuse of the grand jury, in that the grand jury should not be used as the investigative arm of the FBI.

(Rhonda Copelon, Liz Schneider and Doris Peterson)

41. In re Raymond

The women's and gay movements in Lexington, Kentucky became the first targets of the new wave of grand jury abuse. After extensive F.B.I. harassment, purportedly to investigate the presence of fugitives in that community, six people were subpoenaed to a grand jury because they exercised their right not to speak to F.B.I. agents. After a near-successful legal battle, they were incarcerated for contempt as recalcitrant witnesses. Jill Raymond, an active socialist-feminist, has been held in county jails since March, 1975.

CCR attorneys provided intensive consultation to local attorneys challenging the grand jury. Motions to quash the subpoenas charged that the grand jury was being unlawfully used, not only as an instrument of political harassment, but also as an arm of the F.B.I. to investigate the whereabouts of fugitives. By so doing, the grand jury transcends its proper judicial function — to determine whether indictments should be issued on crimes committed in its jurisdiction.

Although the record of abuse was well-substantiated, the District Court denied the motions and cited the witnesses for contempt. On appeal, however, the Sixth Circuit remanded the case for hearing on the question of whether the grand jury was being used to apprehend fugitives. The U.S. Attorney then filed a secret, *in camera* affidavit, claiming for the first time, that the grand jury was investigating the harboring of fugitives. This claim directly contradicted statements of the foreman of the grand jury and the informal admissions of the investigating F.B.I. agents that no one in Lexington knew the identities of the suspected fugitives.

An application to the United States Supreme Court for a stay of sentence, on the issues of grand jury abuse and the unconstitutionality of the *in camera* proceedings, was filed by CCR attorneys. The stay was denied. CCR attorneys are now assisting local attorneys in efforts to terminate Ms. Raymond's incarceration as punitive, rather than coercive, and to have her transferred from the cruel and dangerous conditions of the county jails.

(Rhonda Copelon, Doris Peterson, with Mary Emma Hixson, Bill Allison, Robert I. Sedler and Judith Peterson.)

42. In re Jack and Micki Scott

After lengthy proceedings in the United States District Court for the Middle District of Pennsylvania, Jack and Micki Scott have still not testified before a federal grand jury seeking to investigate the alleged harboring of Patricia Hearst and William and Emily Harris. Jack Scott has now been designated a target of the inquiry, and his subpoena has been dropped, but his wife's testimony is still being sought. The issue of one spouse being forced to testify against another raises spectres of Nazi Germany, where family members were urged to spy on each other and report to the authorities.

(William M. Kunstler, Margaret Ratner and Holly Maguigan)

43. In re Burns, *et al.*

On May 12, 1975, in a crowded courtroom in New York County Supreme Court, three alleged members of the Black Liberation Army (BLA) were sentenced to life imprisonment. After sentencing, correction guards claim to have discovered escape tools on these prisoners. Newspaper reports issued soon after, suggested that the targets of the police investigation were their four attorneys, three of whom are members of the National Lawyers Guild.

Shortly thereafter, twelve political activists (including 3 spectator lawyers) were subpoenaed to a New York grand jury

investigating the incident. The District Attorney's office claims they were subpoenaed because they were in the courtroom, although not all of them were actually there. Moreover, since spectators were not required to identify themselves to gain admission to the trial, the D.A.'s office could not have acquired that information without illegal surveillance. In fact, a detective with the New York "Red Squad" whose primary work has been gathering intelligence about political activists in New York, appeared at the grand jury.

CCR attorneys filed a motion to quash the subpoenas, claiming they were issued on the basis of illegal surveillance, and that their actual purpose is to gather intelligence and intimidate spectators from attending political trials, and lawyers from representing political activists. Substantial legal papers were filed, including forty-seven affidavits from journalists, teachers, lawyers, law students and political activists, who testified to the "chilling" impact of these subpoenas on their constitutional rights to freedom of association, public trial and effective assistance of counsel. State Supreme Court Judge Culkin denied the motion and ordered the subpoenees into the grand jury, but CCR attorneys successfully obtained a stay of enforcement, pending appeal to the Appellate Division. The appeal was denied in November 1975, and CCR attorneys then went to the Court of Appeals which denied the stay pending appeal. Finally, on November 21, the subpoenees went before Judge Culkin and demanded that the grand jury be polled as to whether it wanted to hear their testimony. When Judge Culkin refused to have the grand jury polled, the subpoenees refused to testify, and made a statement to the Court as to the reasons for their refusal. The District Attorney's office has not yet acted on this.

(Liz Schneider, Rhonda Copelon, William H. Schaap with Paul Chevigny)

Labor

44. United States *v.* Union Nacional de Trabajadores, *et al.* (UNT)

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

CCR attorneys have raised a wide variety of issues in pretrial motions, including the defendants' right to be tried by a jury; the right to conduct proceedings in Spanish (English is the official language in federal court in Puerto Rico); the composition of the jury; and the use of electronic surveillance against the defendants and their attorneys.

We have twice gone to the United States Court of Appeals for the First Circuit on this case, once on the jury trial question (*In re Union Nacional de Trabajadores*, #74-1073), in which the Circuit granted the petition for *mandamus* and ordered a jury trial; and again on the question of disclosure of surveillance.

The Circuit ruled that the District Judge must order the government to respond to defendants' and counsels' claims of electronic surveillance. The government denied everything, including surveillance of Juan Mari Bras, Secretary General of the Puerto Rican Socialist Party (PSP). CCR attorneys see this response as inadequate. The District Court has not yet ruled on the issue of inadequacy, but the Center is prepared to go to the First Circuit again, if necessary.

CCR attorneys have been working with sociologists in Puerto Rico on a massive challenge to the composition of the federal jury, particularly the impact which the English language requirement has on jury composition. A second part of the challenge deals with whether jurors actually understand English well enough to comprehend the proceedings on which they sit.

During the work on the jury challenge, the United States Supreme Court ruled in another case, *Muniz v. Hoffman* (in which the CCR filed an *amicus* brief on behalf of the UNT) that the statute we relied upon to gain a jury trial did not apply to the Taft-Hartley Act, under which UNT was charged with contempt. As a result, the government has sought to eliminate the jury trial in this case. CCR attorneys successfully blocked the government's efforts in the District Court, but on appeal from the District Court's ruling, the Court of Appeals agreed to revoke its earlier mandate despite the fact that the government could have appealed the ruling to the Supreme Court earlier and neglected to do so. More important, the challenge of the jury composition was brought as a result of assurances from an attorney at the National Labor Relations Board that the decision in the *Muniz* case would have no bearing on the Circuit's order for a jury trial. The withdrawal of the jury guarantee at this point has effectively punished UNT for seeking not only a trial by jury, but a legally constituted one.

CCR attorneys are now seeking to incorporate the work

done on the jury challenge into the case of *United States v. Delfin Ramos Colon*, discussed earlier.
(Liz Schneider, Nancy Stearns, Rhonda Copelon, William Schaap, with Mark Amsterdam)

45. N.L.R.B. *v.* Union Nacional de Trabajadores (Unfair Labor Practices)

These four unfair labor practices cases brought against the Union Nacional de Trabajadores by the National Labor Relations Board, involve charges of NLRB violations. The Board has held that the Union should be subject to a broad cease and desist order, aimed at prohibiting them from organizing. CCR attorneys, together with other North American lawyers, are assisting lawyers in Puerto Rico to fight the order, on the grounds that the unfair labor practices charges and the order itself, have been sought by the Board to destroy the independent labor movement in Puerto Rico. We further charge that the order is unconstitutional in that it violates the First and Fifth Amendments, by its breadth; by its failure to give notice to what is prohibited, and that it punishes the Union for First Amendment protected activity. Enforcement proceedings are currently pending in the First Circuit Court of Appeals on the issue of whether the broad order should be upheld, and argument was heard in February.
(Liz Schneider, with David Scribner, Ralph Shapiro and Paul Schachter)

46. Local 920

For more than five years, members of the International Longshoremen's Association, Local 920, in Staten Island, have been trying to bring union democracy to their local. Although the rank and file group has the support of a large percentage of the membership, they were prevented from getting the changes they were seeking. For several years, the local has operated without by-laws, in violation of the International's Constitution. Meetings were scheduled at times most inconvenient to the membership, and, for two years there had not been a quorum at a regularly scheduled meeting. The leaders of this struggle for democracy, the Committee for a Democratic Local 920, and their spokesperson, Frank DeMayo, continued to call for reforms. Finally, after DeMayo had spoken out against the leadership, and brought two related complaints to the NLRB, the union leaders met one evening, and "expelled" him—after more than thirty years in the union. DeMayo and the members of the Committee, with the legal support of CCR and the National Lawyers Guild Labor Law Project, brought two federal suits against the union leadership, and an NLRB complaint over the expulsion. The union has already been forced to reinstate DeMayo, and a long dormant By-Laws Committee is now drafting by-laws which the group will review, with the assistance of their lawyers. Although the time of the meetings has been changed, and numerous reforms are under way, the lawsuits are continuing, and will proceed until the various reforms requested by the Committee are voted upon by the membership.
(William H. Schaap, Liz Schneider, with Jerome Tauber, Vickie Ehrenstein)

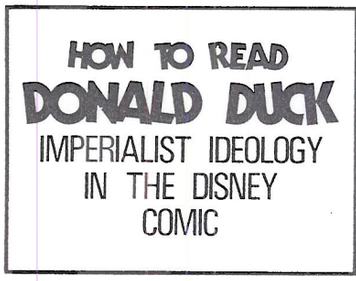
47. United States *v.* Allegheny-Ludlum Industries

After successfully challenging on behalf of rank and file steelworkers the constitutionality of the United Steelworkers of America's "No-Strike" agreement (also called the Experimental Negotiating Agreement or ENA), with the "Big Ten" steel companies, CCR lawyers became involved in a rank and file steelworkers' fight against an inequitable consent decree.

At the same time the ENA was upheld, the USWA leadership, steel companies, Department of Labor, and Equal Employment Opportunities Commission signed a consent decree to allegedly remedy race and sex discrimination in the industry. Rank and file steelworkers saw this decree as similar to the ENA in that it was agreed upon by the Union leadership without consultation with the membership, waived the workers' rights under Title VII of the 1966 Civil Rights Act, and offered inadequate remedies to race and sex discrimination.

A variety of individual steelworkers and interested organizations intervened in the case in opposition to the consent decree. CCR attorneys filed an *amicus curiae* brief, which argued that the decree should be set aside as it was the product of an abuse of Union democracy, once again constituting a conspiracy between the USWA leadership and the steel companies.

The Fifth Circuit has since upheld the consent decrees.
(Liz Schneider, Doris Peterson with David Scribner and James Logan)



First Amendment Rights

48. Donald Duck *v.* Commissioner of Customs

During the short-lived reign of the Popular Unity Government in Chile, two professors at the University of Chile produced a serious work of scholarship entitled *How to Read Donald Duck: Imperialist Ideology in the Disney Comic.* Their book became a minor classic, going through one Italian and fifteen Spanish editions since 1971. This year, it was translated into English, but the first shipment to the United States from Europe was detained by the Commissioner of Customs on the ground that the illustrations appearing in the book may constitute infringements of copyrights owned by Walt Disney Productions.

CCR lawyers, believing that the illustrations (which acknowledge Walt Disney's copyright) are a classic case of "fair use" of copyrightable material, while the seizure of the books is a classic case of abuse of the laws to suppress political dissent and unpopular opinions, have filed extensive arguments in favor of the admissibility of the books with the Commissioner of Customs. If his decision is unfavorable, they are prepared to take the matter to Court.
(Peter Weiss, William H. Schaap, Rhonda Copelon)

49. Domestic Satellite Cases

The Network Project, a research collective working in the area of communications policy, has been challenging the FCC's decision to approve a number of petitions from such corporate giants as Western Union, A.T. & T., RCA and Hughes Aircraft, for the construction of domestic satellite communications facilities, without any provisions for public access or "public dividends." CCR lawyers, believing that this policy raises important First Amendment problems, have assisted the Network Project in preparing petitions to deny some half dozen domestic satellite licenses. The dismissal of some of these petitions has been upheld by the U.S. Court of Appeals for the District of Columbia. However, the Court stated, in its opinion, that it expected the Federal Communications Commission to be responsive to the "public access" arguments of the petitioners. The litigation has also sensitized the FCC and the domestic satellite operators to the First Amendment arguments raised by the petitioners and has led to the formation of a new organization PISA (Public Interest Satellite Association), concerned with representing the interests of educational, minority and dissident groups in the new field of domestic satellite communications.
(Peter Weiss with Andrew Horowitz and Morton Hamburg)

50. Moroze *v.* Board of Education of the Essex County Vocational School District

Lewis Moroze, a non-tenured teacher at the Newark Vocational School, was denied renewal of his contract after three years of satisfactory service. He appealed to the Commissioner of Education, and finally to the State Board of Education, claiming that the real reason for the failure to renew his contract was his successful program of teaching Black experience and history to a student body which was 95% Black and Puerto Rican, and to the use of the well known book, *From Slavery to Freedom*, by John Hope Franklin, a noted Black historian.

After four years of litigation, in September, 1975, the State Board of Education ordered his reinstatement with back pay. In an opinion which has been widely noted, particularly in educational circles, the Board said:

> "In light of all that had transpired in the Newark urban area, it seems reasonable to conclude that school personnel would seek opportunities to provide relevant instructional materials. Lewis Moroze tried to do just that. He utilized and provided instructional materials with a relevancy and a purpose befitting the educational system of which he was a part . . . [He] introduced relevant and excellent instructional aids in his classroom in an effort to provide an understanding of the contributions of Black persons to the American social order. He came afoul of the school's administrator, who wanted him to hew to rigid, narrowly defined methods of teaching, even though those methods were failing on every hand . . ."

Moroze is at present back on his job, teaching at the Newark Vocational School and continuing his use of innovative educational techniques.
(Morton Stavis)

Miscellaneous

51. Wright *v.* Patrolmen's Benevolent Association, *et al.*

Hon. Bruce McM. Wright, a New York City Criminal Court Judge, is also a Black man, who is particularly sensitive to the inhumane and frequently illegal processes of the criminal court system. For five years, he took the Bill of Rights seriously, including the right to reasonable bail and the presumption of innocence. As a result, Judge Wright incurred the wrath of the Patrolmen's Benevolent Association (PBA), the District Attorney's Office, judges, and "law and order" forces generally. Judge Wright was transferred from criminal to civil court, where, presumably, his proclivity toward dispensing justice to poor people "would do less harm."

Together with attorneys from the National Conference of Black Lawyers and the National Lawyers Guild, CCR attorneys designed a federal civil rights action attacking the constitutionality of the transfer, and demanding Judge Wright's return to criminal court. The federal district court upheld, against a motion to dismiss, Judge Wright's claims that the transfer was instigated to punish him for his race, bail decisions and controversial public statements concerning the administration of justice.

After the suit was filed, the Criminal Courts Committee of the Association of the Bar of the City of New York investigated the transfer. The Association filed a report supporting Judge Wright's performance as a criminal court judge and his approach to bail; criticizing his attackers as "unfair and uninformed;" the court administration and the bar for their failure to adequately defend him; and urging that he be immediately returned to the criminal bench. In addition, the Association Report identifies Chief Judge Breitel of the Court of Appeals as having sought the transfer for reasons which he "declined to state publicly." Despite this, efforts to begin discovery of judges and others who have information concerning the transfer are being obstructed by the Association, which is claiming yet another unprecedented "privilege" to prevent our inquiry into the investigation underlying its Report and cover up the real basis for the transfer.

(Rhonda Copelon, William M. Kunstler, William H. Schaap, Morton Stavis, Peter Weiss, with Mark Amsterdam, Stephen Latimer, and Lennox Hinds, Lawrence Cumberbatch and James Carroll of the National Conference of Black Lawyers)

52. United States *v.* Briggs, Application of Beverly and Chambers

Ten persons were charged by a federal grand jury with conspiracy to disrupt the 1972 Republican National Convention in Miami. Seven were indicted and after a month long trial acquitted by the jury of this and all related charges. The remaining three were denominated "unindicted co-conspirators." Two of these, Beverly and Chambers, petitioned the District Court to expunge any reference to them from the conspiracy count on the grounds that their being accused in a public document by a quasi-judicial body of a serious crime, without being afforded the opportunity to contest or in any way challenge that accusation, constituted a violation of due process and grand jury secrecy and exceeded the powers of a federal grand jury. The District Court denied relief; the Court of Appeals for the Fifth Circuit, however, unanimously reversed and remanded the case with directions that all reference to Beverly and Chambers be expunged from the conspiracy indictment. Noting that "the issue for decision appears to be of first impression at the appellate level," the Court of Appeals held that appellants' denomination as unindicted co-conspirators was a violation of due process of law and exceeded the power and authority of the grand jury. The Court observed that the use of this tactic by the prosecution "was not an isolated occurrence in time or context," and cited several other political conspiracy cases where this device had also been employed by the Justice Department. Said the Court: "There is at least strong suspicion that the stigmatization of appellants was part of an overall governmental tactic directed against disfavored persons and groups. Visiting opprobrium on persons by officially charging them with crimes while denying them a forum to vindicate their names, undertaken as extra-judicial punishment or to chill their expressions and associations, is not a governmental interest that we can accept or consider." The government did not appeal the decision of the Court of Appeals, and the latter therefore stands as the definitive opinion on this legal question.

(Jim Reif)

53. State *v.* Robert Rice

Rice is the only member of the "Harlem 6" (originally charged with the murder of a Harlem shopkeeper in 1964), who is still in jail. Although a federal judge held that he had been unfairly convicted, this ruling was eventually reversed by the appellate court. However, four of his co-defendants were released after their third trial, when the jury voted 7-5 for acquittal, and a fifth, who pleaded guilty to a lesser charge, is now on parole. Rice, who runs much of the athletic program at the Greenhaven Correctional Facility, is supported in his pending application to Governor Carey for commutation of sentence, by such persons as Episcopal Bishop Paul Moore, Representative Charles Rangel, Rev. Donald Harrington and the Warden and many correction officers at Greenhaven.

(William M. Kunstler, Lewis Steel, Conrad Lynn)

54. Wallace *v.* Kern (Brooklyn House of Detention)

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

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

The Justices and Legal Aid Society appealed the injunction to the United States Court of Appeals, which reversed on jurisdictional grounds and refused to consider plaintiffs' mo-

tion to reconvene the case before the entire court. The U.S. Supreme Court refused to hear the case, deciding not to grant a petition for *certiorari*. Justice Douglas dissented.

Plaintiffs next conducted hearings into allegations that since the State could not provide speedy trials to incarcerated defendants it violated their Sixth Amendment rights. The District Court issued another injunction ordering defendants to be tried within 7½ months after arrest or be paroled pending trial in order to reduce the oppressive legal and psychological effects of pretrial incarceration. The government again appealed, got a stay of execution of the injunction, and the case was reversed by the Court of Appeals for the Second Circuit in July 1974. A motion to reconvene the panel was again denied and a petition for *certiorari* was filed and denied by the Supreme Court.

In July 1974, plaintiffs conducted a thorough trial with respect to how the bail system discriminates against pretrial detainees unable to purchase their freedom, delving into statistical studies, expert testimony and official documentation to establish their case.

In February, 1975, the District Court issued an opinion granting plaintiffs evidentiary bail hearings upon request (to allow information bearing on their roots in the community and other pertinent data to be put before the judge), and a written statement of reasons for the amount of bail set (to facilitate bail review). However, this decision was overturned by the Court of Appeals on jurisdictional grounds. Plaintiffs have filed a petition for *certiorari* to the Supreme Court, which, if it accepts the case for review, will have an opportunity to vindicate the constitutional rights of pretrial detainees.

A portion of the District Court's order, pertaining to the creation of adequate facilities for lawyer-client interviews in the court bull-pens, was not appealed by the government, and plans are underway for the building of such facilities.

(Dan Alterman, Elizabeth Fink, Stever Latimer, law student John Boston, and legal workers Mike McLaughlin, and Merle Ratner)

55. Matter of Jeanne Baum

Jeanne Baum is a Blackfoot Indian woman, who removed her 13-year old daughter, Siba, an honor student, from Selden Junior High School and refuses to allow her to return until the school system does something about racism. She removed her daughter when Siba's English teacher returned a book report on the autobiography of Geronimo, an Apache Chief, with a criticism ending with the words ". . . the Indians got what they deserved."

Ms. Baum has been charged in Suffolk County Family Court with neglect and a trial on that matter was held on January 2, 1976. We are awaiting the Court's decision.
(William M. Kunstler)

56. Drinan, *et al. v.* Ford, *et al.*

Beginning with *Massachusetts v. Laird* in 1971, the Court of Appeals for the First Circuit had demonstrated a greater reluctance than most other courts to dismiss as "political" suits challenging Presidential war-making without Congressional authority.

On January 31, 1975, Center attorneys, representing 21 members of Congress and one active-duty marine, moved, in the District of Massachusetts, for an injunction restraining President Ford and other named members of the Executive Branch from conducting military and paramilitary operations in Cambodia in violation of the Constitution and specific Congressional prohibitions.

On March 25, 1975, Judge Frank Freedman granted the government's motion to dismiss by refusing to draw a line between the aid voted for Cambodia and the military operations complained of. The First Circuit granted an expedited appeal and, during oral argument, indicated some sympathy for the plaintiffs' position and little for the government's.

However, the case was overtaken by events, i.e. the end of the war in Cambodia, and the appeal was dismissed as moot on May 27, 1975.
(Peter Weiss, Rhonda Copelon, Doris Peterson, Robert L. Boehm with Nancy Gertner)

EDUCATION

The Center expends tremendous energy on winning its legal cases, but its efforts do not end once the court battle is over. We know that it is the understanding and the implementation of the rights won which make the victories worthwhile.

Distribution of Materials

To that end, CCR has developed a variety of methods to disseminate that information. The distribution of briefs, motions and memoranda to hundreds of lawyers has undoubtedly benefited countless defendants whose rights were being similarly violated. Although it is not financially feasible to print the dozens of major briefs produced at the Center each year, it has been possible to keep interested people informed of CCR's work through the yearly distribution of the Annual and Docket Reports. This results in a great many requests for legal papers with which we comply as rapidly as possible. In addition, the Center sends out a "docket update" each year, which serves to fill people in on the latest developments in some of the major cases. In this way, attorneys and other interested persons throughout the country are kept informed of new legal techniques and novel uses of established law as they are developed by the CCR.

Expanding the Program

This year, the Center has both expanded its general educational program and instituted a special one just for attorneys, to supplement the above-mentioned materials. For its general audience, CCR will provide articles written in laypersons' language on various aspects of the legal system.

The "lawyer program" provides more technical details, which CCR feels will be of particular interest to people practicing law. The first, former CCR staff attorney Mark Amsterdam's law review article, "The One-Sided Sword: Selective Prosecution in Federal Courts," was sent to 1,000 attorneys, law libraries, law students and legal workers, who in turn requested CCR to send copies to their colleagues. In this way, the Center has been able to make available valuable legal information to an increasing number of members of the legal community. Other mailings will include bibliographies of CCR case materials, law review articles, and other literature written by Center staff persons.

Freedom of Information Act

In the spring of 1975, CCR prepared a sample letter to the CIA, and suggested to contributors that they take advantage of the Freedom of Information Act, and write to the CIA, FBI and other government agencies requesting any personal files these agencies might have. The Center asked to be advised of the results, and has received some 300 responses to date. Since responses continue to arrive each week, it is expected that it may take several months to complete the investigation and analyze the results.

Public Forums

A crucial part of the Center's educational program is making its staff available for speaking engagements at law schools, lawyers' organizations, community groups, public meetings and radio and television programs. In the past year, Center staff members have traveled to more than twenty states to fulfill more than 150 speaking engagements, on such topics as prisoners' rights, women's rights, electronic surveillance and grand jury abuse, to name a few. Recently, CCR attorneys were panelists in a three-day "Women in the Law" conference in Philadelphia, attended by over 2,000 women attorneys, law students and legal workers.

Recognizing the necessity to keep abreast of parallel legal situations in other countries, CCR sent legal observers to political trials in Germany, Chile, and the Dominican Republic. Upon return, the observers gave public lectures on their experiences abroad. In addition to staff travel, CCR received courtesy visits from several attorneys from other countries. These included Ismail Mahomed, the only non-white ever named Senior Barrister in South Africa; and Ambassador Nguyen Van Luu, of the Republic of South Vietnam, who is also an attorney. Through such visits, CCR staff has been able to learn more about foreign legal systems, and to describe its own work in this country.

Teaching

In the past year, two Center staff attorneys taught law school courses on "Women and the Law," and a third attorney resumed teaching her course this spring. CCR attorneys also run "training sessions" in their areas of specialization, such as wiretap law, grand jury abuse, and jury composition and selection, at the request of the National Lawyers Guild and the National Jury Project (See below).

The CCR also shares its legal experience with others through a column in the National Lawyers Guild newspaper, which reaches lawyers, law students, legal workers and prisoners.

As a result of our work in the *Mandel* case (See Docket #4), CCR is planning a series of seminars to train women lawyers to represent rape victims. These seminars not only will include a review of new developments in rape law, but discussion of courtroom strategy and exploration of new approaches. In addition, CCR will seek the participation of rape victims who have been through the trial experience; members of the sex crimes squad; and women from various women's organizations which have been doing support work for rape victims.

Finally, Center lawyers are called upon on a daily basis to act as consultants to other lawyers and paraprofessionals on cases containing issues in which the Center has acquired expertise.

National Jury Project

Founded early in 1975, the National Jury Project is cosponsored by CCR, the National Lawyers Guild, the National Conference of Black Lawyers, the Civil Liberties Defense Fund and the National Emergency Civil Liberties Committee. The NJP was formed to aid elimination of discrimination in the jury system through jury composition challenges,

analysis of jurors' attitudes, and legal and educational campaigns to preserve the unanimous jury verdict. CCR staffpersons have been actively involved with the NJP since its inception, serving both on its Executive Board and the Steering Committee. Rhonda Copelon worked on the jury composition challenge in the case of *State v. Joan Little* (see Docket #14) and Greg Finger worked on the jury selection project for the case of *United States v. Pat Swinton*. In both cases, the result was complete acquittal. National Jury Project staff work closely with CCR on a number of cases including: *U.S. v. Delfin Ramos* (see Docket #12), in which they are helping to coordinate a study to expose the exclusion of non-English speaking people from juries in Puerto Rico; and *State v. Spencer*, (see Docket #13), in which they are planning a study to determine racial prejudice among grand and petit jurors in Queens, New York.

National Study Committee on Indochina
(formerly Recriminations Committee)

Shortly after the end of the fighting in South Vietnam, and following the installation of the Provisional Revolutionary Government in Saigon, President Ford announced that there should be "no recriminations." A large segment of the community—particularly the people most active in the anti-war movement over the past decade—found this statement not only incredible, but dangerous. They felt that if the government's plan to get the people to forget about Vietnam were successful, some of the most costly lessons of history could be lost. There should be recriminations. The American people *must* remember Vietnam, as the German people must remember Auschwitz, and the Japanese people remember Hiroshima.

Under the auspices of CCR, a large group of anti-war activists and scholars is attempting to compile information about both the war, and the war crimes of many of our "leaders" as well as plan some form of monument to the Vietnam war. CCR has provided legal and logistical support for plans to create a Vietnam people's archives and museum, to preserve the history of the war; and CCR attorneys have participated in plans to continue the investigations of scholars into the real decision-making processes during the war—through Freedom of Information Act lawsuits—and to aid the scholars in the preparation of informative indictments of government figures, using many of the principles of Nuremberg.

Pre-Trial Detainees' Manual

As a result of the overwhelming response to *Wallace v. Kern* from both attorneys and pretrial detainees all over the country, members of the Brooklyn House of Detention Project determined that there was a great need for some kind of repository for information pertaining to pre-trial detention, and the Legal Manual for Pre-trial Detainees was born.

This Manual will include chapters on the rights of detainees and "how to" information to assist them in filing their own civil rights actions, as well as doing work on their own cases. A broad based editorial board of people with knowledge of the various areas to be covered has been formed, and an editor has been hired. The Manual will have both English and Spanish editions, and should be completed this fall.

Table of Cases

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