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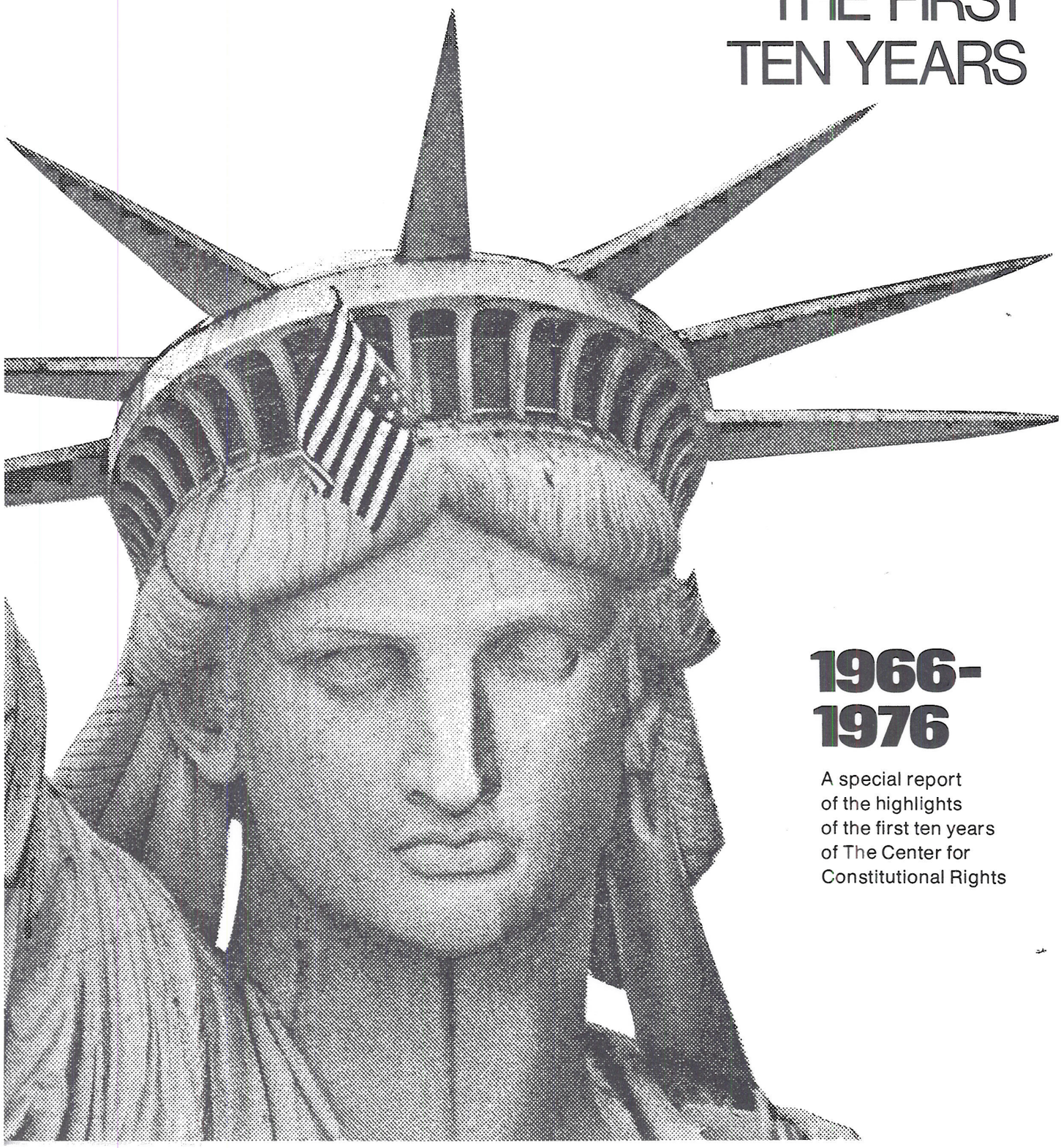
CCR

THE FIRST TEN YEARS



1966-1976

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

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

CCR Center for Constitutional Rights

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

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

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

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

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

1966-67

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

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

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

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

Civil Rights Movement

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

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

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

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

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

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

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

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

School Desegregation

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

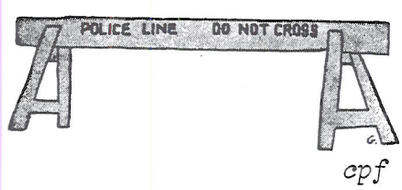
1968-69

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

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

Adam Clayton Powell

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



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The War in Vietnam

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

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

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

Chicago

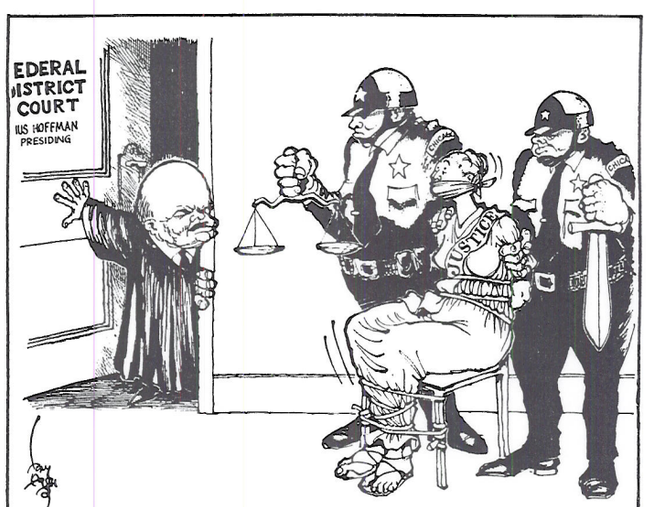
The Democratic Convention in 1968 was viewed by many as a test of the ability of our political structures to respond to the issues of the day. The war in Vietnam and the mistreatment of black, third world and poor people had been debated and fought on an unprecedented scale. When thousands of Americans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

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

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

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

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



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

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

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

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

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

Attacks on the Black Movement

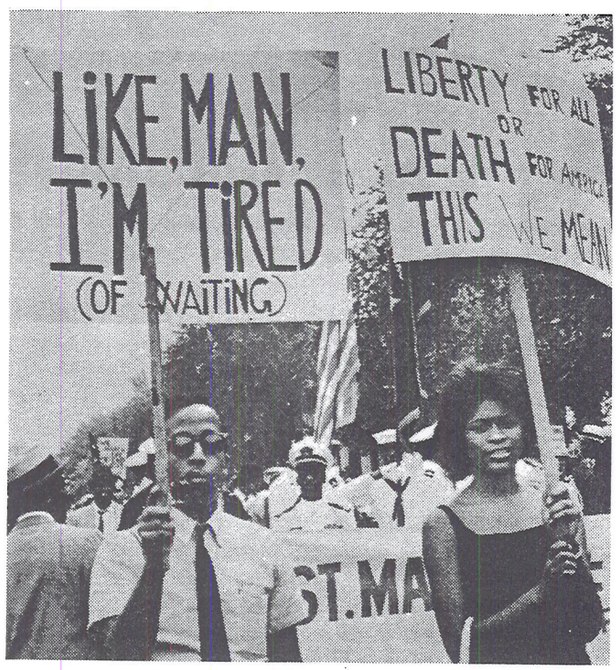
The black movement had become a major political force in the United States, and as its militancy increased, the government stepped up efforts to destroy it. Through the work of CCR and other groups it is now known that the FBI had developed a secret plan to discredit all political leaders and the movements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

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

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

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

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



Enemies List

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

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

Attacks on Lawyers

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

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

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

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

1970-71

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

Women's Rights

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Okinawa Project

As the United States intensified its involvement in Southeast Asia, more and more young men found themselves fighting overseas in a war they did not support, under conditions of extreme racism and authoritarianism. Their increasing conflicts with the military resulted in a multitude of criminal charges—ranging from murder, riot and assault to the more common charges of AWOL and possession and sale of drugs—with nowhere to turn for help. In response, the Center sent a lawyer and a legal worker to set up a military project on the island of Okinawa to provide legal counsel and assistance to the servicemen and women and their dependents. Okinawa, 67 miles long, at that time had over 150 U.S. military installations and 40,000 military personnel.

More important than the nature of the charges against the GI's was the manner in which their defense was conducted. In the hundreds of courts-martial handled by the project, racism, influence of prosecutors, judges and jurors, selective enforcement of regulations, and other similar constitutional violations were constantly exposed and attacked. This work was supplemented by CCR staff in New York, which provided briefs, research and representation on appeal. During their two year tenure, the project staff also developed a women's center for servicemen's wives, servicewomen and Okinawan women.

The impact of the project did not go unnoticed by the military, which promulgated a series of regulations barring the project's staff from military bases and denying them access to their clients, potential witnesses, and legal materials. The staff members were also subjected to a campaign of personal discreditation in an attempt to keep GI's from seeking their assistance. Under the pressure of a federal suit initiated by CCR (*Amsterdam v. Laird*), the military relented and revoked its illegal regulations.

In September, 1972, the viability of the project ensured, its permanent sponsorship, administration and staffing were turned over to the National Lawyers Guild, which developed projects in other countries based on this model.

Congressional Committees

Those at home protesting the war continued to meet with attack, and many suffered under the repressive last gasp of the Congressional Investigating Committees.

Although by 1970 the Committees had lost nearly all of their power, they could still issue subpoenas and hold hearings. In March, 1970, the Eastland Committee (the Senate International Security Subcommittee) issued a still undisclosed number of subpoenas seeking bank records and other documents of organizations which were in some way identified with the anti-war movement. CCR lawyers drew on techniques developed by their founders in challenges to the constitutionality of the House Un-American Activities Committee in cases such as *Stamler v. Willis*, in which the United States Court of Appeals for the Seventh Circuit ruled in 1969 that a witness subpoenaed by a congressional investigating committee could challenge, in a civil action, the constitutionality of the subpoena and the committee.

Civil actions were filed on behalf of several of the organizations and individuals whose records had been subpoenaed (*United States Servicemen's Fund v. Eastland, Liberation News Service v. Eastland, Ansara v. Eastland*). For the first time in many years, subpoenas issued by congressional investigating committees were actually blocked by the federal courts because they violated the First Amendment rights of the organizations and their members. CCR succeeded in protecting USSF's bank records from 1971 to 1975, a critical period in the life of the G.I. movement which that organization assisted. In August, 1973, the United States Court of Appeals for the District of Columbia invalidated the Eastland subpoena, but in 1975 the Supreme Court ruled that Senators and their aides were immune from suits such as *USSF v. Eastland*, never reaching the First Amendment questions.

Grand Jury Abuse

By 1971, grand juries had emerged as successors to the discredited legislative investigating committees. These grand juries, armed with a new immunity statute that took away the subpoenees' Fifth Amendment protection against self-incrimination, not only harassed student and peace movement activists, but leading scholars critical of the war. CCR lawyers used the experience gained combatting the legislative committees to fashion creative litigation strategies against the new techniques of persecution being developed by the government to stifle dissent.

While preparing the Chicago 7 appeal, Arthur Kinoy was served with a subpoena to answer questions concerning his daughter Joanne's whereabouts. Center lawyers challenged the subpoena on grounds of harassment, the attorney-client and parent-child privileges, the First Amendment, and the fact that his daughter's residence was no secret. The subpoena was withdrawn.

Center lawyers then succeeded in preventing Sister Carol Vericker, one of six nuns who refused to testify

1970-71

about anti-war activities, from being incarcerated for contempt (*In Re Vericker*).

Center lawyers have consistently taken the lead in attempting to protect the rights of witnesses subpoenaed before the grand jury. In such other cases as *In Re Rodberg* (involving the subpoena of Senator Gravel's aide to testify before the "Pentagon Papers grand jury"), *In the Matter of Ralph Stavins* (also involving the Pentagon Papers grand jury), and *In the Matter of WBAI-FM* (refusal to turn over a note from the Weather Underground), the Center either prevented clients from being jailed for contempt, or obtained their release promptly after such jailing.

War in Vietnam Continues

The grand jury was not the government's only means to stifle dissent. A significant victory was won by CCR attorneys in the case of *Jeanette Rankin Brigade v. Capitol Police* when a statute prohibiting demonstrating, walking, or standing in groups on Capitol grounds was declared unconstitutional as violative of First Amendment freedoms. Center lawyers also successfully defended many others prosecuted for exercising their First Amendment right to protest the war. Among these were a group of nuns arrested for demonstrating inside St. Patrick's Cathedral and 15 Vietnam War veterans, who for two days took over the Statue of Liberty, placing an inverted flag on the statue's crown as a symbol of liberty in distress.

While continuing to support those engaged in dissent, the Center strove to shape litigation which would expose the unconstitutionality and criminality of the war in Southeast Asia. On November 17, 1971, the Mansfield Amendment became law. In part, it requested the President to set a date for the complete withdrawal of American forces from Indochina. In signing the law, Nixon declared that he did not consider that provision of the Amendment binding on him.

Center lawyers filed a suit (*Brown v. Nixon*) in federal court in Massachusetts to enjoin the President from failing to comply with the Mansfield Amendment. Going against the conventional wisdom that the President is immune from suit, CCR named him as a defendant and developed an extensive analysis of why it was proper to do so. Their position was eventually validated by the Watergate prosecution.

When the war escalated in April, 1972, the Center moved for a preliminary injunction to restrain the bombing and for a ruling on the question of the binding effect of the Mansfield Amendment. The ruling was indefinitely delayed due to the illness of the judge, but the case became a model for similar suits across the country.

Hampton

Following the murders of Black Panther Party leaders Fred Hampton and Mark Clark by the Chicago police in December, 1969, CCR and attorneys in Chicago filed a massive "wrongful death" lawsuit on behalf of those injured in the raid and the families of Clark and Hampton (*Hampton et al v. Hanrahan et al*).

The case required infinite patience and voluminous pre-trial discovery, for the government fought disclosure of its abhorrent role every step of the way. The suit continues today and has succeeded in revealing that the murders were part of the secret FBI counterintelligence program (COINTELPRO) to wipe out the Black Panthers and other leaders of the black movement. Because of the impossibility of remaining in Chicago for the years required for this litigation, the active participation of Center attorneys in the case ended when the pre-trial work was completed and the trial began in 1976.

Attica

The inmate uprising at Attica State Prison and its brutal quelling four days later thrust the prison issue into public consciousness. Shortly after the massacre, it became clear that any prosecutions contemplated by the State would be directed against the inmates and an attempt would be made to cover up the role and responsibility of former Governor Rockefeller and other State officials.

To prevent this, CCR lawyers filed a suit in federal court to force State and federal prosecution of Nelson Rockefeller and the other State officials responsible for the brutality at Attica. The suit was dismissed, but provided a forum for focusing attention upon those truly guilty of the crimes committed at the prison.

Center lawyers further undertook the defense of Dacajeweiah (John Hill). Despite clear evidence of the highly selective nature of the prosecution, the fact that all but one of the remaining indictments against other Attica inmates were dropped, the extreme prejudice against the prisoners felt by the Buffalo jury pool, and the presence of a government informer in the defense camp, Dacajeweiah became the scapegoat of Attica and is presently serving a 20 years to life sentence. Center lawyers and others continue to work for his release.

1972-73

1972 • Christmas bombing of Hanoi; Harrisburg Conspiracy trial; 46 injured aboard U.S.S. Kitty Hawk in racial dispute.

1973 • Nixon inaugurated for second term; Supreme Court declares restrictive abortion laws unconstitutional; Nixon proposes drastic cuts in social welfare programs; Indians occupy Wounded Knee for 70 days; all charges against Ellsberg and Russo dismissed due to "improper government conduct"; Spiro Agnew resigns; Nixon Watergate tapes subpoenaed; Gainesville 8 acquitted; Chilean President Salvador Allende assassinated.

The Gainesville 8

In 1972, the Nixon administration brought charges against 8 members of the Vietnam Veterans Against the War (VVAW) for conspiring to violently disrupt the Republican National Convention. The Center entered this major conspiracy case not only to win acquittal, but to publicly expose the political motivations of the Nixon administration's attempt to discredit one of the most effective anti-war organizations in the country. The full impact of those motivations was not revealed until the Watergate hearings, when it was claimed that one justification for the Watergate burglary was the need for security at the Republican National Convention from VVAW and other groups. As VVAW was known to be a non-violent organization, it would have been difficult to make this convincing unless they were publicly charged with a violent plot.

The chronology of events strongly supports this view. In less than a month after the arrest of the Watergate burglars on June 17, 1972, VVAW members from all over the country were subpoenaed to appear before a federal grand jury in Tallahassee. Their appearances were crammed into a four day period of time, obviously to coincide with long-planned VVAW demonstrations at the Democratic National Convention in Miami. Six (later eight) of those subpoenaed were indicted for conspiracy to disrupt the Republican National Convention.

Center lawyers, working in cooperation with lawyers from Texas and Florida, filed dozens of pretrial motions, raising charges of bad faith prosecution, electronic surveillance of the defendants and their lawyers, and the presence of agents and informers in the defense camp.

During the trial, defense counsel found FBI agents hiding in the closet next to their office. It was also revealed that every main witness for the prosecution was a government agent or informer.

At the conclusion of the 5-week trial, the jury reached a not guilty verdict in a matter of hours. But the government had succeeded in forcing the defendants and their lawyers to expend enormous amounts of time, money and energy to keep out of jail people who should never have been arrested, and defeat a prosecution that should never have been brought.

Government Misconduct

Throughout its defense of political activists CCR has continuously raised the question of illegal electronic surveillance. CCR first challenged the Nixon Administration's policy of national security wiretapping in 1969 during the Chicago 8 case. At that time the government had announced that it did not need a court order to wiretap anyone it considered to be a threat to domestic security. Although the courts were not always responsive, and the government usually denied the existence of wiretaps, the Center persevered. That perseverance, coupled with the Nixon Administration's flagrant violation of constitutional rights and consistently inadequate denials of surveillance, in 1972 resulted in one of the Center's most significant and far-reaching legal victories.

In a prosecution for conspiracy to destroy government property (*United States v. Plamondun et al*), the government admitted wiretapping without a warrant, and a courageous judge ordered that the defendants be given the records of the wiretaps. In an attempt to avoid disclosing the records, the government took the issue to the Supreme Court (*United States v. United States District Court*). In a landmark opinion, the Court unanimously declared warrantless domestic electronic surveillance unconstitutional. This decision rejected the government's attempt to gain legitimacy for its experiment in total unreviewable Executive power to invade people's privacy and monitor their political activity. As a result, the government was forced to drop a series of political prosecutions, including those against Leslie Bacon, Abbie Hoffman, and many of the May Day defendants, rather than reveal its illegal surveillance program.

The dropping of prosecutions and the Watergate bugging itself suggest the sweeping nature of the government's wiretap program. CCR pressed affirmatively to expose this abuse of power. After the government's admission of wiretapping in Chicago, CCR filed the first civil wiretap action on behalf of the

1972-73

defendants and nine anti-war and black organizations (*Dellinger v. Mitchell*). Civil discovery techniques forced disclosure of a significant part of the domestic wiretap program. The carefully analyzed record developed was used by attorneys throughout the country and was a crucial source for the wiretapping section of the Report of the U.S. Senate Select Committee on Intelligence.

Having lost the battle for absolute power to wiretap in the name of domestic security, the government has continued to assert this authority in the name of "foreign security." Another civil damage action (*Kinoy v. Mitchell*) has revealed that this is just a different label for invading the privacy of domestic groups and individuals, and seeks a definitive ruling from the courts on the unconstitutionality of the "foreign security" loophole.

Both *Kinoy* and *Dellinger* are models for similar litigation and together have uncovered a wiretapping program aimed at just about every progressive movement since 1954. CCR attorneys continue to press for further disclosures against the government's claims of secrecy.

Civil damage actions are one recourse for victims of government misconduct. Criminal prosecutions of government officials are another. In *Briggs et al v. Goodwin*, Center lawyers on behalf of the Gainesville defendants have sued to compel the goverment to appoint a special prosecutor to seek the criminal indictment of Guy Goodwin of the Internal Security Division of the Justice Department, and to reimburse the defendants for the cost of their legal defense. Goodwin, known in the early '70's as the "grand inquisitor" of the politically motivated grand jury, falsely testified to the grand jury which indicted the Gainesville 8 that there were no agents or informers among CCR's clients. One of the witnesses represented at the grand jury by CCR lawyers actually had been a paid FBI informer for months before the Veterans were even subpoenaed. Goodwin's perjury guaranteed him a steady flow of information about the defense strategy right up to the time of the trial. Despite his false testimony, the Justice Department is still unwilling to prosecute one of its own.

Wounded Knee

After U.S. Marshals, armed with materiel illegally supplied by the Pentagon, marched on the Indians at Wounded Knee, the government attempted to justify its violence and distort the events of the occupation by bringing a sweep of criminal charges against leaders and members of the American Indian Movement and their supporters.

Center lawyers took responsibility for two major cases, reflecting the breadth of the government's attack.

First, the Center represented AIM leader Russell Means, who, along with Dennis Banks, was charged with "interfering with federal officers," assault, conspiracy and numerous other crimes (*United States v. Banks and Means*). Before trial, CCR succeeded in knocking out six of the charges as lacking any evidence to support them. During the 8½ month trial, it was brought out that the FBI had altered or suppressed key documents and conducted illegal electronic surveillance and that an FBI Special Agent had perjured himself on the witness stand. In addition, the prosecution presented a witness who testified that he had seen the defendants conduct criminal acts at Wounded Knee at a time when he himself was locked up in the Pine Ridge Reservation Jail.

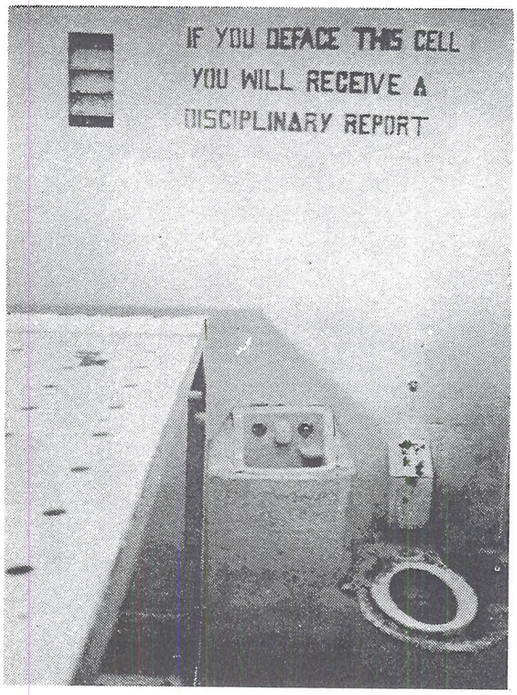
During deliberations, the jury initially voted 12-0 to acquit, but one of the jurors became seriously ill before the final vote. When the government refused to accept an 11-person verdict, the judge dismissed the charges, stating the prosecution's conduct had "polluted the waters of justice."

The government's vindictiveness reached even those who provided humanitarian support in an airlift of food and medical supplies to the occupiers of Wounded Knee. Center lawyers filed pre-trial motions, alleging the bad faith of bringing criminal charges against a Boston doctor and others for "aiding and abetting" starving people, and eventually the prosecution was dropped. (*United States v. Zimmerman*).

Brooklyn House of Detention

Because of its work in trying to keep activists out of jail, the Center was asked to become involved in litigation started by seven indigent inmates awaiting trial in the Brooklyn House of Detention. Outraged at the conditions of their pre-trial confinement, the setting of excessive bail, lack of adequate counsel, denial of speedy trial rights, coercion in plea bargaining and lack of due process and equal protection because of their economic status, these men had filed a handwritten class action complaint and instituted a peaceful boycott of the Brooklyn Supreme Court to dramatize their grievances. Shortly thereafter, lawyers from the Center and the National Lawyers Guild became counsel in the suit (*Wallace v. Kern*), which led to the development of the Brooklyn House of Detention Project, located at CCR.

While many of the legal victories in the suit were



later overturned at the appellate level, the issues received wide support from the public and Legal Aid Society attorneys, who represent most indigent defendants in the city. As a result, many of the changes for which the inmates were fighting were implemented despite the appellate court's unwillingness to provide relief.

One of the most important and unique aspects of the suit was that it allowed inmates to break down the traditional view of indigent prisoners as passive objects of institutional manipulation. Prisoners testified, helped with the preparation, conducted cross-examination, participated in the strategy decisions, and, of course, conceived the original lawsuit. The concept of the prisoner as responsible actor rather than passive victim has been extended in a spin-off project, a legal manual for pre-trial detainees. Initiated by two former inmates of the Brooklyn House, the manual is designed to aid the detainee in learning how to assert his or her rights, and includes chapters on arrest, arraignment, bail, plea bargaining and many others. The manual has been completed, and will be published shortly.

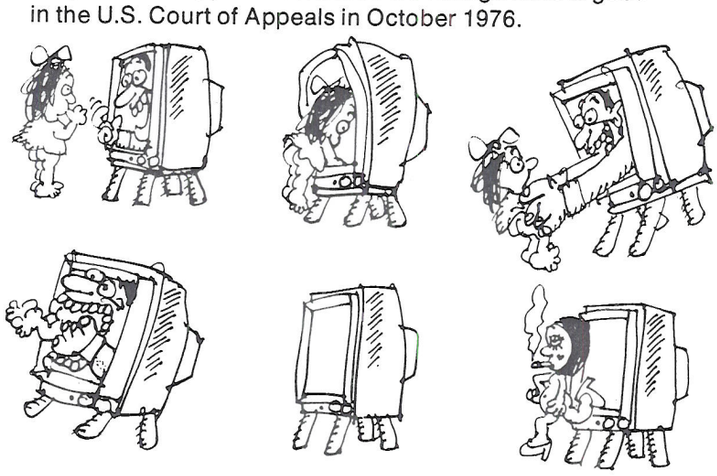
Women's Rights

By 1972, the Women's Movement had begun to examine the impact of the mass media on women's lives, and the status of women in American society. The absence of women from serious TV programming and the sexist and stereotyped treatment of women throughout the program day in news, public affairs, entertainment and commercials could no longer be ignored as merely "bad jokes."

Therefore, in May 1972, CCR attorneys filed a Petition to Deny the License Renewal of WABC-TV on behalf of the NYC Chapter of the National Organization for Women, charging the station with sex discrimination in programming, employment and ascertainment (the process of learning the problems, needs and interests of the viewing community). The NOW petition was the first comprehensive challenge to a TV station on the basis of sex discrimination.

CCR attorneys also worked with women attorneys in Washington D.C. in preparing a similar challenge to the local NBC affiliate, WRC-TV, brought by the D.C. Chapter of NOW and other community groups.

When the FCC failed to act on the petitions for more than 2 years, CCR attorneys and their co-counsel petitioned the Court of Appeals to order the FCC to rule on the two challenges. In a virtually unprecedented order, the Court directed the FCC to rule within 60 days, which it did, effectively dismissing the claims of discrimination as subjective and frivolous and denying the petitions. Appeals from the FCC rulings were argued in the U.S. Court of Appeals in October 1976.



The treatment of women as an extension of their husbands was crystallized in an action (*Hess. v. Schlesinger*) brought 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. If a woman disobeyed this regulation, her husband was transferred (as Hess was), or court martialed.

During the trial, the Commandant of the Marine Corps, the government's chief witness, explained that wives of Marines were incompetent to handle their affairs if left in Japan on their own. After that testimony the judge did not even wait for briefs, but decided from the bench that the rule, unique to the Marine Corps, was unconstitutional. The Marine Corps later rescinded it.

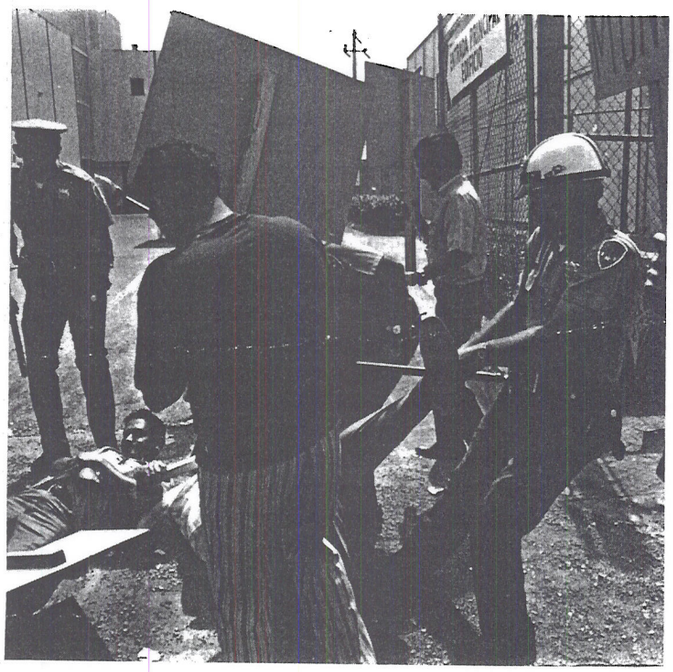
1974-75

International Racism

In flagrant violation of a United Nations Security Council resolution which it had supported, establishing an embargo on trade with Southern Rhodesia (Zimbabwe), Congress passed a special resolution (the Byrd Amendment) permitting the United States to import Rhodesian chrome, that country's most important export.

Center lawyers brought a suit to invalidate the Byrd Amendment, on behalf of the Black Congressional Caucus and other groups, including Zimbabwean exiles in this country (*Diggs v. Schultz*).

Although the litigation was ultimately unsuccessful, rulings in the case broadened access to the courts in situations of this kind, and the Court of Appeals held that while it could not overrule the Byrd Amendment, Congress had, in passing it, violated international law.



Labor

As the economy worsened and labor unrest grew, the need for a fresh legal approach to labor problems became increasingly apparent. Consequently, in 1974, Center lawyers became involved in the struggle of rank and file members of the United States Steelworkers of America (USWA) against their union leadership, after it had secretly signed away thier right to strike in the guise of an "Experimental Negotiating Agreement" (ENA) with the "Big Ten" steel companies (*Aikens et al v. Abel et al*).

This agreement basically surrendered the workers' right to strike before the conclusion of a new three-year (1974-77) contract, thus depriving the rank and file of the only bargaining leverage they ever had in contract negotiations, the right to put their hands in their pockets and walk off the job.

Despite this clear violation of union democracy, the suit was dismissed. Shortly thereafter, the union leadership and the "Big Ten" steel companies extended the "experimental" no-strike agreement to cover negotiations for the 1977-1980 contract. Following this, Center lawyers and the rank and file groups decided new legal approaches were needed, and no appeal was taken.

Center lawyers also filed an *amicus* brief on behalf of some of these groups, raising the same issues of secrecy and lack of internal democracy in a proceeding contesting the validity of equal employment consent devices in which the union leadership effectively waived individual members' claims of discrimination in the same top-secret manner that it gave away the right to strike.

Puerto Rico

The Center also came to the aid of the Puerto Rican Union Nacional de Trabajadores (UNT), which came under attack by the National Labor Relations Board (NLRB) for its militantly pro-labor stance and its commitment to Puerto Rican independence.

The UNT, founded on the principle of rank and file control, struck a construction site operated by a North American-owned company during a labor dispute. First, the NLRB obtained an anti-strike injunction in federal court against the Union. Then, several weeks after the strike had been settled and civil contempt proceedings dismissed, the Board sought criminal contempt charges against the Union and two of its officers for failing to end the strike (*United States v. Union Nacional de Trabajadores*).

Pre-trial, Center lawyers challenged the constitutionality of a requirement which goes to the heart of the colonial relationship between the United States

1974 • Nixon resigns, Ford grants him an unconditional pardon; charges against AIM leaders Dennis Banks and Russell Means dismissed; Mitchell, Haldeman, Erlichman and Mardian convicted of all charges on Watergate cover-up; Boston erupts over school busing; black family's house bombed in Queens.

1975 • Highest unemployment rate for 33 years; Ford and Kissinger urge Congress to allocate $222 million for aid to Cambodia; Khmer Rouge wins Cambodian war; U.S. begins Vietnam Babylift; National Liberation forces win Vietnam War; first Attica trial ends in conviction of two inmates; Operation CHAOS, CIA's illegal domestic spying program, revealed; U.S. votes against admission of Vietnam to U.N.; Joann Little acquitted.

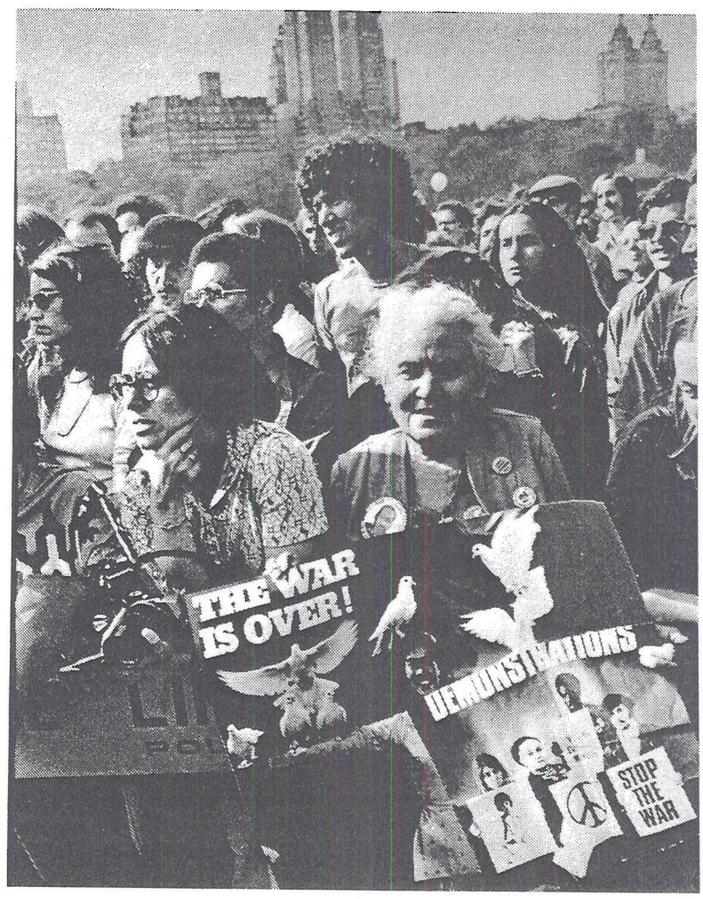
and Puerto Rico—that the English language be used in federal court proceedings on the island. They also moved for disclosure of illegal electronic surveillance of the defendants and their attorneys. Despite lengthy affidavits detailing the basis for their claim, which included information received from individuals employed by the Puerto Rican telephone company that the phones of the defendants and at least one of their attorneys had been tapped, the judge denied the motion. CCR attorneys sought a writ of mandamus in the First Circuit Court of Appeals to require the judge to order disclosure. In a landmark decision, the Circuit granted the mandamus, thus validating this procedure as a remedy for resolving pre-trial wiretap issues.

At the trial, the NLRB rested its case on the claim that the Union leaders' presence at an anti-NLRB demonstration was proof of criminal contempt. Center lawyers argued that the true reasons for the prosecution were the Union's militance in representing the interests of its rank and file and its support of Puerto Rican independence. The trial judge acquitted the President of the UNT, but convicted the Secretary General and the Union itself. However, the case received wide support on the island, and several important labor leaders were prepared to testify that the clear purpose of the NLRB's actions was to destroy the rank and file's trust in the Union's ability to represent their interests by forcing the Union leadership to call a halt to the strike.

In another effort to stop the UNT, the NLRB issued a broad cease and desist order which effectively prohibits the Union from organizing in Puerto Rico. CCR lawyers and others attorneys in Puerto Rico and North America have appealed this order on various grounds, including that the order was issued solely on the basis of the Union's militance and political perspective. A petition for *certiorari* is pending in the Supreme Court.

The attack on the UNT is but one example of the United States government's attempts to stifle the Puerto Rican independence movement. In 1974, Center lawyers were called upon to defend Delfin Ramos, an active supporter of and organizer for Puerto Rican independence (*United States v. Delfin Ramos*). Ramos had been charged with violating the federal Explosives Control Act, but after 18 months of prosecution, on the second day of trial, the charges against him were dismissed. This dramatic action occurred after the United States Attorney stood up in open court and admitted that the government had not a shred of evidence against him. The government further admitted that it had known for months that no case could be presented against Ramos.

The judge called the cover-up by the United States Attorney's office the most outrageous conduct he had ever seen. Center lawyers and many others, however, are well aware that the malicious prosecution of Delfin Ramos is only one of many such cases, and will continue to expose the government's attempts to discredit the Puerto Rican independence movement, both here and on the island.



The End of the War

From the enactment of the Mansfield Amendment in 1971 to the commitment of U.S. military aid in violation of countless congressional prohibitions, CCR fought tirelessly to convince the judiciary that it had the legal right and responsibility to declare the war unconstitutional.

In the winter of 1975, the Center made a final attempt, when it brought a lawsuit on behalf of 21 members of Congress and an active-duty Marine, to restrain President Ford and other members of the Executive Branch from conducting military and para-military operations in Cambodia (*Drinan et al v. Ford et al*). The District Court dismissed the case, but the First Circuit Court of Appeals granted an expedited appeal,

1974-75

and during oral argument, indicated sympathy for the plaintiffs' position and little for the government's. However, the case was overtaken by events—the end of the war in Cambodia—and dismissed as moot in May, 1975.

The Babylift

As if in revenge for the victory of the Vietnamese people, one of the last acts of the U.S. government was the mass uprooting of some 2,700 Vietnamese children, allegedly considered orphans or worse still, "half-orphans" by American officials. This "Babylift," touted as a humanitarian effort, has now been exposed as a cynical, last-ditch attempt to win sympathy and financial support for the failing Thieu regime.

CCR lawyers filed a lawsuit within two weeks of the children's arrival, asking that the children's backgrounds be investigated and that those with parents who wished their return be reunited with their natural families, whether here or in Vietnam. Several Vietnamese children have been reunited with their parents as an indirect result of the suit, but despite ever growing proof that many of the children have parents, and that refugee parents here are searching for them, the government and courts continue to move at a snail's pace, and as we approach 1977, the last battle of the war is far from over.

Ganienkeh

The destruction of nations is not a new phenomenen in U.S. history, as the native american people well know. CCR, in cooperation with the Institute for the Development of Indian Law, is representing a group of Mohawk Indians which in Spring, 1974 resettled this aboriginal land (Ganienkeh, or Land of the Flint) in upstate New York. New York had recently purchased the land to be part of a State Park.

The State filed an action in federal court to evict the Mohawks (*State of New York v. Danny White et al*), who contest the right of one nation to turn to its own courts to settle a land dispute with another nation.

In addition to the Federal suit, local white citizens and the local District Attorney have taken action in the State courts. The Grand Council of the Six Nations (of which the Mohawks are one) directed the Indians not to take part in any litigation in American courts which seeks to determine the ownership of land and therefore the validity of Indian treaties. However, local white residents have formed a support group for the Indians, and have appeared as *amicus curiae* on their behalf. Meanwhile, the citizens of Ganienkeh have been farming and continuing to develop their settlement.

Sterilization Abuse

Throughout the abortion struggle, CCR was aware that gaining that right might carry with it the danger of punitive sterilization of low income and third world women. Therefore, in 1975, CCR attorneys joined the broad based Ad Hoc Advisory Committee on Sterilization of the New York City Health and Hospital Corporation to draft guidelines to prevent involuntary sterilization. Those guidelines, which apply to all New York City hospitals, ensure that women will be provided, in their own language, with full information concerning the risks and benefits of sterilization, alternative birth control methods, a thirty-day waiting period during

which the woman can fully consider whether she wishes to be permanently sterilized, and will protect women against pressure to become sterilized when they are admitted to the hospital for abortion or childbirth.

The guidelines, which went into effect in November, 1975, were challenged in a federal action by a group of six well-known New York gynecologists, who claimed they interfered with their right to practice medicine (*Douglas v. Holloman*). CCR attorneys were permitted to intervene in the action to defend the guidelines on behalf of the Ad Hoc Advisory Committee, the Committee to End Sterilization Abuse and the United Welfare League. The action, which also challenges the constitutionality of weaker state and federal sterilization guidelines, is still pending.

Civil Rights

The civil rights movement seemed to have come full circle in 1974 when a small neighborhood in Queens, New York erupted in a manner all too reminiscent of Selma, Alabama. Tony and Glenda Spencer bought a house in Rosedale, Queens, a predominantly white neighborhood. The house was firebombed before they moved in. Then, on New Year's Eve, the Spencer family narrowly escaped death when their house was pipebombed. 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."

The Spencer family was relentlessly pursued by a self-appointed vigilante group known as "ROAR of Rosedale." As if the bombings and endless harassment of the Spencers and their children were not sufficient, Tony was arrested while confronting a mob outside his home, and charged with "menacing" and possession of a weapon (*State of New York v. Spencer*). No one else was arrested. It took Center lawyers, working with a lawyer in Queens, the National Conference of Black Lawyers and several community groups seven months before the charges were dropped "in the interests of justice." It will take considerably longer for the scars to heal.

Judges too, can be victims of racism. Bruce McM. Wright, a New York City Criminal Court Judge, is a black man 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, the presumption of innocence, and his right to speak out against injustice. As a result, he incurred the wrath of the Patrolmen's Benevolent Association (PBA), the District Attorney's Office, judges, and "law and order" forces generally. In a transparent move to curtail his proclivity toward dispensing justice to poor people, Judge Wright was transferred from criminal to civil court.

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 (*Wright v. Patrolmen's Benevolent Association et al*).

After the suit was filed, the Criminal Courts Committee of the Association of the Bar of the City of New York investigated the transfer, concluding that Judge Wright's attackers were "unfair and uninformed," and urging that he be returned to the criminal bench.

Chief Judge Breitel, of the New York Court of Appeals, admitted to representatives of the Bar Association that he had made the decision to transfer Judge Wright. However, the Bar Association excised his statement of reasons from its final report. When attorneys sought to depose Association representatives who had heard the Chief Judge's admissions, the Association moved to block the depositions. This motion was denied by the District Court and depositions are going forward.

Grand Jury Abuse

Activists had a brief respite from harassment by politically motivated grand juries during the Watergate investigations, when the Nixon Administration was too busy defending itself. Since then, however, the Justice Department and the FBI have expanded their abuse of the grand jury process, using the grand jury to gather intelligence and harass and discredit political activists. They moved first against the women's community in Lexington, Kentucky, and as a result Jill Raymond spent 14 months in county jails (*In re Raymond*). Together with local counsel, CCR attorneys represented Raymond in her fight against the grand jury and helped prevent her being resubpoenaed.

CCR attorneys have also defended witnesses against grand juries aimed at Puerto Rican, native american and black movements and their supporters. Because of their expertise in the area, Center lawyers have been called upon for advice and legal papers on grand jury problems by hundreds of attorneys throughout the United States.

CCR has fought against the increasing erosion of the Fifth Amendment, most recently in the government's attempt to convert our accusatorial system of justice into an inquisitorial one with the subpoena of Dr. Phillip

1976

Shinnick, an Assistant Professor and Director of Sports Studies at Rutgers University (*In re Shinnick*). Shinnick is presently in jail because he refused to give his fingerprints and samples of his hair and handwriting to a grand jury allegedly investigating reports that he had visited a Pennsylvania farmhouse where Patty Hearst stayed while underground. The government has admitted that the grand jury did not intend to ask him any questions, and that the purpose of the subpoena was to obtain this "evidence" to use against him.

NEWS ITEM: Justice Department to investigate FBI agents in new disclosures of burglaries.

Grand juries are also being used as a weapon against activist lawyers (p. 6).

Martin Stolar, a New York lawyer, was threatened with contempt for refusing to violate the attorney-client privilege, when a grand jury attempted to force him to disclose confidential information about his client. CCR lawyers filed an *amicus curiae* brief on his behalf. Martha Copleman, an attorney who worked on the Wounded Knee cases, is still fighting a grand jury subpoena aimed at forcing her to testify about one of her clients. She too is represented by CCR.

Crimes Against Women

Crimes against women are an ugly part of America's history. Often the victims of these crimes are doubly degraded if they attempt to fight back. Rape victims who choose to prosecute their rapists describe their courtroom experiences as a second rape where they are made to feel that they are the guilty parties. Their private lives are subjected to public scrutiny. Women who defend themselves against their attackers are charged with assault, or even murder if their assailants are killed. Until recently most states required that a woman's testimony about her rape be corroborated by an outside witness, and still, unless she can produce evidence of a brutal beating, her statements of resistance are disbelieved.

The trial and ultimate acquittal in 1975 of Joann Little for having stabbed her assailant received widespread publicity. Center lawyers were asked to assist the defense in challenging the racial composition and racial attitudes of the jury system where she was to be tried. Although the jury composition motion was unsuccessful, the trial was moved to Raleigh, North Carolina on the basis of documentation of overwhelming racial prejudice and presumption of guilt in a twenty-three county area in Eastern North Carolina—a rare victory in a motion of this type. The Center prepared this evidence in conjunction with the National Jury Project, of which it is a co-sponsor. Founded in 1975, the project combines legal and social science skills to reduce prejudice in the jury system through jury composition challenges, attitudinal studies and sophisticated jury selection techniques.

Other rape victims subjected to the same treatment do not receive such widespread public support. In response to the growing demand for just and humane treatment of rape victims, Center lawyers began experimenting with the possibility of representing rape victims to reduce the sexism with which rape trials have traditionally been infected. This involves filing motions to bar from the trial as irrelevant evidence of the complainant's prior sexual conduct (*People v. Mandel*). Center lawyers are now working on a similar case in which they are acting as legal counsel to the complaining witness.

CCR lawyers, together with a broad range of other women's legal organizations focusing on women's rights litigation, submitted an *amicus* brief to the Supreme Court on the unconstitutionality of the death penalty for rape (*Coker v. Georgia*). This brief traces the sexist and racist history of the death penalty for rape in the deep south, where it was established by white men to protect their "property" from violation by others.

1976 • Daniel Schorr leaks secret House Intelligence Committee Report after House votes not to publish it; FBI discloses it burglarized Socialist Workers Party offices over 92 times in six years; Supreme Court rules States may not require a woman to get her husband's consent to obtain an abortion; Darelle Butler and Ramon Robideau acquitted.

Women who defend their children against attack are victimized as well. In August 1973, Yvonne Wanrow, a Colville Indian, was sentenced to 20 years in prison for fatally shooting a 62-year-old known child molester, who attempted to attack her son, and had previously raped her babysitter's seven-year-old daughter, infecting her with venereal disease.

Her conviction was reversed by the Washington State Court of Appeals because a tape recording of her telephone call to police after the incident was used illegally, but the State of Washington appealed the reversal to the State Supreme Court.

Wanrow came to the Center for help, and last February CCR lawyers argued not only against the use of the tape recording, but attacked the sex stereotyped instruction submitted to the jury at the close of the trial. Center lawyers argued that failing to apply individualized standards of self-defense prejudiced Wanrow's case, and is in fact prejudicial to all women claiming self-defense. Wanrow and her children are still awaiting the court's decision.

The problems of battered wives, long whispered about but not confronted, are finally being recognized as widespread and serious. In New York City alone, thousands of women are beaten regularly by their husbands. More than 40% of all requests for police assistance and protection come from women who have been battered or threatened by their husbands. For years, women subjected to violence in the home have remained hidden until their wounds healed sufficiently not to arouse comment. When through fear and desperation they attempt to get help, their husbands' brutal behavior is tacitly (and sometimes overtly) condoned by the courts and police.

CCR lawyers, working with lawyers from MFY Legal Services, Inc., Brooklyn Legal Services Corporation and the Legal Aid Society have launched an attack on the callous practices of the police and the courts, to force them to provide the legal remedies to which women are entitled by law, but denied in practice. The litigation (*Bruno et al v. Codd et al*) is designed to force the courts and police to recognize and respect a woman's right not to be beaten. A judicial declaration that married women in New York are no longer to be subjected to discrimination in trying to enforce their right to survive against violent, criminal behavior would necessarily pave the way for similar litigation in other states and serve as a catalyst to the development of public awareness, concern and action on behalf of battered women everywhere.

Chile

Shortly after the 1973 coup in Chile, a young American filmmaker was killed under circumstances suggesting that the Chilean junta wanted him dead because he knew too much, and that the CIA may have been involved in the murder. As a preliminary step in providing legal redress to the victim's parents and widow, the Center is seeking to uncover the facts surrounding the murder through the Freedom of Information Act.

CCR also has under preparation a number of cases seeking to expose the complicity of United States government agencies with human rights violations in other countries.

LOOKING AHEAD

The Center's penchant for difficult cases is sometimes misinterpreted as a legal death wish. In fact, however, we enjoy our victories as much as any one else.

This year we have had more than our share; more, certainly, than in any previous year of our decade of existence.

• Charges against Tony Spencer were dismissed (p. 17).

• U.S. Supreme Court upheld the lower court's decision that barring parents of out-of-wedlock children from teaching in the Drew, Mississippi Municipal School was unconstitutional (*Drew Municipal School System v. Andrews*).

• Feminist Jill Raymond was released from Kentucky county jail (p. 17).

• All charges against Delfin Ramos were dismissed (p. 15).

• American Indian Movement members Darelle Butler (represented by CCR) and Ramon Robideau were acquitted of shooting two FBI agents on the Pine Ridge Oglala Sioux reservation after continuing FBI COINTELPRO activity was revealed. A juror called the prosecution's case an insult (*United States v. Robideau and Butler*).

• New York State's attempt to maintain a policy limiting Medicaid reimbursement to therapeutic abortion was permanently enjoined (*Klein v. Nassau County Medical Center*).

• A nationwide crisis in the provision of abortion services to indigent women was averted when the Hyde Amendment to the Health, Education and Welfare Appropriations Act, which would have denied Medicaid reimbursement for abortion to most indigent women, was enjoined as unconstitutional (*McRae v. Mathews*). (In conjunction with the American Civil Liberties Union, Planned Parenthood, and the New York City Health and Hospital Corporation.)

• Federal charges against H. Rap Brown were dismissed (p. 5).

Whatever satisfaction we and our supporters derive from these victories, they do not lead us to believe that the struggle to make the Constitution live has entered a new and mellower phase. We have no illusions about the next years, or the next decade: in some ways they will be more difficult for the peoples' movements than the recent past. Repression, both personal and institutional, will come not only in familiar shapes, but in new and subtle guises. Old rights will be trampled and new rights will be articulated and struggled for against great odds.

With the help of its friends, the Center will continue to rise to the challenge, to defend what is good in the old, and to speed on what is best in the new.

—Elizabeth Bochnak
Education Director

TABLE OF CASES

Credits: p. 1, Paul Stamler; p. 2, LNS; p. 3, Herb Randall; p. 4, cpf; p. 5, *Student Life*/LNS; p. 6, *We Shall Overcome*/LNS; p. 8, LNS Women's Graphics; p. 11, VVAW; p. 13, Paul Younghouse/LNS; p. 13, Lou Myers/PSYCHO SOURCES/LNS; p. 14, *Claridad*; p. 15, LNS; p. 16, Doug Hostetter; p. 18, *Militant*; p. 19, Ted Polumbaum. Composition and Printing, U.S. Lithograph Inc.; design by Kathie Brown.

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