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NY Times 8/17/69

Traditionally, it would probably be called Smith, Stavis, Kunstler, Kinoy & Weiss. But there is nothing traditional about the town's newest law firm, situated, with characteristic disregard for the niceties, in a floor-through walk-up on Ninth Avenue at 42d Street.

And then again it's not really a law firm. Imagine a law firm where the staff is on salary but the partners work for nothing? And the clients pay no fees? And nobody's afraid to lose cases?

I fact, it's the Law Center for Constitutional Rights, a coalition of experienced lawyers and young staff counsel who represent people and organizations in The Movement.

The Movement, of course, is the generic term covering antiwar protesters, Black Panthers, Students for a Democratic Society, the Student National Coordinating Committee, antidraft groups and radicals in general.

A Busy Time at Hand

It is, thus, a conglomerate, and as such it is experiencing the same governmental and popular onslaughts that have besieged the business conglomerates lately.

"We're in a rough period, and it's going to get worse," Morton Stavis, a director and one of the four originators of the law center, said the other day. "The Justice Department is clearly bent on a program of repression, as are local police chiefs and prosecutors. We've got plenty of work to do here."

Mr. Stavis, at 54, the "elder" of the organization, is a successful corporation lawyer from Newark who three years ago decided with three other civil rights lawyers to "institutionalize" the relationship the four men had in various black and radical legal causes.

The three others are William M. Kunstler, who since the early nineteen-sixties has been involved in most major civil rights litigation; Prof. Arthur Kinoy of the Rutgers University Law School, who was Mr. Kunstler's law partner and handled most of the appellate and Supreme Court work involved in those cases, and Benjamin E. Smith, a New Orleans lawyer who led the "Mississippi Challenge," an effort to seat a black Mississippi Congressional delegation three years ago.

"We were spending a lot of time on the phones with each other," Mr. Stavis said, "so we thought why not organize a shop, raise some money to hire a staff and really do something bigger?"

As a result, the men opened an office in Newark on a budget of $40,000 provided by lawyer friends. Last month, with a budget of $120,000—also private donations—they moved to New York, where a staff of five young lawyers, three secretaries and a full-time administrator at the center now handle scores of actions throughout the country.

The center also has a mailing list of 500 lawyers who receive continually copies of briefs and complaints.

Often the long room on Ninth Avenue, with cubicles for the staff and small offices for the "partners," looks like the anteroom to a Federal grand jury. Thus on a recent afternoon Jerry Rubin, a Yippie leader, was there sipping coffee with H. Rap Brown, the black militant, while both men waited to see Mr. Kunstler, who was conferring with some Panthers.

Rubin is under a Federal conspiracy indictment in Chicago for his alleged activities at the Democratic National Convention last summer. Brown is on bail on a Louisiana gun - possession charge.

Anti-Semitism Acknowledged

Since many of the law center's clients are Negroes who have expressed strong anti-Israel and anti-Semitic sentiment, the lawyers, most of whom are Jewish, were asked how they felt about representing them.

"I find black anti-Semitism a very troublesome thing, it disturbs me very much," Mr. Stavis said. "But we're lawyers and, we don't need to identify with the positions of our clients."

He said, however, that he would not want to represent white segregationists.

Mr. Kunstler said he could "understand" the anti-Semitic feelings of slum Negroes, though he disagreed with them, since "the visible enemy in the ghetto is often the Jewish landlord and shopkeeper."

"Maybe by their associations with us, the anti-Semitism, much of which I believe is rhetoric, is being dissipated," Mr. Kunstler said.

But Peter Weiss, a patent lawyer who recently joined the center as a "partner," disagreed.

Israeli Left Cited

"That just makes you a whiter white man," he said. "I have a deep feeling for Israel, though I don't like some of the things going on there now, and I believe much of the anti-Israel feeling on the Left and among blacks stems from ignorance.

"They don't realize there's a Left in Israel too, that everyone there is not a hawk. We should try to educate them on this."

Although the partners were willing to discuss the issue, the younger staff members said they did not want to "get drawn into this thing."

Mr. Weiss, who spends his afternoons at the law center developing his theories of "international police brutality"—he believes, for example, that any Vietnamese victims of American brutality should be able to sue for damages—gave perhaps the most succinct definition of the center's work and philosophy.

'Affirmative Litigation' Listed

"We say to the institutions of this country," he said, "that this is how you're supposed to do it and damn it, now do it that way."

To realize that purpose the center has used the technique of "affirmative litigation," which seeks to stop alleged governmental incursions on liberty through court injunctions rather than wait on prosecutions that must then be defended before juries. The latter course results in delays that often cripple dissent.

For example, the center is attempting to enjoin Texas authorities from prosecuting a black militant for murder under the state's Riot Control Act, which provides that one who instigates a riot is responsible for the acts that occur in the riot.

The Texas defendant, Floyd Nichols, was concededly many miles from the shooting of a policeman at the time of the riot but was prosecuted because he had months earlier spoken on the Texas Southern University campus urging student activity.

Though the law center's partners do not get paid, the young staffers earn from $8,500 to $10,500 a year. Three—Michael Fayer, Carl Borege and William Bender—studied under Professor Kinoy at Rutgers. The others are Nancy Stearns, a recent graduate of New York University Law School and Beth Livezey, who received her law degree in June from the Vanderbilt University Law School.

It is the intention of the center that the young lawyers stay a maximum of four years. "We don't want people making a career here," Mr. Stavis says. "We want to help them, give them the benefit of our experience and then see them go on elsewhere."

CENTER FOR CONSTITUTIONAL RIGHTS

The Center for Constitutional Rights (CCR), 853 Broadway, New York, NY 10003 [212/674-3303], which describes itself as "*activists in the struggle against illusory democracy,*" has completed its tenth year. Formed in 1966 by four leading members of the National Lawyers Guild (NLG), Arthur Kinoy, William Kunstler, Benjamin Smith and Morton Stavis. Kunstler, Kinoy and Stavis were defending the officers of the Southern Conference Educational Fund, an Communist Party, U.S.A. front, who were being prosecuted under Louisiana state anti-sedition statutes. [The SCEF executive director, treasurer and counsel were James Dombrowski, Benjamin Smith and his law partner, Bruce Waltzer, and the SCEF files were kept in their New Orleans law office].

CCR attorneys represented and guided the efforts of the Mississippi Freedom Democratic Party to replace the delegates of the regular Democratic Party; represented SCEF organizers Alan and Margaret McSurely in resisting Senate subpoenas; brought suits challenging the draft and constitutionality of the Vietnam war by raising a "*Nuremberg defense*" and "*attempting to introduce evidence of war crimes into judicial proceedings.*"

CCR attorneys won the U.S. Supreme Court appeal of the *Plamondun* decision, *U.S. v. U.S. District Court,* in which warrantless domestic internal security wiretapping was declared unconstitutional. CCR notes, "*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.*"

Among CCR's current suits is an attempt to return to the custody of the Vietnamese Communists the 2,700 children rescued from Saigon in the Babylift; Indian law cases seeking to reestablish Indian reservations as totally independent foreign countries within the U.S. borders; and several resistances to grand jury investigations of terrorist groups and their underground networks of supporters.

For its tenth anniversary, CCR has distributed a docket and a listing of its staff, officers and cooperating attorneys, which follow as pages 16 and 17.

CENTER FOR CONSTITUTIONAL RIGHTS

Founded by three active members of the National Lawyers Guild (NLG), Arthur Kinoy, Morton Stavis and William M. Kunstler, in November, 1966, the Center for Constitutional Rights (CCR) is a nonprofit tax-exempt organization operating from 588 Ninth Avenue, New York, N.Y. 10036 (212/ 265-2500).

According to its own publicity releases, the CCR has "*since its beginning, been engaged in an expanding and increasingly intense struggle to halt and reverse the steady erosion of civil liberties in the United States.*" Stating that the CCR grew out of the "civil liberties" activities of its founding members in the early 1960's who used "*a variety of innovative legal techniques designed to force compliance by southern officialdom with the Constitution,*" the self-serving statement continues, "*It is to the rights of these that continue to call for justice, equality and peace that the CCR is committed.*"

CCR, which originally consisted of one full-time lawyer and one secretary, now has five full-time staff attorneys, five senior attorneys who "*contribute from 25% to 100% of their time,*" thirty-seven cooperating attorneys and staff workers. [One staff attorney, Jim Reif, is taking a one-year leave of absence to work in the NLG's National Office from June 1973 onwards].

In its first year of operations, CCR operated on a budget of $40,000: now with a docket of some 70 cases, its projected budget for 1973 is about $300,000.

This month, using the mailing list of *WIN* magazine [postage meter PB 149409], CCR sent out an appeal for funds over the signature of one of its many notorious clients, Philip Berrigan.

In a letter which commences, "*It is often difficult to love one's country and still love justice, for justice is under attack by the leaders of our country...*" Berrigan urges financial support for CCR, ignoring [in the text of the letter] the slogan [in caps] at the bottom of the page, "*All contributions to CCR are tax deductible,*" and writes: "*Unlike the government, which finances its attacks upon the Constitution with our tax dollars, the Center must finance the defense of the Constitution with contributions.*"

Those presently involved with CCR include: Benjamin E. Smith, New Orleans, president; Robert L. Boehm, N.Y., treasurer.

Volunteer Staff Attorneys: Arthur Kinoy, William M. Kunstler, Doris Peterson, Morton Stavis, Peter Weiss.

Staff Attorneys: Mark Amsterdam, J. Otis Cochran, James Reif, Rhonda Schoenbrod, Nancy Stearns.

CCR (CONT.)

Staff: Esther M. Boyd, Georgina Cestero, Gregory H. Finger, Lillian M. Green, Dorothy Thorne, Marcella L. Tobias, Richard J. Wagner.

Board of Cooperating Attorneys:

William J. Bender, Newark, N.J.
Edward Carl Broege, Newark, N.J.
Alvin J. Bronstein, Washington, D.C.
Haywood Burns, New York, N.Y.
Vernon Z. Crawford, Mobile, Alabama
I.T. Creswell, Jr., Washington, D.C.
William C. Cunningham, S.J., Chicago
William J. Davis, Columbus, Ohio
Bernard D. Fischman, New York, N.Y.
Jeremiah Gutman, New York, N.Y.
William L. Higgs, Albuquerque, N.M.
Philip J. Hirschkop, Alexandria, Va.
Linda Huber, Washington, D.C.
Susan Jordan, Berkeley, Calif.
Percy J. Julian, Jr., Madison, Wisc.
C.B. King, Albany, Ga.
Beth Livezey, Los Angeles
George Logan, III, Phoenix, Ariz.
Charles M.L. Mangum, Lynchburg, Va.
Howard Moore, Jr., Berkeley, Calif.
Harriet Rabb, New York, N.Y.
Margaret Ratner, New York, N.Y.
Michael Ratner, New York, N.Y.
Jennie Rhine, Berkeley, Calif.
Dennis J. Roberts, Oakland, Calif.
Catherine G. Roraback, New Haven
Michael Sayer, Gardiner, Maine
Benjamin Scheerer, Cleveland, Ohio
Helene E. Schwartz, New York, N.Y.
David Scribner, New York, N.Y.
Abbott Simon, New York, N.Y.
Tobias Simon, Miami, Fla.
Richard B. Sobol, Ann Arbor, Mich.
Michael Standard, New York, N.Y.
Daniel T. Taylor, III, Louisville, Ky.
Neville M. Tucker, Louisville, Ky.
Bruce C. Waltzer, New Orleans

CCR: LAW AS AN INSTRUMENT OF RESISTANCE

The Center for Constitutional Rights (CCR), 853 Broadway, New York, NY 10003 [212/674-3303], a nonprofit, tax-exempt litigation organization established in 1966 by leading members of the National Lawyers Guild (NLG) as a vehicle for using the law *"as an instrument of resistance."*

Among the cases filed in 1977 by CCR is a suit by the family of Charles Horman, an American killed during the overthrow of the Marxist Allende government in Chile in September 1973 against former Secretary of State Kissinger and a number of U.S. officials. The suit was filed following *"relatively unsuccessful"* efforts by CCR lawyers Peter Weiss, chairman of the Institute for Policy Studies (IPS) board of trustees, Rhonda Copelon, John W. Corwin and Nancy Stearns to obtain documents on Horman's death and activities leading to the Allende overthrow under the Freedom of Information Act. The suit was filed following the emergence of *"facts *** from other sources,"* particularly, states CCR, from articles published in the Long Island newspaper, *Newsday*, by the late fellow of IPS's Transnational Institute, Paul Jacobs.

CCR admits that Horman had been investigating *"the 1970 kidnapping and assassination of Allende's loyal general, Rene Schneider,***. At the time of his arrest, Horman had uncovered some of the facts of United States involvement in the Schneider case: facts which were not revealed to the American public until the 1975 Senate Select Committee on Intelligence Report on Convert Action in Chile disclosed CIA participation."*

According to CCR, Horman was in the city of Vina del Mar which is adjacent to the headquarters of the Chilean Navy and the Naval Section of the U.S. Military Group in Chile. CCR states that Horman met with *"several members of the U.S. military"* and learned that there had been advance knowledge of the planned coup against Allende.

According to the CCR complaint, following his arrest Horman was questioned by Chilean Military Intelligence officials who decided Horman was to be executed. They allege that Horman was taken to the office of the general in charge of Chilean Military Intelligence and that an American was present when the death sentence was reviewed and approved.

CCR says it is *"seeking to force the government to tell *** everything it knows"* Horman, his death, and the circumstances related to his death such as covert activity, the Schneider affair and the overthrow of the Marxist government.

On March 1, 1978, the U.S. Supreme Court is scheduled to hear oral arguments in Alan and Margaret McSurley's damages suit against the late Senator John McClellan and members of the staff of the former Senate Internal Security Subcommittee. The subcommittee had subpoenaed documents seized by Kentucky authorities and used in anti-sedition prosecution. The Kentucky anti-sedition statute was later ruled

unconstitutional and thus the confiscation of documents to be used in the prosecution illegal. The McSurelys, members of the staff of the Southern Conference Education Fund (SCEF), a Communist Party, U.S.A. (CPUSA) front until its capture by the Maoist October League, successfully appealed their contempt of Congress conviction on grounds that their subpoenas had been based on examination of documents seized under the old anti-sedition statute.

CCR attorneys filed suit in 1968 for civil damages against the Senator and the subcommittee staff for *"illegal search and seizure"* of the McSurely documents. In 1975, the D.C. Court of Appeals upheld the immunity of the Senator and staff under the Speech and Debate Clause of the Constitution even for actions outside the general scope of their duties so long as these were *"facially"* legislative. The D.C. Court of Appeals reversed itself in a rehearing in December 1976, and the Government filed an appeal to the U.S. Supreme Court.

CCR activities during the year included an appearance in April appearance of Peter Weiss before the House International Relations Committee's Subcommittee on International Economic Policy and Trade in which he argued that the Trading With the Enemy Act had been *"perverted, particularly since the Cold War"* to give the President excessive power. And Doris Peterson and Rhonda Copelon testified before the House Judiciary Committee's Subcommittees on Grand Jury Reform and Immigration, Citizenship and International Law to make *"recommendations for dealing with the massive governmental abuse of the grand jury process."*

Other CCR members served as consultants to *Seven Days* magazine and the National Lawyers Guild's Grand Jury Project. CCR staff produced articles for the NLG publication, *Guild Notes*, for *IFCO News*, produced by the Interreligious Foundation for Community Organization, and for *First Principles*, produced by the Center for National Security Studies (CNSS) and the American Civil Liberties Union (ACLU).

CCR has expanded its four woman full time legal staff which now includes Rhonda Copelon, John W. Corwin, Jose Antonio "Abi" Lugo, Doris Peterson, Elizabeth M. Schneider and Nancy Stearns. CCR's staff director is Marilyn Boydstun Clement, former assistant director of IFCO, who will coordinate CCR fundraising. Staff members Elizabeth Bochnak, Georgina Cestero, Beti Garcia and Joan L. Washington have been joined by Rose Muzio and Claudette Furlonge of the Workers World Party (WWP).

CCR's volunteer staff attorneys remain Arthur Kinoy, William M. Kunstler, Morton Stavis and Peter Weiss. CCR officers and board members include chairman, Robert Boehm; president, Morton Stavis; vice-presidents Arthur Kinoy, William Kunstler and Peter Weiss; secretary-treasurer, Abbott Simon; members Peggy Billings, Haywood Burns, Gregory H. Finger, Judy Lerner, David Scribner, Michael Standard and Bruce C. Waltzer.

CCR (CONT.)

The CCR lists its *"cooperating attorneys"* as including William Allison, Louisville, KY; Daniel Alterman, NYC; Mark Lemle Amsterdam, NYC; William J. Bender, Seattle, WA; Edward Carl Broege, NYC; Alvin J. Bronstein, Washington, DC; Ramsey Clark, NYC; Brady Coleman, Austin, TX; Martha Copleman, Nacogdoches, TX; Tim Coulter, DC; I.T. Creswell, Jr., DC; Cameron Cunningham, Austin, TX; William J. Cunningham, S.J., Santa Clara, CA; Michael I. Davis, NYC; Alan Dranitzke, DC; Mary Dunlop, San Francisco; Bernard D. Fischman, NYC; Nancy Gertner, Boston, MA; Janice Goodman, NYC; Jeremiah Gutman, NYC.

Also William Higgs, DC; Philip Hirschkop, Alexandria, VA; Mary Emma Hixson, Louisville, KY; Linda Huber, DC; Susan B. Jordan, San Francisco; Percy L. Julian, Jr., Madison, WI; David Kairys, Philadelphia; Gladys Kessler, DC; C.B. King, Albany, GA; Jack Levine, Philadelphia; Robert Lewis, NYC; Beth Livezey, Los Angeles; George Logan, III, Phoenix, AZ; Holly Maguigan, Philadelphia; Martha McCabe, Nacogdoches, TX; Charles Victor McTeer, Greenville, MS; Howard Moore, Jr., Berkeley, CA.

Margaret Ratner, NYC; Michael Ratner, NYC; David Rein, DC; Jennie Rhine, Oakland, CA; Dennis J. Roberts, Oakland, CA; Catherine Roraback, Canaan, CT; Allen Rosenberg, Boston, MA; David Rudovsky, Philadelphia, PA; Michael Sayer, Lisbon Falls, ME; William H. Schaap, *Military Law Reporter*, DC; Paul Schachter, NYC; Benjamin Scheerer, Cleveland, OH; Helene E. Schwartz, NYC; Ralph Shapiro, NYC; Tobias Simon, Miami, FL; Nancy Stanley, NYC; Martin Stolar, NYC; Nadine Taub, Newark, NJ; Daniel T. Taylor, III, Louisville, KY; Kenneth Tilsen, St. Paul, MN; Doron Weinberg, San Francisco; and Wendy Williams, DC.

CCR victories include Margaret Ratner's winning of a release order from federal district judge Robert Carter for Maria Cueto and Raisa Nemikin who had served 11 months of a contempt citation for refusing to cooperate with a grand jury investigating the terrorist FALN. The judge ruled that in light of their unyielding non-cooperation, *"no legitimate purpose"* would be served by requiring them to remain in jail until the jury term expires on May 8, 1978.

Lawyers for Pedro Archuleta his release from a New York contempt following a Chicago judge's ruling that it was *"futile"* to attempt to force him to testify. Luis, Andres and Julio Rosado remain in a New York federal prison following their contempt citations last August. And the contempt jailings of Jose Lopez, Ricardo Romero and Roberta ended January 30 with the expiration of a grand jury term.

CENTER FOR CONSTITUTIONAL RIGHTS

Operating from offices at 853 Broadway, New York, NY 10003 [212/674-3303], the Center for Constitutional Rights (CCR) is a tax-exempt litigation organization formed by leading members of the National Lawyers Guild (NLG) as a vehicle for using the law *"as an instrument of resistance."* CCR states it was formed in 1966 by Arthur Kinoy, William Kunstler, the late Benjamin Smith of New Orleans, and Morton Stavis *"with the help and encouragement"* of Robert Boehm. *"Soon after, the founders were joined by others, notably Peter Weiss. Since its inception it has worked on behalf of people's movements, representing anti-war activists, Native Americans, Blacks, Puerto Ricans, women and others seeking to change American policies and structures."*

CCR has termed itself *"activists in the struggle against illusory democracy,"* and in a recent fundraising letter, CCR director Marilyn Boydston Clement emphasized that *"our work is not only as a legal organization."* Reviewing CCR's activities in "movement organizing," the CCR letter said:

> *"We led the fight against the newly created Senate Sub-committee on Security and Terrorism this spring. We helped to create and give major support to the efforts of the National Anti-Klan Network, the Reproductive Rights Network and the Affirmative Action Coordinating Center. We produced Fight the Right, a magazine that proved so effective in publicly exposing the intent of the Reagan Administration to subvert or destroy fundamental freedoms."*

Examination of CCR's 1981-82 Docket indicates that CCR's cases shows a considerable number in support of members of violence-oriented revolutionary groups, terrorists and their supporters. A feature of these and other CCR cases is extensive discovery efforts against U.S. foreign and domestic intelligence agencies with a clear view toward determining the sources of information.

Among the "people's movements" defended both in court and with organizing publicity and propaganda support since the 1960s have been the Southern Conference Educational Fund, the Communist Party, U.S.A.'s (CPUSA) main front oriented towards the civil rights movement in the South during the 1960s and early 1970s and whose treasurer was CCR co-founder Ben Smith; members of the White Panther Party prosecuted for blowing up a CIA recruiting office; witnesses subpoenaed before federal grand juries investigating terrorist organizations including the Weather Underground Organization (WUO), Black Panther Party (BPP), Black Liberation Army (BLA), Symbionese Liberation Army (SLA), American Indian Movement (AIM), and Armed Forces of National Liberation (FALN).

On behalf of the U.S. Peace Council (USPC), the Women's International League for Peace and Freedom (WILPF) and the Fund for Open Information and Accountability (FOIA, Inc.), last January CCR lawyers Nancy Stearns and Michael Ratner filed an *amicus* brief in the appeal of convicted Vietnamese spy David Truong. The appeals were unsuccessful and Truong recently commenced serving his federal prison term.

CCR lawyers Margaret Ratner and Elizabeth M. Fink have represented 10-year WUO fugitive Cathlyn Platt Wilkerson since her surrender in July 1980. Wilkerson pleaded guilty to possession of explosives with intent to use them against the property of others, a class-D felony, in order to avoid a New York State grand jury investigation associated with a trial because *"such a trial would not provide enough of a political forum to warrant the intense efforts it would require."* Wilkerson was released from prison in December 1981, over the objections of prosecutors and prison officials.

CCR's William Kunstler, with Peter Neufeld [Russell Neufeld is a former WUO fugitive, NLG staffer and leader of the WUO's Prairie Fire Organizing Committee in New York], has been representing Vicente Alba, a supporter of the FALN, in efforts to suppress use as evidence of his carrying a concealed unlicensed firearm in the Bronx Criminal Courtroom the pistol removed from him in a search. Other domestic security and intelligence cases condicted by CCR involve discovery of files on Jose Alberto Alvarez and his wife, Digna Sanchez, both members of the Puerto Rican Socialist Party (PSP) Central Committee; efforts to overturn the conviction of suspected MIRA terrorist Eduardo "Pancho" Cruz, arrested in 1971 and convicted of possession of explosives; and the efforts of CCR co-founder Arthur Kinoy to obtain FBI foreign counter-intelligence wiretap records in which he was overheard.

In a lawsuit commenced a decade ago with NLG activist Barbara Handschu as the lead plaintiff against the New York City Police Department's intelligence unit, CCR's Michael Ratner, and veteran "old left" lawyers including Marshall Perlin, formerly Kinoy's law partner in a firm headed by CPUSA and NLG members Harry Sacher and Frank Donner and who now is a leader of the Fund for Open Information and Accountability, Inc. (FOIA, Inc.), a spin-off of the CPUSA-controlled National Committee to Re-Open the Rosenberg Case; Victor Rabinowitz (employed by the Cuban government for twenty years); John Abt (former head of a Soviet spy ring who has been a member of the CPUSA Political Committee since the 1950s); Samuel Gruber of FOIA, Inc.; David Scribner and Martin Popper, CPUSA veterans who helped found the NLG; and younger NLG activists Michael Krinsky, Elizabeth Fink and Steve Paganuzzi, have been opposing any settlement that would not bar

police from investigating groups that engage in "First Amendment activity" - in other words, groups that assemble, associate, produce publications, and so forth - unless evidence already exists demonstrating that the groups are involved in criminal activity.

CCR's "international" activities have coincided with interests and initiatives of the Soviet bloc, including its *"monitoring United States compliance with the United Nations Security Council's mandatory arms embargo on weapons to South Africa. Monitoring of such arms transfers *** may result in litigation undertaken by CCR on behalf of those struggling against South African apartheid."*

CCR also has sought to return to the custody of Hanoi the 2,700 children rescued in the 1975 "babylift;" to reestablish American Indian reservations as totally independent countries within the U.S. borders; to aid the defense in West Germany of leaders of the Baader-Meinhof terrorist network; and provide aid for the Soviet-backed Puerto Rican revolutionary movement in Puerto Rico and on the mainland, including aiding in the transformation of the NLG's Puerto Rico Legal Project into the Puerto Rican Center for Labor and Civil Rights.

CCR's current fundraising campaign is circulating a request for financial support of a lawsuit against the Reagan Administration's support for the government of El Salvador against revolutionaries backed by the Soviet Union, Cuba and Nicaragua. The CCR fundraising appeal says that the co-plaintiffs in the suit, *Crockett v. Reagan*, Civ. No. 81-1034, *"are charging Reagan, Weinberger and Haig with violating not only the War Powers Resolution, but also the U.S. Constitution by usurping the warmaking powers of Congress."* "Warmaking" is CCR's term for the presence in El Salvador of three dozen U.S. military advisers training the local armed forces.

Without mentioning that CCR staff attorney Michael Ratner is president of Deep Cover Publications, the publisher of Philip Agee's false and misleading attacks on the State Department's "White Paper on El Salvador," CCR's appeal for funds boasts that the document *"has been shown by The Wall Street Journal, The New York Times and others to be a tissue of inaccuracies and outright fabrications."* And CCR attached to its appeal part of Jonathan Kwitny's attack on the White Paper from the June 8, 1981, issue of *The Wall Street Journal* that used the Agee material.

Noting that every contribution for this lawsuit will be matched by one-third with a contribution from the Unitarian Universalist Service Association *"who are supporting this significant lawsuit,"* CCR names as its lawyers handling the case

Michael Ratner, Frank Deale, Peter Weiss, Morton Stavis, Margaret Ratner, Robert Boehm, and Arthur Kinoy. Ira Lowe and former Congressman Robert Drinan, 1968 NLG vice-president, have also been added as counsel.

The plaintiffs in the suit are listed as Representatives George W. Crockett, Jr. [D-MI], veteran NLG activist and former counsel to CPUSA leaders prosecuted under the Smith Act; Anthony Beilenson [D-CA]; Phil Burton [D-CA]; William Clay [D-MO]; Ronald Dellums [D-CA]; Mervyn Dymally [D-CA]; Robert W. Edgar [D-PA]; Don Edwards [D-CA]; D.C. Delegate Walter Fauntroy; Thomas Foglietta [D-PA]; Barney Frank [D-MA]; Robert Garcia [D-NY]; William H. Gray, III [D-PA]; Tom Harkin [D-IAl; Mickel Leland [D-TX]; Michael E. Lowery [D-WA]; Barbara A. Mikulski [D-MD]; George Miller, III [D-CA]; Parren J. Mitchell [D-MD]; Anthony "Toby" Moffett [D-CT]; James Oberstar [D-MN]; Richard Ottinger [D-NY]; Frederick Richmond [D-NY]; Gus Savage [D-IL]; Patricia Schroeder [D-CO]; James M. Shannon [D-MA]; Louis Stokes [D-OH]; Harold Washington [D-IL]; and Theodore Weiss [D-NY].

The CCR "international" case receiving renewed media attention is a suit for damages filed in 1977 against former Henry Kissinger and ten others by the family of Charles Horman, an American killed during the September 1973 overthrow of the Marxist Allende government in Chile.

CCR said that the Horman suit was filed following *"relatively unsuccessful"* efforts by CCR lawyers Peter Weiss, chairman of the Institute for Policy Studies (IPS) board of trustees, Rhonda Copelon, John W. Corwin and Nancy Stearns to obtain documents on both Horman's death and the events leading to the overthrow of the Allende regime under the Freedom of Information Act. CCR stated the suit was filed following the emergence of *"facts *** from other sources,"* particularly in articles published in *Newsday* by Paul Jacobs, the late fellow of the IPS/Transnational Institute.

CCR's report on the Horman case shows that it did not go well for their purposes. CCR lost a series of motions including one to depose in the U.S. various witnesses living abroad; and, most significantly, *"the court refused to allow plaintiffs to discover anything which the government claimed to be secret"* including CIA and military intelligence materials on Chile. CCR indicated that the Horman family believed that further litigation would be "futile" and that they were seeking to dismiss the case "without prejudice" so that it could be refiled in the future.

Previously, CCR said Horman had been *"investigating *** the 1970 kidnapping and assassination of Allende's loyal general, Rene Schneider, ***. At the time of his arrest, Horman had*

un-covered some of the facts of United States involvement in the Schneider case: facts which were not revealed to the American public until the 1975 Senate Select Committee on Intelligence Report on Covert Action in Chile disclosed CIA participation." In fact, that Church Committee report disclosed no such thing; but fact so often does not serve the needs of propaganda. The CCR's 1977-78 docket indicated that the real purpose of the Horman suit was to *"force the government to tell *** everything it knows"* not merely concerning Horman, but regarding all U.S. covert activity in Chile, the Schneider affair and the overthrow of Allende.

The CCR was the beneficiary of the New York premier [$45/ticket] on February 11, 1982 of the new Universal film, *Missing*, based on the Harmon story. The film's director is Costa-Gavras and it stars Jack Lemmon and Sissy Spacek.

CCR's 1981-82 Docket includes the successful overturning of the conviction of NLG Puerto Rico Project attorney Judith Berkan, who had been sentenced to a 6-month jail term for trespass on U.S. Navy property on Vieques Island, Puerto Rico, on a technical question of whether the Navy could claim ownership of beach areas below the high tide line.

In conjunction with the NLG and attorneys associated with the Puerto Rican Socialist Party (PSP), CCR in also supporting leaders of the Vieques Fishermen's Association involved in sea demonstrations and in a damages lawsuit by relatives of two terrorists shot to death in 1978 while trying to blow up communications towers. CCR has boasted that *"the fruits of these combined efforts"* in discovery *"are already paying off"* with information having been obtained *"from approximately 100 depositions, from tens of thousands of documents obtained from the Puerto Rican police, the U.S. government and from other investigations."*

CCR reported that *"the underground group"* to which Carlos Soto Arrivi and Arnaldo Dario Rosado had belonged had been penetrated by an informant, Alejandro Gonzalez; and are attempting to show his role as that of *agent provocateur*.

In the area of labor law, CCR lawyers Arthur Kinoy, Margaret Ratner, Michael Ratner; CCR cooperating attorneys Staughton Lynd and Paul Schacter; and Northeastern Ohio Legal Services lawyers John Stember and Jay Hoznack won an appeal in the 6th Circuit Court of Appeals representing United Steelworkers of America Local 1330 in Youngstown, OH, against the U.S. Steel Corporation which closed four major plants in that city in 1977. Rather than go to trial for a second time, the company entered into a settle-

ment with the local to takeover and run the plants. However the Federal Economic Development Administration considered the venture too risky and withheld loans. CCR reports it is working on developing a strategy in Pittsburgh whereby the city can use its power of eminent domain to take over a closed plant *"and turn it over to the workers for a nominal fee."*

Other than handling the appeal of a first degree murder conviction of Rita Silk Nauni, a Sioux women who in September 1979 *"shot and killed a white male police officer and wounded a white female police officer,"* CCR's Indian law docket includes an effort at book banning. On behalf of Sioux Indians objecting to distribution of *Hanta-Yo*, a best-seller by Ruth Beebe Hill, CCR staff lawyer Frank Deale has demanded that the Federal Trade Commission investigate the book's claims to factuality on grounds of *"deceptive trade and promotional practices."*

Anti-nuclear litigation by CCR includes an effort to get a court ruling that all former U.S. servicemen who participated in atomic weapons testing must be warned they may father deformed children (on the basis of a single case). The case is being used for *"gathering information concerning the [atomic] test experiences, radiation exposure levels and subsequent health histories of the test participants."*

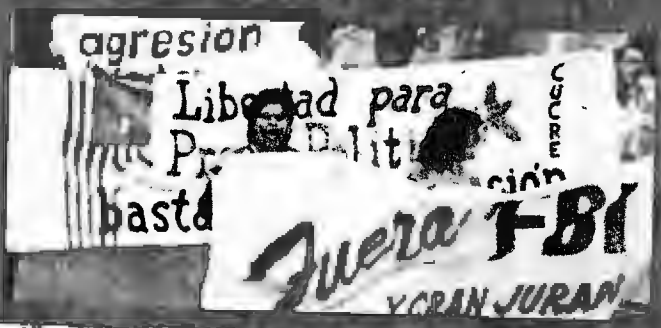
CCR failed in its effort before the U.S. Supreme Court to require the U.S. Navy forced to prepare a highly detailed (and public) environmental impact statement disclosing details about an alleged storage site for nuclear warheads in Hawaii. The NLG submitted an *amicus* brief in support of the suit by the Catholic Action of Hawaii/Peace Education Project.

CCR's Officers and Board of Trustees include Robert Boehm, chairperson; Morton Stavis, president; Arthur Kinoy, William M. Kunstler, Peter Weiss, vice-presidents; David Scribner, secretary-treasurer; Lauren Anderson, Peggy Billings, Haywood Burns, Gregory H. Finger, Judy Lerner, Joan Martin and Helen Rodrigues-Trias. Kinoy, Kunstler and Weiss also serve as CCR's volunteer staff attorneys.

Staff attorneys include Betty Lawrence Bailey; Rhonda Copelon; Frank E. Deale; Jose Antonio Lugo; Doris Peterson; Margaret Ratner; Michael Ratner; Randolph M. Scott-McLaughlin and Susan Wunsch. CCR's 77 "cooperating attorneys" include Ramsey Clark, Alan Dranitzke, Victor Goode, Jeremiah Gutman, Barbara Handschu, William Higgs, Philip Hirschkop, Susan B. Jordan, David Kairys, C. Vernon Mason, Jr., Dennis Roberts, Catherine Roraback, David Rudovsky, William Schaap, Elizabeth Schneider, Helene E. Schwartz, Michael Standard, Martin Stolar, Nadine Taub, Doron Weinberg and Leonard Weinglass.

Center for Constitutional Rights

DOCKET REPORT 1985-1986



Center for Constitutional Rights

853 Broadway New York, New York 10003 • (212) 674-3303

The Center for Constitutional Rights (CCR) provides vigorous, innovative legal support to progressive movements. The CCR was born in 1966 out of the southern civil rights struggle. Founded by attorneys Arthur Kinoy, William M. Kunstler, Ben Smith and Morton Stavis, with the help of Robert Boehm, it was soon joined by Peter Weiss and others dedicated to the creative use of law as a positive force for social change.

Contributions to the CCR are tax deductible. CCR Financial Report available on request.

After January 1, 1986, our new address will be 656 Broadway, New York, N.Y. 10012.

Dedication

This year's Docket Report is dedicated to Juan Antonio Corretjer, the late leader of the Puerto Rican independence struggle, and to Nelson and Winnie Mandela, world-wide symbols of the fight for justice in South Africa.

Nelson and Winnie Mandela

This Docket Report goes to press at a historic moment — when the government of South Africa no longer appears invulnerable — as it confronts internal rebellion by millions of Black citizens and international financial pressure. The CCR is honored to make this dedication to Winnie and Nelson Mandela because of their unwavering and principled persistence in the cause of freedom, despite prison, torture, and banning. They represent the best of human striving to live free in the face of overwhelming hostility, and are an example for all people, everywhere.

Juan Antonio Corretjer, 1908-1985

Don Juan Antonio Corretjer, was a prominent leader of the Puerto Rican independence struggle and the island's poet laureate. Corretjer was second in command to Pedro Albizu Campos, leader of the Partido Nationalista (Nationalist Party), and was the founder and general secretary of the Liga Socialista Puertorriquena (Puerto Rican Socialist League).

In 1936 Corretjer was jailed for refusing to give a grand jury the names of Nationalist Party members and of subscribers to the newspaper *La Verdad*. He was the first person imprisoned for refusing to collaborate with U.S. intelligence gathering via the grand jury. Corretjer was sentenced to 10 years in jail on seditious conspiracy, a charge still being used against Puerto Rican independence activists. He served six years, and was exiled from Puerto Rico for the remainder of his sentence.

Corretjer died on January 19, 1985, bequeathing to us his heroism and his poetry.

From "Distances," by Juan Corretjer

And this I think tonight in La Princesa:*
the fight never ends.
All of life is a struggle
to obtain desired freedom.
The rest is nothing
but surface and style.

*La Princesa was a notorious prison in Puerto Rico

Courtesy of the Corretjer Family

Juan Antonio Corretjer *Nelson Mandela* *Winnie Mandela*

The First Amendment

Chester Higgins, Jr./The New York Times

Columbia University divestment demonstration.

Student Protest

At numerous universities throughout the country, students protesting the CIA's presence on campuses have been arrested on criminal charges and brought before college disciplinary boards. Students have attempted to put CIA agents under "citizen's arrest" during CIA informational meetings. As punishment, students have been subjected to disciplinary action--probation, in most instances.

Student activists throughout the country have called on the CCR to assist them in preparing their defense to criminal trespass and similar charges. In each instance, defendants have tried to raise the defense of "necessity," asserting that they had to take action to prevent a greater harm to the peoples of Central America.

In connection with their campus campaigns, students have held educational forums. CCR staff members have participated, explaining the illegality of United States actions in Central America. We have also helped attorneys and students secure witnesses and prepare defenses.

CIA Recruiters on Campus

48. Brown University

In December 1984, 68 Brown University students were tried by a faculty committee for attempting to make a citizen's arrest of two CIA recruiters. While the CIA officials were lecturing, students stood up and read an indictment charging the CIA with crimes in Central America and elsewhere. At no time did the students physically touch the officials but requested Brown security guards to make the arrest. The legal basis for the criminal charge was that the CIA violated the Neutrality Act--the students based the indictment on the CCR's work.

The students requested the Center's help at their trial. While students acted as their own counsel, Center attorneys gave legal support and testified. We told how the CIA was violating United States criminal laws, and we described how Rhode Island law included the right to make a citizen's arrest. Former CIA agent John Stockwell presented troubling testimony about CIA atrocities throughout the world.

Over 600 students attended the hearing, and a large majority supported the activists, who were found not guilty of the most serious charges. The activists did receive a notation on their records for disrupting a school function.
[Michael Ratner]

Central America

49. Vermont v. Keller

In March 1984, 26 people in Winooski, Vermont, occupied the offices of their Senator, Robert T. Stafford, a supporter of Reagan Administration policy. The protesters said that they would stay in the office until Stafford held a public forum on events in Central America. They remained in the office over the weekend and on Monday morning were arrested for trespass.

In preparation for trial, defense lawyers were able to reach agreement with the prosecution to allow the "necessity" defense to be presented to the jury. Over 20 witnesses testified about the harm caused by United States involvement in Central America. Among those who testified were Ramsey Clark, former U.S. Attorney General, David Rosenberg, Associate Professor at Middleberry College, John Stockwell and David McMichael, both former CIA agents, and numerous Salvadoran and Guatemalan refugees. This case was one of the few in the country in which such evidence was allowed to be presented to a jury. The CCR assisted in preparing the defense. Defendants were acquitted of all charges.

Government Misconduct

Sanctuary

"It behooves North American churches and synagogues to realize now what the German churches learned too late some forty years ago; it is not enough to resist with confession, we must confess with resistance."

William Sloane Coffin

For many North Americans, involvement in the movement to give sanctuary to political refugees from El Salvador and Guatemala means a "loss of innocence." From the perspective of the sanctuary movement, it is clear that the United States is deeply implicated in the repression of citizens in Central America.

This modern sanctuary movement began in Arizona in the summer of 1981. Quakers Jim and Pat Corbett, and John Fife, minister of Tucson's Southside Presbyterian Church, began to assist, feed and house refugees fleeing El Salvador and Guatemala. Large numbers of Salvadorans and Guatemalans were being held in jails and camps by the U.S. Immigration & Naturalization Service. They were then being deported back to their countries, where persecution and perhaps even death awaited them. U.S. law does not allow deportation under such conditions. But as deportation of economic migrants who are illegal aliens is permissible, the government so names these refugees. This fiction is used to justify their deportation.

In March 1982, Southside Presbyterian Church led numerous congregations in publicly announcing that they were declaring "sanctuary." The movement spread quickly. Today there are more than 1,500 refugees in more than 200 congregations belonging to all of the major denominations and supported by more than 60,000 groups.

Sanctuary is a Judeo-Christian tradition with biblical, theological and historical roots--analogy is often made to the American Underground Railroad of Civil War times. Sanctuary is not primarily a place, but a pledge of support—of shelter, food, medical care, a job and legal help—and, if need be, a readiness of church members to accept criminal prosecution.

Religious persons involved in the sanctuary movement believe their work is legal. They call upon the U.S. government to enforce the 1980 Refugee Act, based on the United Nations Protocol on Refugees, which says asylum should be granted to refugees who leave their countries because of "persecution or a well-founded fear of persecution." This is precisely the situation of Guatemalan and Salvadoran refugees. Yet the U.S. government deports them as economic migrants, thus expressing its support of military regimes in those countries.

The growing strength of the sanctuary movement has drawn government attention. A high-ranking general recently admitted to a gathering of top military leaders: "The greatest challenge to all that we do now comes from within the churches."

Thus, in February 1984 Stacy Merkt, a Catholic lay worker, was arrested and charged with transporting Salvadoran refugees. She was convicted but this was overturned by a court of appeals.

In March 1984 Phil Conger, leader of the Tucson Ecumenical Council, was arrested for transporting Salvadorans. Jack Elder, former director of Casa Romero, was arrested for transporting two Salvadorans to a bus station. The CCR helped in the preparation of Elder's defense and he was acquitted by a jury.

In November 1984 new charges were brought against Elder and Merkt, again for tranporting and for conspiring to transport. Merkt was acquitted of the transportation charges, but convicted of the conspiracy. Elder was convicted on all counts. He was sentenced to probation, and this was changed to a one-year sentence when he refused to say he would stop assisting refugees, leave Casa Romero, and not speak to the press. Elder's sentence was later reduced to five months in a half-way house. His conviction is on appeal.

In each of these cases, the defendants maintained that the Salvadorans and Guatemalans who received help were political refugees under international and domestic law, and that such assistance is completely legal. Most of the trial judges have refused to allow jurors to hear this defense and the argument that religious convictions of indicted sanctuary workers required them to assist the refugees.

The Center is deeply committed to the sanctuary movement. One of our attorneys is devoting all her time to the defense of a sanctuary worker against criminal prosecution (Docket No. 57). We have also brought a widely supported federal action demanding an end to goverment prosecution of sanctuary workers (Docket No. 56).

Stop the Prosecutions

56. American Baptist Churches in the U.S.A. v. Meese
In this suit, 80 religious organizations charge the United States Attorney General and the head of the Immigration Service with violating domestic and international law. The suit is a response to the U.S. government's prosecution of religious sanctuary workers as criminals for providing humanitarian aid to Salvadoran and Guatemalan refugees (Docket No. 57).

The lawsuit was filed in May 1985 in the San Francisco federal court. The plaintiffs assert that these federal officials must accept legal responsibility for protecting persons fleeing conditions of war, persecution and widespread human rights violations. The officials are denying Salvadorans and Guatemalans fleeing such conditions the right, under domestic and international law, to temporary refuge. The refugees have a right not to be deported back to their countries while danger and violence persist. The lawsuit also charges the U.S. officials with interfering with First Amendment religious rights of sanctuary workers.

The plaintiffs challenging the government in this case include the American Baptist Churches in the U.S.A., the Presbyterian Church (U.S.A.), the Unitarian-Universalist Association, the General Board of Church & Society of the United Methodist Church, and many other churches and religious groups. They seek a judicial ruling which will prevent the deportation of Salvadorans and Guatemalans until such time as conditions in their countries are safe. The plaintiffs also seek an injunction to prevent criminal prosecutions of sanctuary workers.

[Morton Stavis, Sarah Wunsch, Frank E. Deale, Ellen Yaroshefsky, with Marc Van Der Hout, National Lawyers Guild]

Defense of Sanctuary Workers

57. United States v. Maria del Socorro Pardo de Aguilar
In 1982 the government began an investigation of the sanctuary movement. In 1984 the government commenced "Operation Sojourner" an extensive effort to infiltrate the sanctuary movement with informers. Two undercover agents attended worship services, Bible study meetings, and internal church discussions. Posing as committed sanctuary workers, the two tape-recorded many of these meetings and took part in transporting and protecting refugees.

In January 1985 the government indicted 16 people, including three nuns, two priests, a minister, and lay volunteers, on 71 counts of conspiracy, transporting and harboring refugees. The indictments were based on information gathered by the two government agents. In a nationwide police action, 58 Central Americans associated with the refugee network were arrested in Phoenix, Seattle, Tucson, Philadelphia, and Rochester. Forty-three persons named as "unindicted co-conspirators" were to be subpoenaed to testify. The indictments were announced while the sanctuary movement was holding a national conference in Tucson.

CCR attorneys, with others from across the country, volunteered to defend those indicted and to help the unindicted co-conspirators. Pretrial hearings began in May 1985. Defense lawyers filed numerous motions to dismiss the indictments, citing international law and the right to religious freedom. Also filed was a motion to suppress all the government's evidence because it was obtained by the infiltration of churches by agents.

The government is seeking to limit the issues at trial, to exclude any mention of international law, religion, or the civil wars in El Salvador and Guatemala. The government also seeks to stop the defendants from showing that the sanctuary workers were acting to protect the lives of Central American refugees.

During the hearings the court refused to hear testimony from expert witnesses on conditions in El Salvador and Guatemala. The court did permit the testimony of national religious leaders that sanctuary is a right and duty of churches.

On the issue of church infiltration by informers, the court did not allow the defense to call the informers. It did hear testimony from two ministers about the detrimental effects of government infiltration upon their ability to practice their ministry.

The trial is scheduled to take place in October 1985.

[Ellen Yaroshefsky, with Michael Altman, James Brosnahan, Bates Butler, Stephen Cooper, Robert Hirsch, Tom Hoidal, Michael Kimerer, Michael Piccarretta, Nancy Postero, William Risner, Karen Snell, and William Walker]

Harvey Finkle

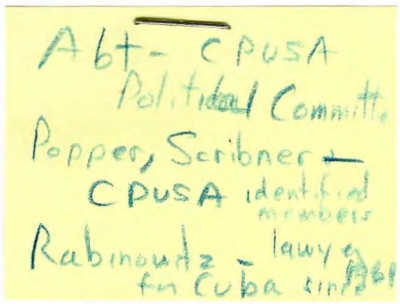
Sanctuary refugees testify.

Government Harassment

Customs Seizure

58. Haase v. Webster
As part of the CCR's efforts to stop FBI harassment, it recently took the case of Edward Haase, a journalist whose address book, notes, diary and other personal papers were seized by U.S. Customs on his return from Nicaragua. At Customs, Haase was questioned by FBI agents who photocopied the seized materials and threatened to disseminate them to other government agencies.

In February 1985 the CCR filed a lawsuit challenging the seizure and dissemination, and the participation of the FBI.


Abt - CPUSA
Political Committee
Popper, Scribner - CPUSA identified members
Rabinowitz - lawyer for Cuba

trial, the plaintiffs entered into what CCR's clients believe to be a bad settlement.

The settlement authorizes political spying on groups whose activities are protected by the First Amendment. The police are not required to show that such groups are involved in criminal activities. Moreover, the settlement permits the infiltration of such groups by undercover agents. The settlement allows police manipulation of the groups by the use of disruptive practices reminiscent of the notorious FBI COINTELPRO program.

The CCR, with Marshall Perlin of the Fund for Open Information and Accountability, took the initiative in opposing the settlement. In May 1985, however, the court upheld it. The CCR and the National Emergency Civil Liberties Committee are appealing on behalf of their clients.

[Michael Ratner, Margaret Ratner, David Scribner, with Marshall Perlin, Victor Rabinowitz, Michael Krinsky, John Abt, CCR cooperating attorney Elizabeth M. Fink, Martin Popper, O. Stephen Paganuzzi]

Attorney Subpoenas

63. In the Matter of Tipograph

Susan V. Tipograph, a lawyer, has represented political activists for many years. She was recently subpoenaed to testify against Marilyn Jean Buck, one of her clients, at the latter's escape trial in West Virginia. If enforced, the subpoena would have prevented attorney Tipograph from acting as Buck's lawyer and would have forced her to testify against Buck or go to prison for contempt.

The CCR filed a motion to quash the subpoena on a number of constitutional grounds, concentrating on the threat posed to Buck's Sixth Amendment right to be represented by the attorney of her choice. Many organizations submitted friend of the court briefs. These included the Texas Civil Liberties Union, the Virginia College of Criminal Defense Lawyers, the National Lawyers Guild, the National Conference of Black Lawyers, California Attorneys for Criminal Justice, and Prisoners Legal Services of New York. A week before the start of Buck's trial, Tipograph's subpoena was quashed.

This case is one of many in which grand jury and trial subpoenas have been served on attorneys to force them to take the witness stand against past or present clients. Such subpoenas have led one federal judge to comment: it "eliminates the adversary from the adversary process [by providing the government] with the ultimate tactical advantage of being able to exclude competent defense counsel as it chooses."

[William M. Kunstler, Arthur Kinoy, with Leon T. Copeland, Federal Public Defender, Southern District of West Virginia]

MSN

The Movement Support Network (MSN) is the CCR's newest project. It was created to respond to increasing FBI surveillance and harassment of United States groups who support progressive movements in South and Central America. The Network also provides valuable resources to anti-racist, sanctuary, and anti-nuclear groups. Assistance has been given to Black people harassed by grand juries in the north and the south, and the Network has issued a pamphlet on how to respond to federal investigators, "If An Agent Knocks: Federal Investigators and Your Rights." Another new pamphlet, "Radical Re-Entry: Coming Through Customs," advises activists about their rights upon returning to the U.S. The first nine months of the Network's activities have been extremely successful.

The MSN provided Congressman Don Edwards with an incident list of FBI activity directed against people who had visited Nicaragua or its embassy. This allowed Edwards' House Judiciary Subcommittee to embarrass FBI director Webster publicly and to force him to limit the harassment. CCR staff attorneys accepted invitations to testify about incidents of FBI harassment and to speak for legislation that would discourage the use of grand jury subpoenas as a means of intimidating political radicals.

After the Reagan Administration announced its Nicaraguan trade restrictions, the MSN helped inform people about the restrictions by publishing a six-page analysis, twice updated.

MSN representatives spoke at scores of conferences and emergency meetings, sharing our understanding of Administration moves designed to limit support for the progressive government of Nicaragua and for the revolution in El Salvador.

As part of our work in support of progressive movements, CCR attorneys will either act as legal counsel or put those in need of assistance in touch with sympathetic local attorneys.

The Network has established a telephone hotline for individuals and organizations experiencing harassment and surveillance by government agencies. The hotline number is: (212) 477-5652.

Early Warning
full report
December 1984
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71. In the Matter of Williams

Dessima Williams, former Ambassador from Grenada to the Organization of American States (OAS) and a leading critic of United States Caribbean policy, was forcibly seized by immigration officials in October 1984. She had just spoken at a Howard University forum on "Peace in the Americas." She had eulogized Maurice Bishop, the slain leader of the New Jewel Movement and former Grenadian prime minister. Her arrest occurred exactly one year after the U.S.-led invasion of Grenada.

CCR attorneys were called into this case just after Williams' arrest. At first, immigration officials refused to say if she was in their custody. Then, placing a $3,000 bond on Williams, they charged her with being an illegal alien, deportable for remaining in the U.S. after the termination of her diplomatic status. That charge was later dropped. She was then charged with being an illegal alien, allegedly because her diplomatic visa had been invalid when she had entered the U.S. That charge was intended to stop Williams from qualifying for permanent resident status. Williams' application for resident status was denied and that decision has been appealed to the immigration commissioner.

Williams' deportation hearing was terminated by a judge who held that the Immigration Service had not proven her diplomatic status invalid when she entered the country. Government motions to reopen are pending.

[Michael Ratner, with CCR cooperating attorney Michael Maggio]

72. In the Matter of Randall

Margaret Randall is the author of 40 books, most of which deal with women's and Third World liberation. She is also an accomplished poet and photographer. Although born in the United States, Randall married a Mexican citizen in the early 1960s and acquired Mexican citizenship. In 1966 Randall was denied admission to the U.S. as a visitor on the ground that she was "subversive." She was subsequently granted a temporary waiver of excludability. In 1969 she moved to Cuba, where she worked as an editor and writer, and in 1980 she moved to Nicaragua to work on a book with the Nicaraguan Ministry of Culture.

Randall is now married to a U.S. citizen and resides in Albuquerque, New Mexico, near her parents, who are both U.S. citizens. She has applied for permanent resident status, and that application has been pending for more than one year though the average processing time for such applications is 60 days. She was interviewed at length by immigration officials regarding her writings, associations, and beliefs.

It is anticipated that Randall's application for permanent resident status will be denied, despite her birth in the U.S., and the nationality of her husband and parents. The CCR is representing Randall before the Immigration Service and is preparing a lawsuit on her behalf.

[Michael Ratner, with CCR cooperating attorney Michael Maggio]

WAR CRIMES TRIBUNALS ON CENTRAL AMERICA AND THE CARIBBEAN

The CCR, in conjunction with the National Lawyers Guild, the National Conference of Black Lawyers, and La Raza Legal Alliance, held tribunals in October 1984 and January 1985 on United States involvement in Central America and the Caribbean.

The largest tribunal was held in New York City where 37 witnesses testified about U.S. policy in El Salvador, Guatemala, Honduras, Nicaragua, Grenada and Cuba. Lasting two days, the New York Tribunal hosted observers from France, Italy and Germany. Similar tribunals were held in Chicago, San Francisco, Los Angeles, Louisville, Austin, Salinas, Orlando, Seattle, Newark, New Jersey, and Washington, D.C.

Throughout this century, various countries and groups have sponsored tribunals to examine the actions of those accused of war crimes, crimes against the peace, and crimes against humanity. In 1919 a Peace Conference set up a commission to report on violations of international law by Germany and its allies. In 1946 the Nuremburg International Military Tribunal tried leaders of Nazi Germany for war crimes, crimes against the peace, and crimes against humanity. In 1966 and 1967 the Bertrand Russell Tribunal on War Crimes in Vietnam held trials in Stockholm and Copenhagen to investigate U.S. war crimes in Vietnam. Similar Vietnam War era tribunals were held by the International Commission of Inquiry in 1970 and, later, by the Winter Soldier Tribunal.

The tribunals on U.S. responsibility for crimes in Central America and the Caribbean helped to make people aware of this nation's illegal and inhumane actions in these areas. The Judgment of the New York Tribunal is published and available through the National Lawyers Guild.

Death Penalty

77. People v. Smith
Lemuel Smith, a Black prisoner at Greenhaven Correctional Facility in Stormville, New York, was convicted of murdering a white woman guard. He was sentenced, under the only surviving provision of New York's capital punishment statute, to die in the electric chair.

The New York appeals court affirmed his conviction. But the court, by a 4-3 vote, struck down the mandatory death penalty statute on the ground that it contained no provision for the consideration of mitigating factors. The prosecutor and the attorney general applied to the United States Supreme Court for a review of the decision.

The CCR, with the NAACP Legal Defense Fund and the New York Defenders' Association, successfully opposed the move for Supreme Court review. Smith was sentenced to life imprisonment.
[William M. Kunstler, with CCR cooperating attorneys Ronald L. Kuby, C. Vernon Mason, and Mark B. Gombiner]

Persecution of Activists

78. People v. Basheer Hameed and Abdul Majid
Basheer Hameed (James Dixon York) and Abdul Majid (Anthony LaBorde) are two Black men who were involved in community activities in New York. In the 1960s, both men were members of the Black Panther Party. Majid later worked as a paralegal for Bronx Legal Services and Hameed worked with a hospital program for the elderly.

In April 1981 two white policemen were shot while sitting in their patrol car. One eventually died of his wounds; his partner survived but could no longer function as an officer. The police immediately began to construct a case against former Black Panthers, using their extensive files on the party. Pictures of former Panthers, many acquitted in the celebrated New York "Panther 21" case, were shown to potential eyewitnesses. Most could not identify anyone. After hypnosis and long interrogation, and after being shown photographs of the defendants, two witnesses identified them.

Both men were apprehended and jailed on astronomical bail pending appeal. In the first trial, after seven days of deliberation, the jury convicted them of attempted murder in the second degree, that is, attempted murder of a civilian, and could not agree on a verdict on the murder count. An appeal of this conviction is pending.

A second trial on the murder charge began in June 1983. After seven days of deliberations, the jury announced that it was 8-4 for acquittal, but could not deliberate further because the most conviction-prone juror was having a nervous breakdown and was incoherent. Instead of substituting the alternate, as he was required to do by law, the judge declared a mistrial.

The CCR attempted to stop a third retrial, alleging that the illegal mistrial prevented further proceedings under the double jeopardy clause of the Constitution. After losing in state court, we filed a federal writ of habeas corpus and the judge stayed the third trial in June 1984. Ultimately, the judge denied the CCR's attempt to halt a further trial and the court of appeals affirmed. The Supreme Court refused to review the case and the state is now free to retry the two men for a third time.
[William M. Kunstler, Randolph M. Scott-McLaughlin, with CCR cooperating attorneys Mark B. Gombiner, Ronald L. Kuby and C. Vernon Mason; and Peter J. Avenia]

79. United States v. Sims *(amicus)*
In October 1984 hundreds of heavily-armed officers of the Joint Terrorist Task Force broke into the New York homes of eight Black political activists, arresting all of them on conspiracy charges.

Those arrested, now known as the New York Eight, had been active in community organizing. Many of them held post-graduate degrees in law and education from Columbia, Harvard, and Rutgers Universities.

Following the arrest, hearings were held before a federal magistrate under the recent Bail Reform Act, to determine if the defendants should be detained without bail. Under the new Act, defendants can be imprisoned without bail if it is determined that they are a "danger" to the community. Pending this decision the New York Eight were held in preventive detention.

The CCR filed an amicus brief at the district and appeals court levels, in which it was argued that the statute was unconstitutional; it denied defendants the right of reasonable bail conditions. The courts did not rule on that issue but released all defendants on bail, though with excessive conditions.

A jury acquitted the New York Eight of all the conspiracy charges against them. Seven were convicted of minor charges.
[Arthur Kinoy, William M. Kunstler, Randolph M. Scott-McLaughlin, with CCR cooperating attorney Ronald L. Kuby]

Grand Juries

80. In the Matter of Armstrong *(amicus)*
The Center authored an *amicus* brief in support of the release of eight outspoken Black people jailed for refusing to testify before a New York grand jury. Prior to their incarceration–the first for each–they served their community as doctors, medical students, housing rehabilitation specialists, and educators.

The grand jury in question was investigating possible crimes by a group of Black activists, including plans to free a political prisoner (Docket No. 79). Three of the grand jury resisters were married to persons indicted by the grand jury a month after the subpoenas were issued.

Release of the resisters was sought on the grounds that 1) continued imprisonment would not serve a coercive purpose and was therefore illegal, 2) the subpoenas had been used to disadvantage defendants on trial by incarcerating their spouses, and 3) there was no continuing need for the witnesses' testimony since the indictment had issued and the trial begun. As a result of the motion, the resisters were released.
[Margaret Ratner; Linda Backiel, Movement Support Network (MSN); Haywood Burns, National Conference of Black Lawyers; Barbara Dudley, National Lawyers Guild; Richard Emery, New York Civil Liberties Union; and Michael Krinsky, National Emergency Civil Liberties Committee]

Soldier's Objection to Fighting

81. United States v. Corporal Griffin
In May 1984, Marine Corporal Alfred Griffin, a Muslim, was sentenced to four months in jail, forfeiture of half his pay, reduction in rank, and a bad conduct discharge for refusing to participate in United States military activities in Lebanon and Grenada.

Griffin, who became a member of the Nation of Islam at the age of six, said that his religious beliefs prohibited him from participating in wars of aggression. Griffin's testimony was corroborated by two Imams (ministers) from the American Muslim Mission, who testified that the Koran prohibits killing except in defense of self, family or country during an actual invasion.

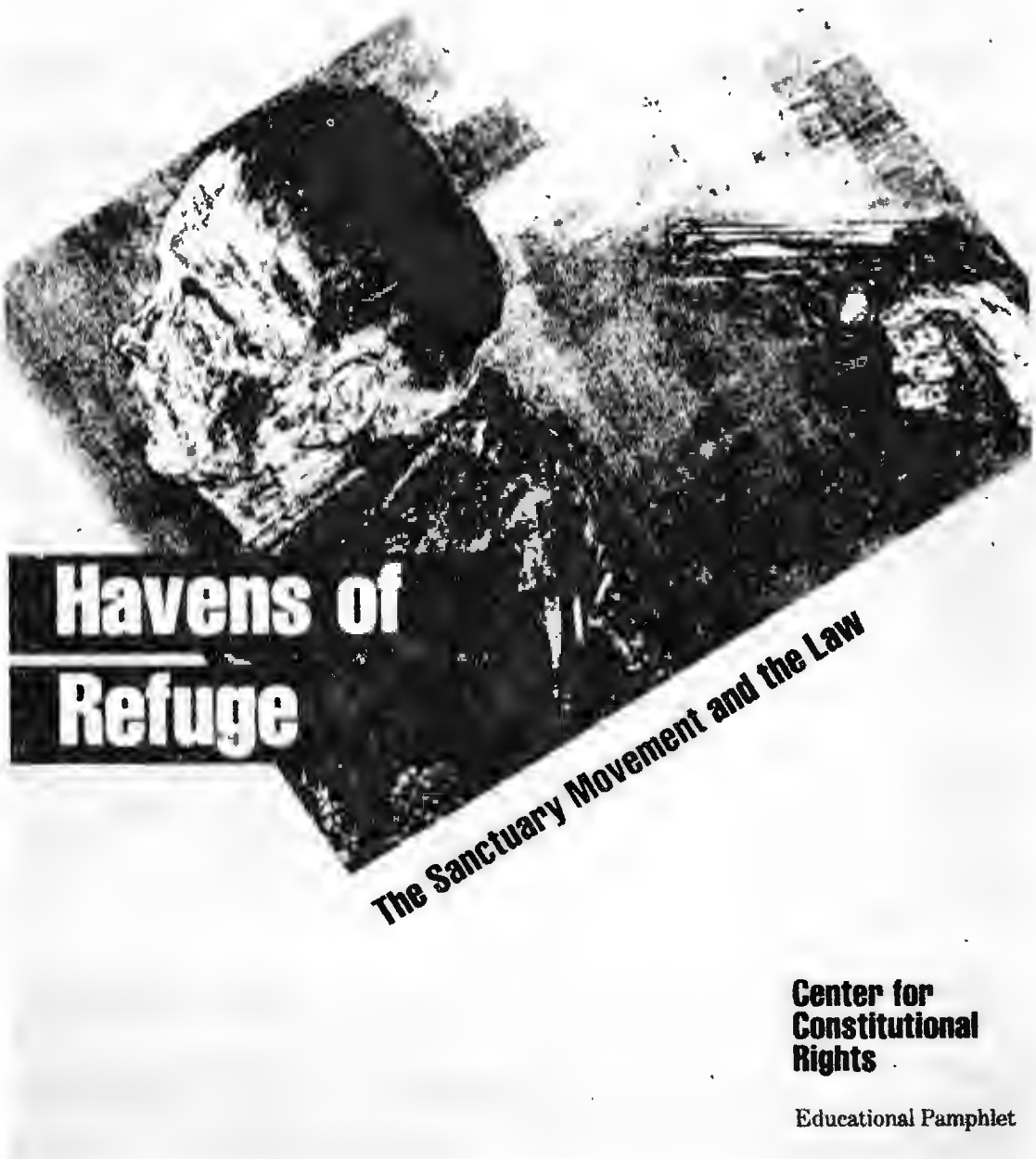
Corporal Griffin went AWOL a few days before his unit left Camp LeJune for Lebanon (just before the Beirut bomb attack). En route, his unit was diverted to Grenada, to lead the invasion there.

CCR attorneys tried to raise a Nuremberg (or war crimes) defense, retaining experts in international law to testify that U.S. military activities in Lebanon were crimes against peace and humanity. The military judge ruled these witnesses irrelevant. An appeal has been argued.

In a precedent-setting decision, however, we were permitted to raise a First Amendment defense, offering evidence that Griffin's religious beliefs prevented him from participating in the operations. Although the actual sentence imposed was vindictive, the case represents a significant victory. For the first time, a religious objection was allowed as a defense against AWOL charges. The military's hesitant handling of the case reflects a deep uncertainty about how to cope with rebellion in the ranks.

The massive press attention received by the case allowed Griffin to broadcast his message of resistance worldwide, and the penalty imposed was light enough to encourage future resistance. G.I.s now have the option of choosing a short jail sentence rather than participating in aggressive American military adventures.

[William M. Kunstler, Randolph M. Scott-McLaughlin, with CCR cooperating attorney Ronald L. Kuby]



CCR pamphlet

CCR's "Nuclear Hazards" are all U.S. weapons

Nuclear and Environmental Hazards

Nuclear Hazards

Forty years after the destruction of Hiroshima and Nagasaki, the CCR's anti-nuclear work is raising a disturbing and unexpected question: Can law and nuclear weapons coexist? The courts in the *Greenham Women Against Cruise Missiles* case (Docket No. 91) resolutely refused to judge the merits of the claim that the deployment of cruise missiles violated international law and the United States Constitution. The court of appeals held that the claims of the Greenham women were outside the power of the courts to decide. A court refused to intervene in the conflict between Congress and the President over the President's *power* to order first use of nuclear weapons and Congress's exclusive constitutional *authority* to declare war. The court held that the conflict had not advanced far enough to be legitimately taken up by a court.

The court refused to see that this case is unlike the issue of presidential power raised by the Chief Executive's seizure of steel companies during the Korean War. A unilateral nuclear action by the President would be followed by unimaginable mass destruction, not by a lawsuit testing whether the President had acted legally. The *Greenham* challenge asked whether the law is of any use to us in the struggle to prevent the mass destruction of the human race and its institutions. The court of appeals decided that in the conflict between courts and nukes, the courts would give up without a fight.

Raissa Page

This, we hope, is not the last word. The *Western Solidarity* case is proceeding (Docket No. 92), other anti-nuclear legal actions are continuing in the U.S. and around the world, and people are mobilizing to resist the policy of preparation for a nuclear war. But the courts' response so far raises serious questions about the efficacy and preservation of democratic institutions in the nuclear age. The issue extends beyond direct challenges to weapons systems. We refer to the mistreatment of visitors to a nuclear Navy ship and the Navy's subsequent refusal to release documents about it (Docket No. 94), the Administration's harsh response to New Zealand's assertion of independence from U.S. nuclear policy (Docket No. 93), the opposition to a popular vote on nuclear weapons in New York (Docket No. 95), and similar anti-democratic actions. These are intimately linked to the establishment's need to preserve the power of nuclear weapons over our lives. People all over the world are taking action to break that power. Law could have a primary place in the struggle, or it could fall by the wayside. The CCR is committed to making the law a useful tool in the international struggle against nuclear destruction.

Cruise Missiles

92. Greenham Women Against Cruise Missiles v. Reagan
The threat of nuclear war has intensified with the introduction of smaller, more accurate nuclear weapons. With these weapons have come Pentagon theories of the viability of *fighting* nuclear wars. This dangerous combination of weapons, technology, and ideology has resulted in the deployment of United States cruise and Pershing II missiles in Western Europe.

For more than four years, militant and imaginative resistance to these missiles has come from the Women's Peace Camp at the U.S. Air Force base at Greenham Common, 60 miles west of London. In November 1983, on the eve of the first cruise missile deployment, this resistance came to the U.S. A lawsuit was brought by the CCR on behalf of Greenham Women Against Cruise Missiles, 13 individual women and their children, and Representatives Ron Dellums of California and Ted Weiss of New York, both Democrats. The suit charged that cruise missiles are intended for nuclear first use and, therefore, that their deployment violates international law and the U.S. Constitution.

The merits of these claims were never discussed. In July 1984 the federal court dismissed the case on the ground that there were no "judicially manageable standards" for a decision. The court of appeals in a brief opinion affirmed the

dismissal; it held that the claims of the Greenham plaintiffs raised issues that courts were not empowered by the Constitution to decide. The issue of nuclear destruction was the prerogative of the elected branches of government. The claims of the congressional plaintiffs in this case were not yet a legitimate concern of the courts; the dispute between Congress and the President about responsibility for starting a nuclear war had not gone far enough to warrant intervention by a court. The opinion did not suggest a more appropriate time to return to court for a decision in this matter.

The impact of the *Greenham* case, the first comprehensive legal challenge to a nuclear weapons system, extends far beyond the courtroom. An extensive organizing and public education campaign by the plaintiffs took them to half the states in the U.S. They took part in innumerable public meetings and press interviews. The CCR published and distributed an educational pamphlet on the case that educated people about the missile menace, and suggested that we can organize and act against it. Information and legal theories developed in this case have been useful in other cases in the U.S. and around the world. These cases have included defenses of anti-nuclear demonstrators in Australia, and a suit challenging the deployment of cruise missiles in The Netherlands.

[Anne E. Simon, Sarah Wunsch, Ellen Yaroshevsky, Robert Boehm, Peter Weiss, with Jane Hickman, solicitor for Greenham Women Against Cruise, and Eleanor Jackson Piel, Lawyers Committee on Nuclear Policy]

MX

93. Western Solidarity v. Reagan

Years of intense public pressure and lobbying efforts finally pushed Congress to cut in half the Reagan Administration's request for MX missiles. Important though this is, it does not address the fundamental question of whether this weapon should be deployed at all. Each missile carries 10 warheads, each with 20 times the explosive force of the bomb dropped on Hiroshima.

A coalition of groups (community, farm, anti-nuclear, religious, and environmental) has challenged the proposed MX deployment. In federal court, in Lincoln, Nebraska, the plaintiffs were joined by Friends of the Earth, SANE, the Council for a Livable World, and Environmental Action. The suit was consolidated with another brought by Colorado officials, challenging the Air Force's neglect of that state in its environmental impact analysis.

The CCR argued that the MX deployment is illegal on the basis of international law and constitutional law. The first-use nature of the MX, and the United States government's open policy of preparing to fight nuclear wars, violate international law. In addition, deployment of such missiles illegally transfers from Congress to the President the constitutional power to declare war.

The case has been pending since April 1984. A trial is set for spring 1986, although the Air Force is already starting construction of the MX. The plaintiffs are seeking summary judgment on a number of their environmental claims. The government is seeking to have the case dismissed.

[Anne E. Simon, with Andrew B. Reid, Frank S. Morrison, Sr., Clayton H. Brant, Nancy C. Crisman, Stephen W. Preston, Advocates for the Public Interest]

FOIA Request

94. In the Matter of Bishop

The deployment of nuclear weapons around the world by the United States is causing increasing international concern. The U.S. military is proceeding with plans to increase the number of nuclear-armed Navy vessels in all parts of the globe. The nuclear arming of the Pacific, starting with the atomic bombings in Japan and continuing with nuclear testing in Pacific islands, is a major element in U.S. military planning.

New Zealand has been visited by nuclear-powered U.S. Navy vessels for the past 20 years. In 1984 a newly-elected Labor Party government pledged to ban nuclear warships in New Zealand's waters. The election campaign and the Party's later implementation of the pledge generated much interest and controversy in New Zealand and world-wide.

John Bishop, a reporter for Television New Zealand, asked the CCR to file Freedom of Information Act requests to find out who arranged the visits of U.S. nuclear warships to New Zealand. The Navy and the State Department procrastinated, taking more than a year to disclose only a small number of documents. The CCR is continuing its attempt to force a more complete disclosure.

[Anne E. Simon]

Homeporting

95. Center for Constitutional Rights v. Department of the Navy

To expand the United States' nuclear arsenal around the world, the Reagan Administration is refurbishing World War II battleships to carry nuclear cruise missiles. The Administration plans to disperse these nuclear-armed ships to "home ports"--a euphemistic title for the facilities which will berth the battleships in cities around the U.S. Stapleton, Staten Island, has been chosen by the Navy as a home port for the *Iowa* and six other Navy fighting ships.

Although many New York politicians originally favored the plan, grass roots opposition has been strong and persistent. To quiet the opposition, the Navy sent the *Iowa* on a good will visit to New York in October 1984 and held an open house on board. Visitors boarding the ship had their political buttons, banners, and literature examined and censored. Several of these visitors asked the CCR to investigate the Navy's assertion that it could control the nature of political expression allowed during the open house.

The CCR's Freedom of Information Act request yielded several documents discussing where items not allowed on the ship should be checked. But the Navy refused to release orders from the Commander-in-Chief of the Atlantic Fleet to the *Iowa's* captain discussing the treatment to be accorded visitors. Because of the public importance of the Navy's plans, and the impact on First Amendment rights of the Navy's policy, the CCR brought suit in federal court, seeking to force the release of the withheld documents.

[Anne E. Simon, Sarah Wunsch]

96. Fossella v. Dinkins

The United States Navy plans to dock a group of ships, armed with nuclear cruise missiles and led by the battleship *Iowa*, at Stapleton, Staten Island. Many elected officials originally hailed this dangerous plan as an economic boon to the city, relying on estimates of the civilian jobs the project would create (estimates that turned out to be grossly inflated).

The prospect of nuclear weapons in New York Harbor has caused grassroots opposition to grow during the year the

plan has been discussed. Faced with unconcerned elected leaders, New York Mobilization for Survival organized the Campaign for a Nuclear Navyport Referendum, undertaking a drive to put their anti-nuke proposal on the ballot in the November election. This would prohibit the city from participating in the Navy scheme by restricting the Board of Estimate's power to commit city land or money to a nuclear weapons project.

The Campaign filed petitions with more than 60,000 signatures in early July and the City Clerk certified that the petitions contained the required number of valid signatures. A group of Staten Island politicians and business leaders filed suit against the City Clerk and the Board of Elections, challenging the validity of the signatures and the propriety of the referendum under New York law and the U.S. Constitution.

The CCR is representing the New York Mobilization for Survival and two other proponents of the referendum who are intervening to support the referendum's validity.
[Anne E. Simon, with CCR cooperating attorney Franklin Siegel and Jerry H. Goldfeder]

Hazardous Waste

Clean Water Act

97. Greene v. Ruckleshaus
The Center is suing the Environmental Protection Agency (EPA) for its refusal to clean up two hazardous waste dumps responsible for contaminating water in the Black community of Memphis, Tennessee. The suit charges that contamination from the dump site is migrating into the city's drinking water. This violates the Clean Water Act, a federal statute mandating the EPA to prevent chemical contiminants from polluting the nation's waters.

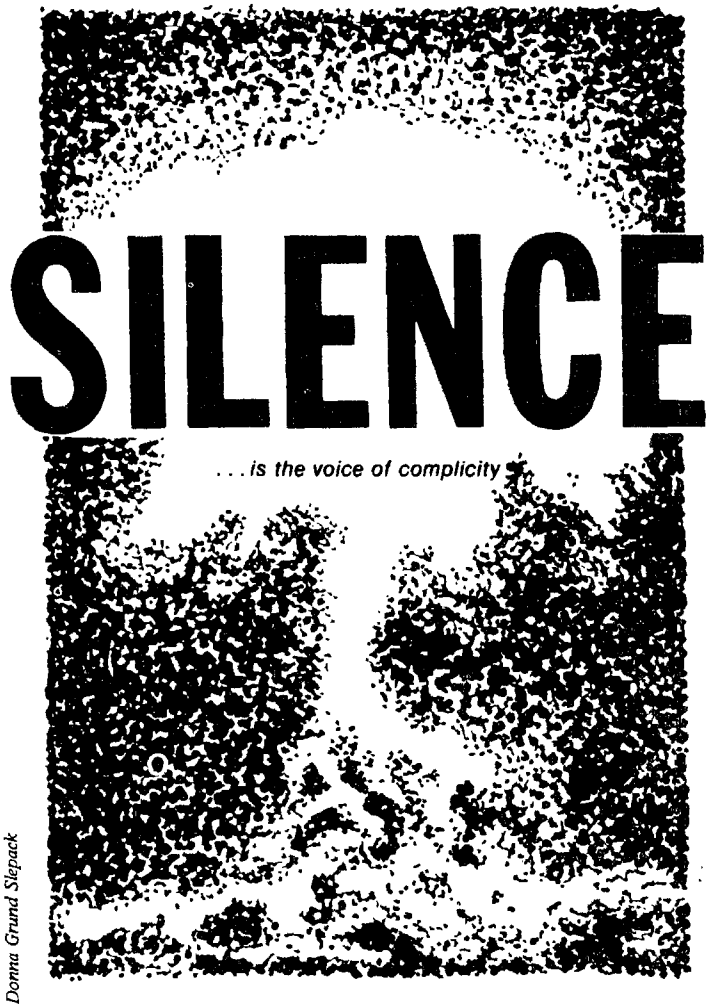
The government moved to dismiss the suit, claiming that the EPA has discretion to act or not act against environmental pollution. This claim is contradicted by the legislative history of the Clean Water Act, which indicates that the EPA is mandated to issue citations to halt contamination and secure payment for cleanup.

In November 1983 the district court denied the government's motion to dismiss. The court agreed with plaintiffs that the EPA is mandated to correct clean water violations. The CCR has submitted evidence to substantiate the plaintiffs' claim and has asked the court to issue summary judgment. That motion is pending.
[Frank E. Deale]

Workplace Safety

98. State of New York v. Consolidated Edison
The New York State Right to Know Law allows all employees access to information about toxic substances in their workplace. This includes the names of particular chemicals and descriptions of their harmful effects. The law also requires workers to be trained in the safe use of toxic substances.

CCR attorneys are representing three Con Edison workers who filed a complaint with the state attorney general. They charged that the utility company had failed to inform them about the presence of PCBs in their work area, and had failed to train them in the safe use of harmful chemicals they encounter on the job. Based on the complaint, the state sued Con Ed, one of the first cases brought under the Right to Know Law. Con Ed moved to dismiss the case on jurisdictional grounds and that motion has not yet been decided.
[Sarah Wunsch, with Nancy Stearns, New York State Attorney General's Office]



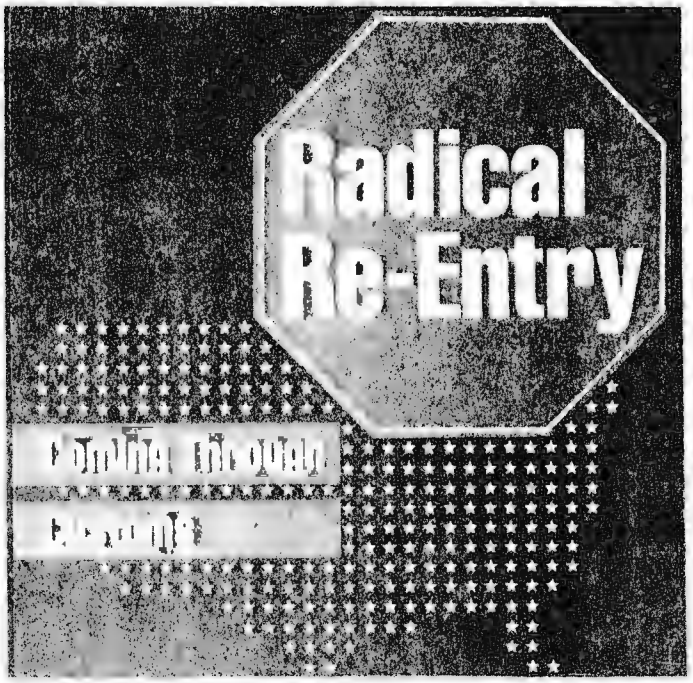
Center for Constitutional Rights Post Card

Nicaragua

In June 1985, Arthur Kinoy, one of the CCR's founders, was invited by the National Assembly of Nicaragua, and by that country's Association of Democratic Jurists, to participate in the creation of a Constitution for the new Nicaragua.

Kinoy was invited to participate in a seminar to discuss the formulation of the Constitution to be submitted this year for consideration by the Nicaraguan people. Kinoy was asked to share with the elected representatives to Nicaragua's National Assembly his understanding of constitutional democracy. His presentation was attended by over fifty Assembly members committed to search for the most effective forms of constitutional democracy for the country.

After the seminar, Kinoy was invited by the President of the Nicaraguan Supreme Court to participate in another meeting, in October 1985, on "Justice in the New Constitution." This meeting will consider the role of the judiciary in the new Nicaragua.



CCR pamphlet

Center for Constitutional Rights Post Card

A NEW HOME FOR THE CCR

In 1986 the Center for Constitutional Rights will celebrate its 20th anniversary. The Center, having outgrown its space, is planning to purchase a permanent home. We have found an office condominium that will provide a space large enough for us to grow into and that will be our own.

We know that 1986 will be a difficult financial year for the Center. In addition to raising funds for all the cases in this year's docket (as well as new ones), we will also need to raise the substantial funds needed to purchase the new office space.

We are confident that in a permanent home the Center will be able to continue our critical work in a more cost effective and efficient manner.

Many trusts, legacies, and large gifts will be necessary to make this dream a reality. If you can help, please let us know.

Who would have thought, when the Center was created 20 years ago, that its existence would be even more necessary in 1986?

Architects' rendering of renovated building for non-profit organizations in which the CCR plans to relocate.

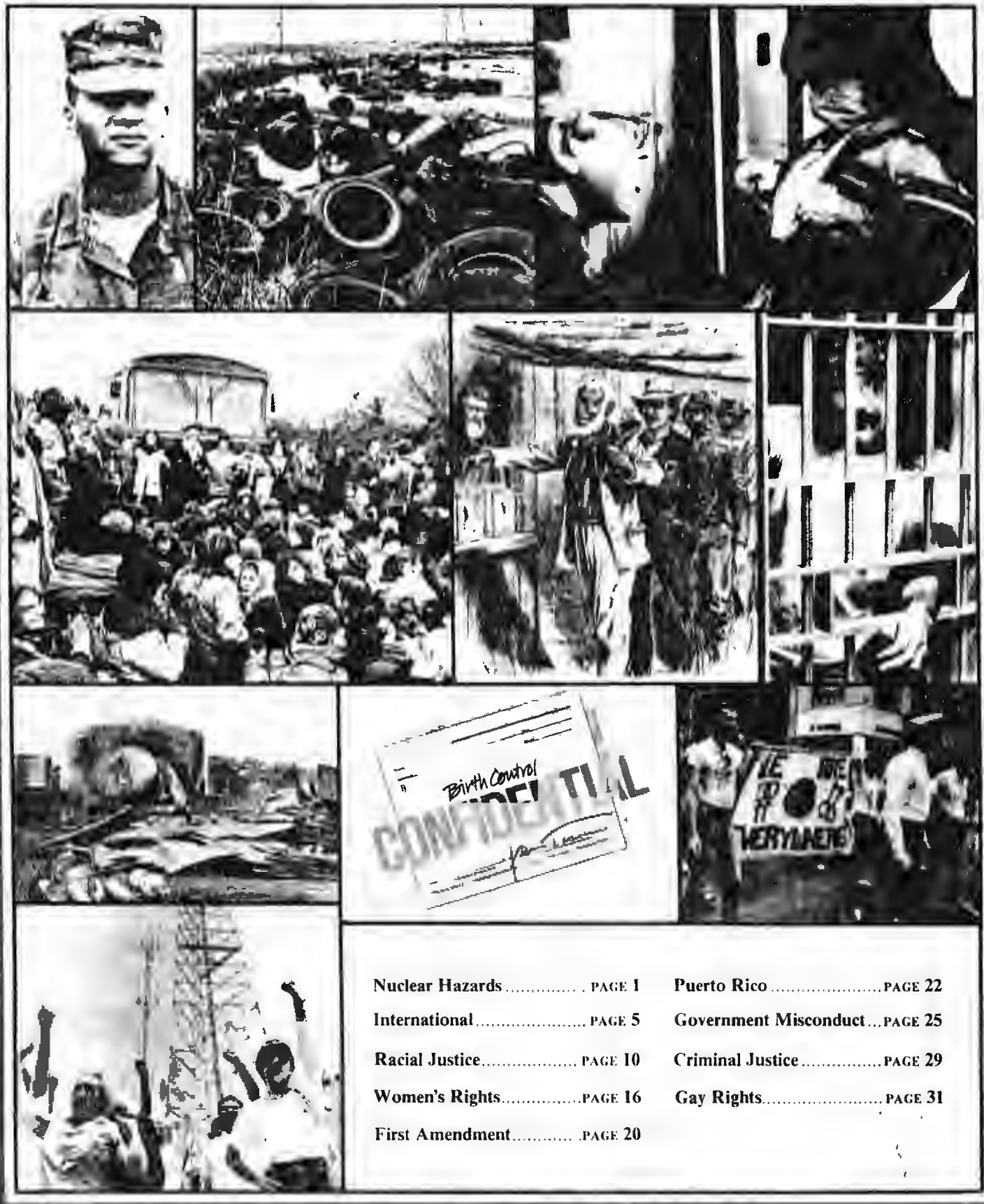
The Rev. Jesse Jackson and Marilyn Clement, CCR Director, at the Counter-Inaugural Ball.

CCR'S COUNTER-INAUGURAL

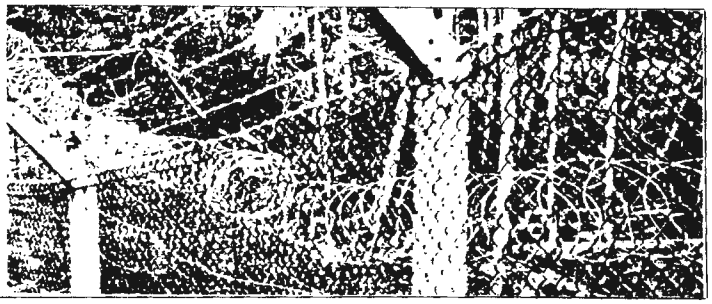
On the weekend of President Reagan's second inauguration, the CCR held a gala Counter-Inaugural Ball, attracting hundreds of supporters to the Puck Building. Former presidential candidate, the Rev. Jesse Jackson, urged those present to be inventive in using the law to fight injustice. CCR President, Morton Stavis, led a toast to a more just future--in spite of a second Reagan term. Marilyn Clement introduced a number of CCR clients, including three women from the Greenham Common struggle against cruise missiles, one of the sanctuary movement's unindicted co-conspirators, and plaintiffs in a case challenging the second primary runoff elections in New York City. Jazz artist Sonny Fortune and a band provided hours of dancing and entertainment.

DOCKET REPORT *1984-1985*

Center for Constitutional Rights



Nuclear Hazards



The rapidly increasing hazards of the nuclear arms race are being recognized and resisted by a growing number of people around the world. This year, the CCR has been engaged in these struggles at many points, from trying to get information about weapon decisions to trying to halt missile deployment.

As the arms race continues, the efforts to oppose it involve unmasking what is happening behind the shroud of secrecy. Although governments justify secrecy, claiming that it protects information from a potential enemy, rather it serves to keep information from the citizenry. Thus, the refusal to play the role of uneducated observers of government nuclear policy is a critical role unifying the various forms of opposition to the arms race.

Direct action exemplified by the Greenham Common Women's Peace Camp in Great Britain remains the basic form of opposition. That vigil, continuing into its third year despite harassment, eviction, and increasingly repressive actions by the British courts and police, brought the plan for cruise missile deployment to the attention of the world. It is now expanded to include a network of activists in Southern England and Wales who are tracking the "secret" maneuvers of cruise missile launch vehicles on their practice runs. In Greenham Women Against Cruise Missiles v. Reagan *(Docket No. 1) CCR challenged the deployment plan under the U.S. Constitution and international law, and publicized in the U.S. the work of Greenham women.*

People in New Zealand, outraged by 20 years of U.S. nuclear warships calling at New Zealand ports, are trying to find out through the Freedom of Information Act just who is responsible for their itineraries in In the Matter of Bishop *(Docket No. 5). Also seeking to rectify a long-standing abuse, former members of the U.S. military, in* Punnett v. Reagan, *are suing to force the Administration to notify people who were exposed to radiation during U.S. nuclear tests in the West in the 1950s (Docket No. 6).*

Anti-nuclear activity in the West has for some years included determined opposition to the planned MX missile, now scheduled to be deployed in silos in Wyoming and Nebraska. A coalition of over 100 groups and individuals has taken the U.S. government to court, alleging that the deployment plan violates international law standards, several provisions of the U.S. Constitution, and a host of statutes designed to protect the environment from the ravages of government agencies bent on pursuing their pet projects. When such a project is the MX, with each missile armed with warheads equivalent to 200 Hiroshima bombs, both environmental protection and fundamental legal rights take on an extraordinary significance, as in Western Solidarity v. Reagan *(Docket No. 2).*

Nuclear policies cannot be implemented without the help of the myriad of corporations which build the weapons. Some corporations are more centrally involved, and identifiable, than others. Protests at the plant where engines for U.S. cruise missiles are manufactured have resulted in numerous arrests and prosecutions. Several persons have been charged with conspiracy as a result of their protests. CCR, in People v. Hutchinson, *was there to make sure that such charges were not a successful tool to suppress dissent (Docket No. 3).*

The disposal of nuclear waste has continued to be an issue of increasing concern in communities throughout the country. CCR has continued to work with Serious Texans Against Nuclear Dumping (STAND) and its local attorneys on a challenge against underground nuclear waste disposal in the Southwest.

Cruise Missiles

1. Greenham Women Against Cruise Missiles v. Reagan

Greenham Common Women's Peace Camp, 60 miles west of London, has been a focus and symbol of resistance to the accelerating nuclear arms race for three years. Located around the barbed-wire fence surrounding the first site of cruise missile deployment in Europe, the camp exemplifies the life and death confrontation between creative hope for the future and repressive denial of change.

As the date for the initial deployment neared last fall, however, a group of British women, knowing that the critical confrontation was not readily transposed into the world of the courtroom and adapted to the language of the law, decided nonetheless to attempt to show the illegality of the United States deployment plan. On November 9, 1983, a group of 13 women and their children, a larger group of women (Greenham Women Against Cruise Missiles), and Representatives Ronald Dellums (D.-Calif.) and Ted Weiss (D.-N.Y.) filed suit challenging the deployment plan.

The suit alleges that because cruise missiles are designed and intended to be used first in a conflict, their installation by the defendants President Reagan, Secretary of Defense Weinberger, Secretary of the Air Force Orr, and Secretary of the Army Marsh, violates central precepts of international law and the U.S. Constitution. Building on the CCR's litigation theories involving the use of the Alien Tort Claims Act (Docket Nos. 7 and 16), the Greenham plaintiffs claim that deployment injures them in violation of international law, and they seek redress for that injury in federal court. They claim that international legal principles about the conduct of wars prohibit: 1) weapons and warfare that cause unnecessary or aggravated devastation or suffering; 2) weapons or tactics that cause indiscriminate harm to noncombatants; 3) in particular, the use of asphyxiating or poisonous gases, and all analogous materials; 4) military attacks on nonmilitary targets that are out of proportion to the military need to attack the civilian target; and 5) military tactics that harm countries that are not parties to the war.

The use of cruise missiles, like the use of any nuclear weapon, violates each of these rules. Radioactive fallout has been shown to cause radiation sickness, a severe, often fatal, disease. Fallout also causes genetic damage.

Recent computer studies have shown that a nuclear war using less than one percent of the current world arsenal could cause such serious damage to the environment and climate that life would be destroyed over much of the world.

Nonmilitary countries that have nothing to do with a nuclear war would sustain damage from blast and fire effects extending far beyond their targets, and the effects of radioactive fallout or "nuclear winter" would alter the world's climate.

The fence surrounding Greenham Common Airbase. *Lesley McIntyre*

In addition to these violations, which are certain to occur if the missiles are ever fired, the suit alleges that deployment runs afoul of other important international legal standards, including: The United Nations Charter, which forbids the threat or use of force in international relations except in grave emergencies; The Universal Declaration of Human Rights, which recognizes that each individual in the world has a right to life, liberty, and the security of the person--a right to survive, to live in peace; The Nuremberg Principles, which declare that planning or preparation for a war of aggression is a crime against the peace; and both The Nuremberg Principles and The Genocide Convention which prohibit genocide and planning or threatening to commit genocide.

The plaintiffs also allege that the damage done by deployment has had a profound impact within the U.S. because the U.S. Constitution allocates to Congress the critical decision to declare war, while the first use of nuclear weapons would be undertaken by the President and the military. They assert that any implementation of the deployment scheme will operate to deprive the congressional plaintiffs of their constitutional right and duty to declare war.

When the case was filed, the plaintiffs asked for a temporary restraining order to halt deployment pending a hearing. The judge, unconvinced of the imminence of deployment, denied the request. A week later, the deployment of the first 16 cruise missiles was announced. A second request for a temporary restraining order was also denied, as was the plaintiffs' plea for a rapid hearing on their request for a preliminary injunction. Instead, the defendants' motion to dismiss the case was set for expedited briefing and argument.

On the motion to dismiss, the government argued that none of the plaintiffs had standing to assert the claims they put forward, and that the entire case presented a political question--an issue considered outside the competence of the judiciary because it concerns foreign and military affairs. More than eight months later, on July 31, 1984, the judge granted the motion to dismiss, concluding under the political question doctrine that there were no "judicially manageable standards" for determining the merits of the case.

An appeal of the lower court's determination that factfinding would be impossible is pending before the United States Court of Appeals for the Second Circuit. In deciding questions of the legality of nuclear weapons deployment, the facts will only be findable with certainty after there is no longer any court to find them, or any litigants to ask that they be found. Judicial action, pursuant to the court's articulated duty to decide legal questions, must come in our present state of knowledge, or not at all.

[*Anne E. Simon, Sarah Wunsch, Ellen Yaroshefsky, Robert Boehm, Peter Weiss with Jane Hickman, solicitor for Greenham Women Against Cruise Missiles, and Eleanor Jackson Piel, Lawyers Committee on Nuclear Policy*]

MX

2. Western Solidarity v. Reagan

The government's plans to build and deploy the MX missile have aroused unprecedented opposition from people throughout the Western and Southwestern United States. The MX is a horrifying weapon. Each has 10 separate nuclear warheads, and each warhead has 20 times the explosive force of the bomb that destroyed Hiroshima. It is designed to travel thousands of miles and maintain its accuracy to within less than 100 yards. As with the cruise missile, it has the accuracy to destroy "hardened" military targets. Thus it is a first-strike nuclear weapon.

CCR/Greenham Education Project:

Against Nuclear Weapons

The Greenham Common suit was conceived as a both a litigation and education effort. It focused on publicizing all over the world the dangers of cruise missile deployment and the efforts of the Greenham Common Women's Peace Camp.

During the October 22, 1983 weekend of national protests against the deployment of cruise and Pershing II missiles in Europe, a massive schedule of speaking engagements before peace, religious, labor, and anti-nuclear groups and interviews on local and national television was arranged for the plaintiffs. These included engagements at rallies organized by the Seneca Women's Encampment for a Future of Peace and Justice in upstate New York, the Savannah River Women's Peace Camp in South Carolina, and by peace groups in Washington, D.C., throughout the State of Maryland, and White Plains, N.Y. After the case was filed in early November, plaintiffs appeared in 25 states in all regions of the country on several national speaking tours.

We have focused our work in this area on bringing information about the dangers of the arms race to people who have had little or no access to it before, and on exchanging information and ideas with groups already active in anti-nuclear work. To ensure the broadest possible outreach, we have written and widely distributed a CCR legal education pamphlet about the *Greenham* case and the struggle against nuclear arms.

In Britain, Greenham Women Against Cruise Missiles organized a national action to coincide with the filing of the suit, resulting in peace camps at the more than 100 U.S. military installations throughout Britain, as well as support camps in West Germany and Holland.

Education of the legal community has been an additional important element of work. CCR lawyers and Greenham plaintiffs have spoken at the National Conference on Women and the Law and the National Lawyers Guild National Executive Board meeting about the lawsuit and the issue of the legality of nuclear weapons. Lawyers from all over the country and Europe have requested copies of documents filed in the case. Spurred by the case, British lawyers organized a major conference on the illegality of nuclear weapons.

The international interest and cooperative effort sparked by the case are encouraging evidence that large numbers of concerned people are building coalitions throughout the world to prevent nuclear war.

After years of organizing and opposition to the MX, in April 1984 a federal lawsuit challenging deployment was filed in Lincoln, Nebraska by a coalition of community, farm, anti-nuclear, Native American, church, and environmental groups. It alleges that the planned deployment of the MX in existing but reconstructed silos for Minuteman missiles in Wyoming and Nebraska is illegal on statutory, constitutional, and international law grounds. The Sierra Club and Friends of the Earth subsequently intervened as plaintiffs, raising environmental claims in opposition to the MX plan.

The CCR, participating of counsel, is presenting the arguments on the illegality of MX deployment both from an international and a constitutional law perspective. The offensive nature of the MX and the U.S. government's stated policy of being prepared to fight nuclear wars demonstrate that the plan violates international law standards. In addition, deployment of such missiles illegally transfers the constitutional power to declare war from Congress to the President. The government has filed answers to both the main complaint and the Intervenors' complaint, thus clearing the way for discovery in preparation for trial.

[*Anne E. Simon with Andrew B. Reid, Frank S. Morrison, Sr., Roger A. Finzel, and Nicholas Yost, Center for Law in the Public Interest*]

Defense of Anti-Nuke Activists

3. People v. Hutchinson

Jean Hutchinson, a British Methodist lay preacher and plaintiff in *Greenham Women Against Cruise Missiles v. Reagan*, traveled to Michigan in November of 1983 to speak to local peace and religious groups. One of these groups, Covenant for Peace, engaged in educational work and demonstrations at the Williams International factory in Walled Lake, Michigan, where engines for cruise missiles are produced. After Hutchinson spoke at a prayer vigil and a public meeting, showed a film about the Greenham Common Women's Peace Camp, and participated in a demonstration outside the Williams factory, she was arrested with others and charged with three counts of conspiracy to violate various state misdemeanor laws. Hutchinson was freed on bail on the condition that she could not return home to Britain. She stayed in the U.S. until that condition was changed in May 1984.

The trial in early July resulted in a directed verdict of acquittal on the grounds that the evidence showed that Hutchinson had been engaged in activity protected by the First Amendment. The other two defendants, students at a local college, were found not guilty by the jury, which had heard expert testimony about cruise missiles.

In assisting on this case, the CCR's experience in litigation of nuclear issues was extensively employed by the defense. The expert opinions which had earlier been submitted in the *Greenham* case helped to shape the defense strategy and formed the basis for the expert testimony at trial.

[*Anne E. Simon with Jean Hutchinson, pro se, Julie H. Hurwitz, William Goodman, Kenneth Mogill*]

4. In the Matter of Helen John *(visa denial)*

The Reagan Administration's refusal to grant visas on political grounds has been well publicized. Most notorious have been visa denials to over 300 people attempting to attend the United Nations Second Special Session on Disarmament in June, 1982; to Nobel prize winner Gabriel Garcia Marquez; to Nino Pasti, former NATO general who opposes the deployment of cruise and Pershing II missiles in Europe; to Hortensia Allende, widow of slain Chilean President Salvador Allende; and to Tomas Borge, Nicaraguan Interior Minister.

CCR client Helen John, a founding member of the Greenham Common Women's Peace Camp in Britain and a plaintiff in *Greenham Women Against Cruise Missiles v. Reagan*, was scheduled to speak in Pennsylvania and Ohio to labor, peace, and

religious organizations during the month of March 1984. Just before she was to leave for the United States, John was informed by the U.S. Embassy in London that her request for a visa was being denied, ostensibly because she was facing a criminal charge in Britain stemming from an October 1983 demonstration at the American airbase at Greenham Common where the U.S. has placed first-use nuclear cruise missiles. John was awaiting trial at the time. Embassy officials told her that they had to have all the evidence against her before they could make a decision to give her a visa.

This denial appeared to violate the U.S. immigration law which states that "aliens" may be denied visas if they have been *convicted* of a crime of "moral turpitude." John had not been convicted of any crime, nor even charged with one of moral turpitude.

CCR attorneys protested the denial of the visa and news of it was reported across Europe. Embassy officials, stating that they were "terribly embarrassed" by the publicity surrounding the denial, reversed their decision and issued a visa to John.

Although she missed the midwest tour, she was able to speak to a wide range of groups throughout New England and New York about the dangers of cruise missiles.
[*Sarah Wunsch*]

FOIA Request

5. In the Matter of Bishop
The spread of United States nuclear weapons is causing increasing concern around the world, especially as the military proceeds with plans to increase the number of nuclear-armed Navy vessels in all parts of the globe. New Zealand has been visited for the past 20 years by nuclear-powered U.S. Navy ships and submarines.

The CCR has filed a Freedom of Information Act request on behalf of John Bishop, a reporter for Television New Zealand, which seeks to find out who is responsible for the U.S. nuclear Navy ships sent to New Zealand. The Navy's initial response has been to disclose only a small number of documents, appearing to be almost randomly selected. The CCR is pursuing a more complete disclosure.

In New Zealand's 1984 elections, the victorious Labor Party ran on an anti-nuclear platform. The new Prime Minister has pledged to seek a ban on nuclear warships in New Zealand's waters.
[*Anne E. Simon*]

Atomic Testing

6. Punnett v. Reagan
Howard Hinkie is one of the 250,000 GIs who were forced to witness nuclear tests from close range in the 1950s. CCR attorneys, along with cooperating attorney Herbert Newberg, will be representing Hinkie at a civil trial in a federal district court in Philadelphia at the end of this year.

Like a human guinea pig, Hinkie was forced to view about 18 tests of nuclear weapons to determine their effects on people. Hinkie subsequently fathered two children with serious birth defects, and his wife suffered three miscarriages. The suit seeks to require the U.S. Army to notify all former GIs who were exposed to nuclear blasts of the health hazards they face, and to prevent the use of humans in nuclear testing without having first secured their informed and voluntary consent.

The Center's role in trial preparation consists of securing witnesses who, like Hinkie, were exposed to various forms of radiation as a result of tests. Such testimony, along with films of the tests being pieced together by archivists, will demonstrate the levels of radiation to which the witnesses were exposed. The government's defense is that the GIs were exposed to too low a level of radiation to have produced any short or long term health or genetic defects. The testimony will provide evidence of the deleterious effects of low-level exposure, which will be of help in scores of other cases seeking to challenge the storage of nuclear waste and the placement of nuclear power plants close to populated areas.
[*Ellen Yaroshefsky, Sarah Wunsch, with CCR cooperating attorney Herbert Newberg*]

special law passed after the Watergate scandal to insure government accountability at the highest levels. It asked Attorney General William French Smith to conduct a preliminary investigation.

The action was filed on behalf of Congressman Ronald Dellums, Dr. Myrna Cunningham, and Eleanor Ginsberg, a Florida resident, all signatories on a letter requesting an investigation which was denied by the Attorney General, who moved for summary judgment. The suit is based on *Nathan v. Smith* (Docket No. 47), a case in which the plaintiffs obtained a special prosecutor to investigate the 1979 Greensboro killings of anti-klan protestors.

The court ordered the Attorney General to conduct an investigation within 90 days or, if the investigation was not completed by that time, to apply for the appointment of a special prosecutor. It reviewed the material submitted by plaintiffs and termed the Attorney General's denial of their request due to lack of specific information "unreasonable and wholly unsupported by the record."

The Attorney General moved for a reconsideration of the decision, asserting that the Neutrality Act applies only to private citizens and not to the President or other government officials, and claimed that his decision on the matter was not reviewable by the court. The court denied the motion, stating that if plaintiffs' contentions were accepted, "there is a danger that, unless the violations be terminated, the nation may be involved in a war not declared by Congress." On an appeal which is still pending, the Attorney General also claims that the President may legally spend tax dollars to overthrow a government, even if Congress has forbidden such an action.

Meanwhile, the majority of members of the Judiciary Committee of the House of Representatives wrote to the Attorney General, asking for the appointment of independent counsel to investigate allegations of violations of the Neutrality Act by government officials. Again the answer was that the Neutrality Act does not apply to government officials.

At stake in the appeal is the issue of whether the President and other government officials are above the law.

[*Ellen Yaroshefsky, Michael Ratner, Sarah Wunsch, Margaret Ratner, Peter Weiss, CCR cooperating attorney Jules Lobel, with Mark van der Hout, NLG*]

9. Barnes v. Kline

On January 4, 1984, the CCR filed an action challenging President Reagan's "pocket veto" of HR 4042 on behalf of 33 members of Congress. HR 4042 mandates that the President periodically certify that there have been significant improvements in human rights in El Salvador as a prerequisite for United States military aid to that country. It was passed by unanimous vote in the House and the Senate and sent to the President on November 18, 1983. The President did not send the bill back to Congress with his veto, but rather held it and issued a statement in which he claimed to exercise a "pocket veto."

Under the U.S. Constitution, when the President vetoes a bill he must send it back to Congress to provide for a possible congressional override of the veto. If the bill is not sent back within 10 days, it automatically becomes law. A "pocket veto" by the President does not allow congressional override and is therefore restricted to situations in which Congress has prevented a normal return veto. Since both houses of Congress have specifically appointed clerks to receive messages from the President during intersession breaks, a return veto was not prevented. This principle has been recognized in recent cases and followed by Presidents Ford and Carter.

After the case was filed, the entire U.S. Senate, the House Speaker, and the House majority and minority leaders and whips intervened as plaintiffs.

The U.S. District Court for the District of Columbia Circuit heard argument on February 22, 1984, on plaintiffs' motion for a declaration that HR 4042 is law. The government argued that a 1929 Supreme Court case was controlling and that subsequent court decisions were wrong and should be reversed. In a surprising decision announced March 9, 1984, the court upheld the pocket veto, agreeing with the government.

CCR's motion for an expedited appeal was granted and oral argument took place on June 4, 1984, before the U.S. Court of Appeals for the District of Columbia Circuit. In August 1984, that court overturned the lower court's decision, asserting that Reagan's pocket veto was illegal and restoring HR 4042.

[*Michael Ratner, Margaret Ratner, Anne E. Simon, Ellen Yaroshefsky, Morton Stavis, Peter Weiss with Michael Davidson, M. Elizabeth Culbreth and Morgan J. Frankel, Senate legal counsel, Steven Ross, BiPartisan Leadership of the House of Representatives, and John Privitera*]

CCR Education Project: Central America

Over the past year, CCR attorneys and legal workers have spoken before audiences of lawyers, religious workers, senior citizens, and community groups in many parts of the country explaining through our Central America and Caribbean lawsuits the illegal nature of the Administration's activities in that region. For example, CCR speakers participated in Central America Education Week activities sponsored by the Interreligious Foundation for Community Organization (IFCO) in Kansas, Indiana, Washington, and Oregon. The CCR published a legal education pamphlet on Nicaragua and distributed over 10,000 copies. Galleries which participated in the national Artists Call Against U.S. Intervention in Central America, which took place in January 1984, distributed them at their exhibitions.

CCR staff members worked with the Central America Task Force of the National Lawyers Guild (NLG) to involve progressive lawyers in litigation against U.S. interventionism and repression of Central American refugees and sanctuary workers in this country. Together with the NLG, we produced the *Central America Litigation Brochure* introducing the array of domestic lawsuits concerning these issues.

The CCR sent a representative to the International Conference in Solidarity with Nicaragua in Lisbon, Portugal, in May 1984, where activists from around the world conferred on strategies for stopping the CIA-backed war against Nicaragua.

We also provided legal materials and facts gathered for our Central America lawsuits to the organizers of the November 12, 1983, national march in Washington, D.C., and to the organizers of the June 9, 1984, demonstration in New York City where 10,000 people marched in solidarity with the people of Central America. Currently, the CCR is working with La Raza Legal Alliance, the National Conference of Black Lawyers (NCBL), and the NLG to plan war crimes tribunals in 12 cities throughout the U.S. to expose U.S. military and covert activities in Central America and the human suffering caused by them.

Because of its representation of Nicaraguan plaintiffs, including Miskito Indians (Docket Nos. 7 and 8), the CCR has been instrumental in bringing Miskito representatives to the U.S. to explain the abuses which they have suffered at the hands of CIA-sponsored *contras*. For example, at the request of Senator Edward Kennedy's office, the CCR brought three Miskito Indians to Washington, D.C., in May 1984 to testify at Senate hearings on the human rights abuses they have suffered as a result of *contra* activities.

Grenada

12. Conyers v. Reagan

On October 25, 1983, President Reagan announced that, under the code name Urgent Fury, he had ordered a pre-dawn invasion of Grenada by nearly 1,900 Marines and armed airborne troops. Fighting became heavier than expected, and by October 29, the United States military presence in that Caribbean island had reached more than 5,600 troops. The force included Army Rangers, members of the 82nd Airborne, and approximately 600 Marines. Eleven Navy ships and six ships in the U.S.S. Independence battle group constituted part of the arsenal committed to Grenada. After approximately six days of heavy fighting and several deaths, the shooting ended. Even today, there remain U.S. forces occupying the country providing security and police services.

Although this invasion and occupation clearly constituted a war against the people of Grenada within the meaning of the War Powers Clause of the Constitution, the President at no time sought congressional approval for these activities as required. The President justified the invasion without approval by claiming that the lives of American citizens were in danger. Such a pretext was used to justify the U.S. invasion of the Dominican Republic in 1965. The claim that the invasion occurred in order to rescue American medical students was belied by the head of the medical school, who declared that these students were not in danger, and by the fact that the U.S. continues to occupy Grenada at a time when there is no danger to any American citizens.

Within a few weeks after the invasion, the National Conference of Black Lawyers (NCBL), the NLG, the ACLU, and the CCR filed suit on behalf of Congressman John Conyers and 10 other Members of Congress challenging the invasion as a violation of the War Powers Clause. The suit requested declaratory judgment that the invasion had taken place in violation of the Constitution and demanded an injunction requiring all U.S. forces to leave Grenada immediately. The government moved to dismiss the case arguing that Members of Congress should not be permitted to bring such suits as they have adequate remedies within Congress and that the case was moot because there were only 300 U.S. troops remaining in Grenada.

The court dismissed the case on a ground termed "equitable discretion," agreeing with the government that the congressional plaintiffs had other remedies and had no right to be in court. Plaintiffs have appealed to the court of appeals which will shortly hear argument.

[*Michael Ratner, Frank E. Deale with CCR cooperating attorney Margaret Burnham, and Deborah Jackson, NCBL, Mark Rosenbaum, ACLU of Southern California*]

South Africa

13. U.S.-Namibia Trade and Cultural Council v. The Africa Fund

The Africa Fund is a not-for-profit organization which provides medical, educational, and humanitarian aid to African refugees. The bulk of its aid buys antibiotics and clothing for Namibian refugees who often arrive in Angola afflicted with malaria, typhoid fever, or other infectious diseases. In February 1984, The Africa Fund's tax-exempt status was challenged in a lawsuit brought in the United States District Court for the Southern District of New York by the U.S.-Namibia Trade and Cultural Council (UNTCC)--a group registered as foreign agent for the illegal South African colonial administration in Namibia.

UNTCC, using a statute which allows a private person to file a lawsuit in the name of the U.S. Government, alleged that the Fund was merely a conduit for money from the U.S. to the South West Africa People's Organization (SWAPO). The suit was one in a recent line of cases brought by South Africans attempting to secure the support of U.S. courts.

In defending The Africa Fund the CCR moved to dismiss the suit, claiming that it was frivolous, politically motivated, and intended to harass. The U.S. government agreed with the CCR and in July 1984 the court dismissed the suit, awarding CCR attorneys fees for its handling of the litigation.

[*Frank E. Deale, Peter Weiss*]

Cuba Travel

14. Regan v. Wald

The freedom of Americans to travel was dealt a heavy blow by the United States Supreme Court in *Regan v. Wald*. On June 28, 1984, in a 5-to-4 decision, the court upheld the Reagan Administration's restrictions on travel to Cuba. Justice Rehnquist, who wrote the majority opinion, was joined by Chief Justice Burger and Justices White, Stevens, and O'Connor. Dissenting were Justices Brennan, Blackmun, Marshall, and Powell.

The restrictions were first announced by the Treasury Department on April 20, 1982 when regulations were issued severely limiting travel to Cuba by prohibiting travel-related financial transactions. The only persons permitted to travel to Cuba without prior government approval were government officials, persons with family members in Cuba, and those "traveling for the purpose of gathering news, making news or documentary films, engaging in professional research, or for similar activities." Others seeking to travel to Cuba for "humanitarian reasons" or "for the purpose of public performance, exhibitions or similar activities" had to apply to the Treasury Department for a specific license. Travel for any other purpose was barred.

In June 1982, the CCR joined with the National Emergency Civil Liberties Committee (NECLC), the ACLU, and the NLG in asking a federal court in Boston to enjoin the travel restrictions on behalf of a number of individuals, the Cuba Resource Group, and the Center for Cuban Studies. The suit argued that the regulations deprived persons of their constitutional right to travel, were at odds with a 1978 amendment to the Passport Act, violated requirements set forth in the International Emergency Economic Powers Act, and were completely without statutory authority. While the trial court denied a preliminary injunction, the U.S. Court of Appeals for the First Circuit reversed and ruled that the restrictions were invalid. The government petitioned the U.S. Supreme Court for a writ of *certiorari*.

Leonard Boudin argued on behalf of the plaintiffs in the Supreme Court. Justice Rehnquist's opinion upholding the validity of the restrictions reflects a disregard for individual liberties and for Congress' legislative efforts to reassert control over what has been called "a prime example of the unchecked proliferation of presidential power." To a majority of the court, "foreign policy" considerations automatically validate executive action at the expense of our most basic rights.

A petition for rehearing has been filed with the Supreme Court.

[*Sarah Wunsch, Michael Ratner, Margaret Ratner, Anne E. Simon, Robert L. Boehm; with Leonard B. Boudin and Betty St. Clair, NECLC; Charles S. Sims, ACLU; CCR cooperating attorneys Harold Mayerson, NLG, and Jules Lobel*]

15. In the matter of Marazul Tours, Inc.

On June 28, 1984 the United States Supreme Court, in a 5-to-4, decision sustained regulations of the Treasury Department which effectively barred most travel to Cuba through the device of preventing U.S. citizens from expending any funds for such purpose (Docket No. 14). The regulations, however, do permit

travel to Cuba for certain designated classes of individuals, such as persons seeking to visit relatives, journalists, and professionals or researchers conducting studies there.

Marazul Tours, Inc. is a travel agency in New York which has arranged much of the travel to Cuba permitted by the regulations. On July 26, 1984, less than one month after the Supreme Court decision, the Secretary of the Treasury served an extensive subpoena on Marazul seeking practically all records in its possession regarding travel to Cuba it had arranged since April 1982. This request included a list of the names and addresses of all persons for whom Marazul had arranged Cuba trips. This was followed by a subpoena on August 15th which sought specific information with respect to a conference on the Cuban legal system scheduled for September 16-23 in Havana. The subpoena sought the names of persons to whom a brochure relating to the conference had been mailed, as well as those who had registered to attend.

The subpoenas were followed by demands that Harold Mayerson, a CCR cooperating attorney, and Michael Ratner, CCR staff attorney, who were listed as program leaders for the conference, appear before designated representatives of the Treasury Department to testify about arrangements for the proposed conference.

A large number of organizations cooperating with the Center, including the ACLU, the NLG, and the NECLC, and others, became deeply concerned about the McCarthyite implicatons of these subpoenas and prepared litigation to prevent the submission of names if the government continued to press for that information.

Initially, there was concern as to whether the Treasury Department would take steps to stop individuals from attending the conference, but the government took no overt steps in that direction.

Thus far, Marazul has furnished and is continuing to furnish financial and business data for which there is no constitutional objection. However, it has not submitted names of persons who have travelled to Cuba, pending clarification as to whether the government will pursue that claim further.

As of this writing, the government, responding to threats of litigation, has retreated somewhat from its original stance but it has not revealed with finality whether it will move on its demand for names.

[*Morton Stavis, Michael Ratner, with CCR cooperating attorney Harold Mayerson, NLG*]

Paraguay

16. Filartiga v. Pena-Irala

The decision of the United States Court of Appeals for the District of Columbia Circuit in this landmark case recognized that aliens who are victims of international human rights violations may sue the perpetrators in federal court for civil redress, thus opening up access to one of the most valuable forums in this nation before which to bring allegations of human rights violations.

In April 1979, Americo Pena-Irala was arrested in Brooklyn by the United States Immigration and Naturalization Service. In the few days before he was to be returned to Paraguay as an illegal alien, CCR attorneys filed a $10 million wrongful death action against Pena for torturing Joelito Filartiga to death in rural Paraguay. Joelito was the 17-year-old son of Dr. Joel Filartiga, a well-known physician, painter, and opponent of Latin America's "most durable dictator," General Alfredo Stroessner. In 1976, when the torture-murder took place, Pena was the Inspector General in the Department of Investigation of the Paraguayan police. Dr. Filartiga and Dolly Filartiga, who was brutally confronted with her brother's tortured body, are the plaintiffs.

The suit was filed under the Alien Tort Claims Act (28 U.S.C. 1350) which gives aliens the right to sue for torts that violate international law. The U.S. Court of Appeals for the Second Circuit recognized that victims of violations of recognized human rights have a right to sue the wrongdoer in federal court. The court ruled that certain human rights, including freedom from torture, slavery and genocide, were guaranteed under customary international law and thus enforceable as part of our own federal law. In its opinion, the court explored the origins of 1350, enacted in 1789 as part of the First Judiciary Law when international law recognized remedies against individuals as well as states and when this country was held out to be a refuge for the persecuted and not a sanctuary for international criminals. The opinion aptly compared the torturer of today with 18th Century pirates--both enemies of all humanity and subject to sanction wherever they are found.

Pena failed to answer the complaint and the district court granted plaintiffs' motion for a default judgment. In June 1983, a federal magistrate recommended an award of $375,000 to the Filartiga family. CCR attorneys filed objections to the magistrate's recommendation because it treated the case like an ordinary personal injury case, thereby failing to vindicate the interest of international law in the award of damages.

District Judge Eugene Nickerson sustained our objections in a sweeping opinion which recognized that the case involved a cause of action under international law which had to be vindicated, and that punitive damages, though rarely awarded in commonplace international law settings, were appropriate here because of the seriousness of the offense of torture. He awarded $5 million to each surviving plaintiff and left standing the magistrate's award with regard to compensatory damages. CCR attorneys are investigating possibilities for enforcement of the award which, in any event, stands as a powerful statement of condemnation.

[*Rhonda Copelon, Peter Weiss, Betty Lawrence Bailey, and Rafael Anglada Lopez*]

Trip to Paraguay

In the spring of 1984, a CCR volunteer staff attorney visited Paraguay to investigate the situation involving legal proceedings and other harassment against Dr. Joel Filartiga, plaintiff in *Filartiga v. Pena* (Docket No. 16) and to join a delegation from the Association of the Bar of the City of New York and the Lawyers Committee for International Human Rights in investigating human rights abuses there.

The members of the delegation were arrested upon arrival and held incommunicado until the CCR attorney alerted the U.S. embassy to the fact that they were in custody. The arrests occurred apparently because the group had been met at the airport by a Paraguayan who was a leading human rights lawyer.

The Phillipines

17. Estates of Domingo and Viernes v. Marcos

On June 1, 1981, Silme Domingo and Gene Viernes, newly elected to the leadership of Local 37, ILWU-Alaska Cannery Workers, were shot and killed in their union hall. Long-term activists in the Filipino community, they successfully led a campaign to democratize the Alaska Cannery Workers, a union of central economic importance to the Filipinos. They were also leaders in the movement which opposes the dictatorial regime of Ferdinand Marcos and United States support for it.

Silme Domingo lived long enough to name his killers. Two men were arrested: they were members of a Seattle street gang and had

who made their living from the fishing industry. Island residents and others participated in a series of demonstrations to point out that Navy activities (such as bombing practices) would adversely affect the fishing industry and upset the delicate ecological balance of the area.

In January 1980 a ship-to-shore bombing target practice conducted by the Navy was met with a peaceful protest in which 11 small fishing boats entered the restricted target area and prevented the tests. Carlos Zenon, president of the Vieques Fishermen's Association, and Pedro Saade, one of its lawyers, were present in one of those boats. When the demonstration was over, Zenon and Saade were arrested.

The U.S. District Court for the District of Puerto Rico found them guilty of trespassing and sentenced them to the maximum sentence of six months in prison. The CCR, along with the Instituto Puertorriqueno de Derechos Civiles (IPDC), appealed the conviction and the case was remanded to the district court for further hearings.

The statute upon which the regulation is based, which authorized the target practice, requires that the Navy may use the navigable waters of the United States and Puerto Rico for target practice only if it does not interfere with the fishing industry. Zenon and Saade claimed on appeal that the trial court denied them the opportunity to prove that the Navy's maneuvers interfere with the fishing industry and are therefore illegal.

The district court agreed to hear two issues: whether the Secretary of the Army unlawfully promulgated the regulation and whether the Navy's target practice unreasonably interferes with or restricts the food fishing industry.

Defendants thereafter filed a motion to dismiss and the government filed a motion for summary judgment. These motions are pending.

[*Michael Ratner, Margaret Ratner with Jose Antonio Lugo and CCR cooperating attorneys Peter Berkowitz, and Pedro Varela, IPDC, and Gregorio Lima*]

72. In the Matter of the Warrant Regarding the Intercepting of Oral Communications at Calle Mayaguez 212, San Juan, Puerto Rico

Numerous clients of the labor law firm of Carreras, Acevedo and Farinacci, including *Pensamiento Critico*, a progressive magazine, and a number of trade unions, were informed, as was the administrator of the law firm, that an electronic listening device had been installed in the law offices and their conversations had been overheard.

The CCR and the IPDC represent 10 unions, six individuals who received notice that their conversations were overheard, and the members of the law firm in a discovery motion under Title III of the Organized Crime and Safe Streets Act. The Act permits the filing of motions to obtain the application for the device and fruits of any interception.

The motion, which is preparatory to the filing of a federal complaint, was denied in the district court and we appealed. The appeal argued that the electronic surveillance was conducted in an attempt to disrupt the attorney-client relationship in violation of the Sixth Amendment and in an attempt to intimidate the staff of *Pensamiento Critico* in the exercise of First Amendment rights.

The court of appeals upheld the district court, affirming that appellants were not entitled to inspect the surveillance materials concerning a law office bug during an ongoing grand jury investigation and that the district court did not abuse its discretion in denying appellants' disclosure motion.

[*Jose Antonio Lugo with CCR cooperating attorneys Peter Berkowitz, IPDC, and Michael Avery*]

Government Misconduct

In April 1984 the Reagan Administration proposed a package of what it called anti-terrorism bills. The bill most threatening to civil liberties is the Prohibition Against the Training or Support of Terrorist Organizations Act of 1984 (HR 5613 and S 2626). In its original version it would be a crime to "act in concert with," "train or serve in" any organization designated by the Secretary of State to be an intelligence agency or armed force of "any foreign government, faction or international terrorism group." It would also prohibit "any logistical mechanical, maintenance or similar support services to the armed forces or any intelligence agency, or their agents, of any foreign government, faction, or international terrorist group," designated as such by the Secretary of State. The Secretary would have unilateral power to determine that a group or government is "terrorist." Persons charged under these laws could be punished by 10 years in jail and a fine of at least $100,000.

The target of these bills appears to be domestic opposition to United States intervention in the Third World. Under the guise of fighting sabotage and assassination, the bill could be used to criminalize certain types of solidarity work in the U.S. and would authorize wholesale FBI, CIA, and grand jury investigation of erstwhile legal political activity.

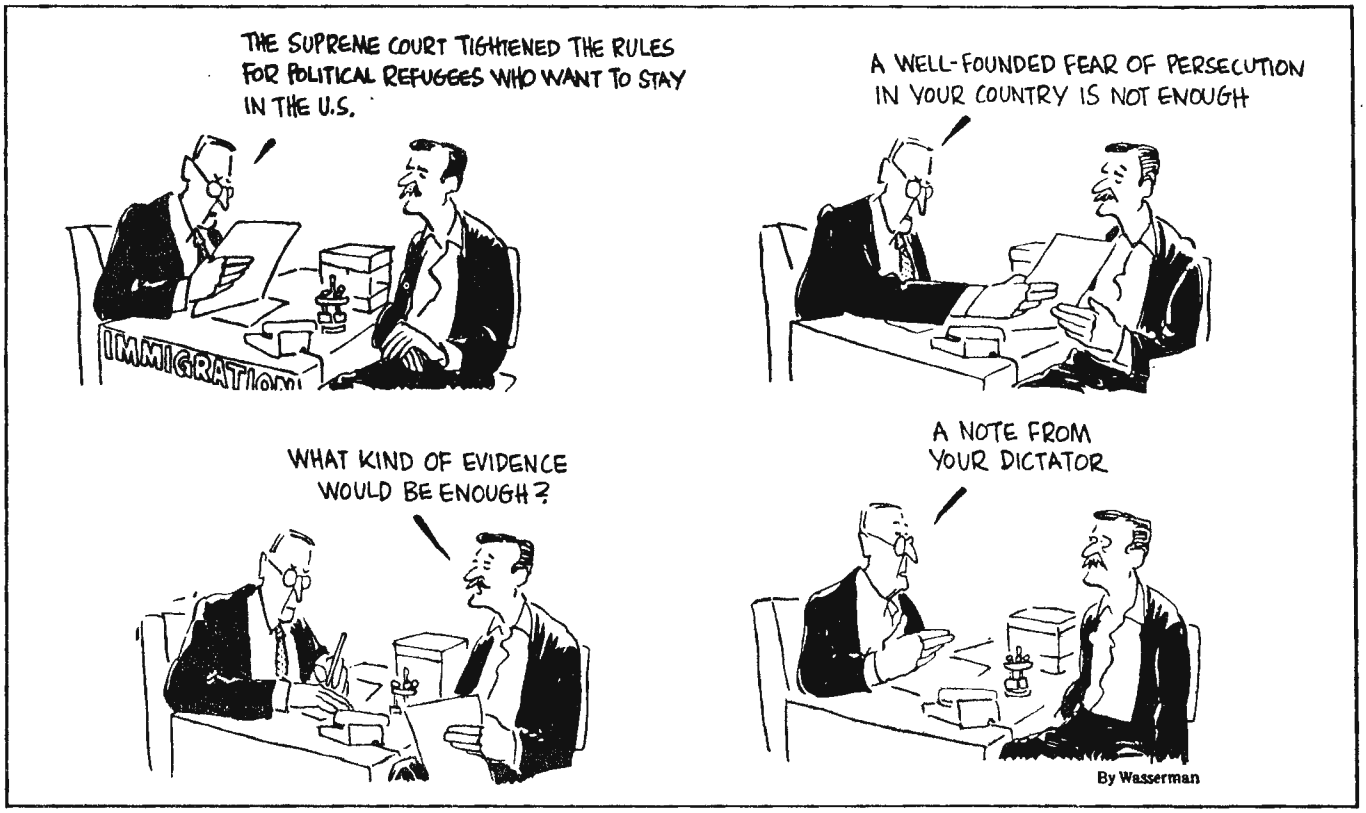
The bills have been on a "fast track" in Congress. The second and third generation bills have already been put into working drafts and it is likely that some form of anti-terrorism legislation will pass. In July 1984 the House Judiciary Subcommittee on Civil and Constitutional Rights, chaired by Congressman Don Edwards, requested that the Center testify on the bills. The CCR prepared testimony regarding recent FBI harassment and intimidation, and unconstitutional provisions in the bills (particularly the labelling of countries or organizations as terrorist), explaining that the Administration itself, which funds paramilitary units to fight the people of Nicaragua, is the real terrorist. Copies of this testimony are available from the CCR.

The hearings were indefinitely postponed, but the CCR expects that the issue of surveillance and harassment of anti-war activists will be growing to constitute a large portion of its Government Misconduct docket. Already this year we have become involved in defense of activists in the sanctuary movement (Docket No. 73) and aiding U.S. citizens working in Nicaragua who are under attack by the U.S. government.

Sanctuary

73. United States v. Elder

Santana Chirino Amaya, a Salvadoran refugee, was deported by the United States government to El Salvador on June 5, 1981. On August 28, 1981 his body was found decapitated, with signs of



torture, at a crossroads where the Salvadoran army and death squads dump many of their victims.

In response to this and other similar deaths and the millions of dollars spent by the U.S. government to back repressive regimes in Central America, over 140 religious congregations in the U.S. have voted to offer sanctuary to Central American refugees fleeing persecution and violence.

Acting out of religious and humanitarian beliefs, churches and synagogues large and small, from Texas to Ohio to New York to Vermont, are providing food, shelter and transportation to the refugees. They include Presbyterians, Methodists, the United Church of Christ, Mennonites, the American Baptist Church, and Disciples of Christ. Many Catholic churches are providing sanctuary. The Rabbinical Assembly representing Conservative Jews endorsed the sanctuary movement, comparing the refusal of nations of the world, including the U.S., "to open their gates to those fleeing the Nazi onslaught" with "the hundreds of thousands . . . fleeing oppression and murder in El Salvador and Guatemala."

The U.S. government, while feigning lack of concern over the growing sanctuary movement, has in fact begun to move against participating religious workers. Several sanctuary workers have already been charged with violation of the Immigration and Nationality Act, which forbids the harboring or transporting of foreign nationals who are illegally in the U.S.

Jack Elder, the director of Casa Oscar Romero, a Catholic diocese-run center in Brownsville, Texas, is presently facing Federal charges for transporting three Salvadorans from Casa Romero to a nearby bus station. Stacy Merkt, a staff member, was convicted of transporting Salvadorans and has been sentenced to two years' probation.

CCR Attorneys are assisting in the defense of Mr. Elder and are developing the argument that he cannot be proven to have transported the Salvadorans knowing that they were here in violation of law because of the body of international law which declares that people fleeing war or persecution have a right to remain in safety. In addition, we are developing an affirmative lawsuit which seeks to halt any further prosecutions of sanctuary workers on the grounds that they are merely exercising their religious First Amendment rights in a manner which is consistent with the law.

To many of the sanctuary workers, the persons being aided are simply human beings fleeing persecution or civil war who are entitled by law to protection. They feel that the real criminals are officials in the U.S. State Department and the Immigration and Naturalization Service who send Salvadorans back to a country where over 40,000 civilians have been murdered by government-sponsored death squads or troops since 1979 and Guatemalans back to a country where over 100,000 people have been killed or have disappeared since the 1954 overthrow of the Arbenz regime.

Of more than 23,000 applications for asylum made by Salvadorans as of 1982, less than one percent were granted, and an average of 1,000 Salvadorans and Guatemalans are deported every month. As a result, the sanctuary movement has grown in this country, a way of saying "no" to U.S. complicity in the deaths, torture and disappearances of innocent human beings.

[*Sarah Wunsch, Rafael Anglada-Lopez, Morton Stavis, with Lisa Brodyaga, Projecto Libertad, and Stephen Cooper, Neighborhood Justice Center*]

Threat to U.S. Citizenship

At present there are at least 250 United States citizens living and working in Nicaragua. In the winter of 1984 the Center was approached by a number of them for advice as to whether they were in jeopardy of losing their citizenship. Under U.S. law, citizenship may be lost if one works for a foreign government in a job which requires an oath, or if one serves in the armed forces of a foreign country. If a person commits one of these or various other acts specified in the statute *and* there is an intent to renounce citizenship, it may be taken away. Up until recently, there have been no problems regarding citizenship among the people working in the North American community in Nicaragua.

The Center has begun to represent one person who may well be threatened with loss of citizenship. By presenting strong claims on the administrative level, we hope we will be able to win the case in the early stage.

Clinic Fights Closing

74. East New York Mental Health Clinic v. U.S. Department of Health and Human Services

The East New York Mental Health Clinic (ENYMHC) is a community-based facility which provided psychiatric counseling to the predominately Black and Latin communities living in the East New York section of Brooklyn. After the Willowbrook consent decree, which mandated that mentally handicapped patients be placed in the least restrictive environments, the ENYMHC in 1978 and 1979 set up two community residences in Brooklyn.

Pursuant to New York State regulations, the office of Mental Retardation and Developmental Disabilities (OMRDD) conducted an investigation into the ENYMHC two residences' compliance with the mental health regulations. The OMRDD informed the ENYMHC that it had instituted proceedings to take away the operating licenses for the residences. The Board of Directors of ENYMHC contended that the proceedings were initiated in bad faith. Many, if not all, of the violations noted in the OMRDD investigation had been corrected before the formal hearing began. In addition, the Board contended that the OMRDD proceedings had violated its due process rights.

ENYMHC was informed that as of November 31, 1983, it would receive no medicaid funds for the operation of the residences nor would the patients who resided there. Under medicaid laws, patients in residences which have been decertified cannot receive federal aid.

The staff of the residences continued to operate both houses without being paid for a period of three months. Members of the board were forced to work around the clock to keep the houses adequately staffed. As no money was coming in to buy food, the staff and the Board contributed food from their own pockets. Finally, after three months, utility companies indicated that they would terminate services for nonpayment of past due bills.

The ENYMHC came to the CCR to see if there were any possible legal actions that could be taken to force the state to resume responsibility for the residences. We filed a federal lawsuit seeking injunctive relief in the U.S. District Court for the Eastern District of New York. After an evidentiary hearing the judge ordered the OMRDD to resume operating responsibilities for the residences immediately. The court in its order made specific mention of the great community support which had been engendered as a result of the work of the ENYMHC. It noted that the availability of warm and compassionate persons in the community is of critical importance to the success of community residence programs.

[*Randolph M. Scott-McLaughlin with CCR cooperating attorney Vernon Mason*]

Center for Constitutional Rights

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The CCR was born out of the southern civil rights struggle and the need to develop innovative, assertive legal strategies to counter the resistance to the freedom movement of the early 1960s. Created in 1966 by Arthur Kinoy, William Kunstler, the late Ben Smith, and Morton Stavis with the help and encouragement of Robert Boehm, the CCR founders were soon joined by other attorneys, notably Peter Weiss. Since its inception it has worked on behalf of people's movements, representing anti-war activists, Native Americans, Blacks, Puerto Ricans, women, and others seeking to change United States policies and structures.

Cover Photographs:
First Row: Thomas Photo Service (See Docket No. 20); Steve Nussenblatt (See Docket No. 77); Jean-Marie Simon/Visions (See Docket No. 73); Second Row: Pam Isherwood/Format (See Docket No. 1); Courtesy Harper's Magazine by Hodges Publications (See Docket Nos. 18-39); Jerry Lower (See Docket No. 82); Third Row: Richard Alcaraz, Claridad Weekly (See Docket No. 70); Poster by Sara Bratnober (See Docket No. 54); Joan L. Washington; Fourth Row: (See Docket Nos. 7-8);

C R[?]

is & explanation
II discrimination - ?

~~Asians~~ -
~~oppt~~
Lowry — opptis for advanced Ed & academic careers closed - but score

Asian Americans - ~~< 2%~~ > 2% of pop - [illegible] US scientists w doctors, & 7% students@ Harvard etc

opptis there - for college & for ~~pr~~ academic careers - but scores very very low -
kids from 50,000 + families - 60 - 80 pts ~~below~~ below = in SAT
~~GRE - 171 pt~~
GRE 171 pt dif on humanities & science -
Harvard - few blacks in top 1/4 in last 5 yrs etc

Wise -
Freeman - black youth "unemployed" -
1/4 of total income of 2000 interviewed was from crime - lots saw it as more remunerative alternative
Lowry — work records @ low level jobs make it more difficult get better jobs -
self imposed
Catch 22

Lowry - "... the suffering of the poorest blacks creates a fund of political capital upon which members of the group can draw in pressing of racially based claims -
always cite poverty, ~~[illegible]~~ rate, unemployment rate -

②

i's discrimination & explanation of aa trans

age
ed -
quality of ed

Jews > hispanics in US & in S. America
Chinese in Malaysia -
Germans farmers > Irish farmers in 18th c. England, Brazilians in Brazil etc
blacks in brazil worse off v whites than in US despite less discrimination

49 Sowell - trends -

54-64 - no. of black in profs, tech, & etc. jobs doubled -
in other kinds of occupation inc. was even > in 40s.

% of employed blacks in prof & tech jobs rose < in 64-9 than in 5 yrs before aa
& no speed up after aa.
Same story for hispanics &
Chinese & J-Ams exceeded other americans incomes in 59.

P R family income 63% of nat. ave in 69 — 50% in 77
blacks fit same time 62% - 60% -
truly disadvantaged - falling even farther behind.
Black male H.S. drop outs < 6 yrs of work exp - 79% in 67 - 69% of = whites in 78
Same ~~time~~ - ~~in~~ blacks males who had completed college & > 6 yrs work - 75% — 98%

(3)

() discrimination ~~of~~ explanation - can it exist?

Black faculty w publications & ~~grad~~ phds for their depts > 100% -

1980 - Black college educated couples w, both working had by 1980 achieved income

female headed households 1980 62% - 1970 was 70%.

crime - & still other evidence pathology up as discrimination has decreased -

those who suffered 100 yrs ago are below our help -

if discrimination exists - the capitalism will come to the rescue -

C 253

EXECUTIVE ORDER

Section 1:

This Executive Order imposes dual obligations on Government contractors and subcontractors regarding employment practices:

(1) that they take affirmative action to ensure that applicants and employees are recruited, trained, employed and promoted without regard to race, color, religion, sex or national origin; and

(2) that they not discriminate against applicants and employees because of race, color, religion, sex or national origin.

By the authority vested in me as President by the Constitution and statutes of the United States, and in order to further the purposes of Executive Order No. 11246, it is hereby ordered that the following subparts are added to Part II of Executive Order No. 11246:

Subpart F - AFFIRMATIVE RECRUITMENT AND TRAINING PROGRAMS REQUIRED PURSUANT TO REGULATIONS OF THE SECRETARY.

Sec. 216 Each Government contractor and subcontractor shall engage in affirmative recruitment and employment-related training programs designed to ensure that minorities and women receive full consideration for hiring and promotion. Such affirmative programs shall be developed pursuant to regulations

promulgated by the Secretary of Labor, and shall describe the actions to be taken, including timeframes for taking such actions, to accomplish the objective of expanding the number of qualified minorities and women who receive full consideration for hiring and promotion. Compliance with the requirements of this Section shall be determined by the Secretary of Labor based on an evaluation of the extent to which the Government contractor or subcontractor has (a) fully implemented the specific action steps which comprise the affirmative recruitment and employment-training programs developed pursuant to regulations and (b) done so in accordance with the program's designated timetables for implementation. Nothing in this Order shall be interpreted to require or provide a legal basis for any Government contractor or subcontractor to exclude or in any respect limit the participation of any individual in any recruitment or training program on the basis of race, color, religion, sex, or national origin.

Subpart G - COMPLIANCE WITH THIS ORDER.

Sec. 217 Nothing in this Executive Order shall be interpreted to require or to provide a legal basis for a Government contractor or subcontractor to utilize any numerical quota, goal or ratio, or any scheme, device or technique that discriminates against, or grants any preference to, any individual or group on the basis of race, color, religion, sex, or national origin with

respect to any aspect of employment, including but not limited to recruitment, hiring, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The voluntary use of numerical goals is not prohibited under this Order so long as they are not used and do not operate to discriminate against or grant a preference to any person on account of race, color, religion, sex or national origin. While the numbers of minorities and women recruited, hired or promoted by the Government contractor or subcontractor may serve as grounds for the Secretary of Labor to initiate an inquiry into a contractor or subcontractor's employment practices, no Government contractor or subcontractor shall be determined to have violated this Order due to a failure to adopt or attain any statistical measures. Nothing in this Order is intended to alter or in any way affect the manner in which a claim of discrimination is proven or defended against under Title VII of the Civil Rights Act of 1964.

Section 2:

(a) The Secretary of Labor shall immediately revoke all regulations and guidelines promulgated pursuant to Executive Order No. 11246 inconsistent with this Order in that they require or provide a legal basis for a government contractor or subcontractor to use numerical quotas, goals or ratios, or any scheme, device or technique that discriminates or grants such preferences as described in Section 217.

(b) The Secretary also shall, within 90 days of the effective date of this Order, issue such further regulations as are necessary to carry out the purposes of the Order which, where necessary for the integrity of ongoing programs, may be in the form of interim final regulations to be applicable during this interim period. Such regulations shall ensure that the requirements of this Order are fully met by Government contractors and subcontractors.

Section 3:

This Order shall become effective immediately.

Nathan Perlmutter
National Director

823 United Nations Plaza
New York, N.Y. 10017
(212) 490-2525

Chuck
Stuart

May 14, 1986

To the Editors
The New Republic
1220 19th Street NW
Washington, DC 20036

Dear Editors:

In his article on Jewish PACs, Robert Kuttner describes me as "defending the likes of the Reverends Jerry Falwell, Pat Robertson and Bailey Smith."

If placing these men in a fairer perspective than Kuttner's prosecutorial stereotyping is "defending them," I plead guilty. Still, I feel compelled to set the record straight.

On my "defense" of Falwell:

I suggested to Kuttner that surveys have revealed that more Fundamentalists and Evangelicals hold an unfavorable view of the Moral Majority than hold a favorable view. Also that the views of Fundamentalists and Evangelicals, on a variety of social and political issues, were generally reflective of the American public's. Consequently, attributing to them Falwell's political views was simply inaccurate. Moreover, it pays Falwell a compliment Fundamentalists and Evangelicals have themselves withheld. I confess that I might have annoyed Mr. Kuttner by also observing that as some Fundamentalists demonize secularists, some secularists love to hate their demon -- Jerry Falwell.

On my "defense" of Pat Robertson:

I told Mr. Kuttner that in my view describing Robertson as if he was a pea in a pod with several other TV evangelists was inaccurate. As a for instance, I told him, that as a guest on Robertson's 700 Club, I explained why Jews are nervously concerned by, and why we litigate against, Christian symbols in public places. Robertson, I told Kuttner, was not only a sympathetic conversationalist on his own telecast, but replayed that interview several times. That's hardly the indicia of a close-minded bigot. In retrospect, I might add, by rerunning our conversation as it was, Robertson was a fairer interviewer than was Kuttner.

On my "defense" of the Reverend Bailey Smith:

I offered the opinion that when Smith opined that, "God does not hear the prayer of a Jew," a mischievous one, to be sure, he was engaging in a religious conceit, but that I put credence in the sincerity of his subsequent apology for the hurt he may have caused. But curiously, Kuttner doesn't go into this. He dwells on an insensitive foot-in-mouth statement in Israel by Smith and makes no reference to his (Kuttner's) agreeing with me that when a former Chief Rabbi of Jerusalem (Orthodox) once declared that God doesn't hear the shofar (ram's horn) when it's blown in a Conservative synagogue, he was indulging the same kind of religious conceit that Smith did. My point in my "defense" of Smith was that religious conceits are not restricted to Baptists and that they ain't necessarily a pogrom.

Significantly, for an article titled "Unholy Alliance" in which Smith is depicted as a black hat, when the interview concluded, Kuttner regaled me with stories of his family's insensitivities to his Gentile wife! His point being that no matter their insensitivity they genuinely loved her.

Understandable charity. However, others (Smith ?) may just be as innocent as Kuttner's family.

As to Kuttner's excoriation of my colleague David Lehrer because he maintained that Congressman Dornan's reference to Vladimer Posner as a "disloyal, betraying little Jew," was misunderstood: the fact is that not only did Mr. Lehrer assert that Dornan was referring to Posner's disloyalty to Jews, but so did Representative Tom Lantos (Dem-CA) who said of Dornan, "I know of no individual in this Body who has less bigotry in his mind and heart than Bob Dornan." And Representative Steve Solarz (Dem-NY) said "A mis-spoken phrase in a moment of heated debate should not be allowed to overshadow Bob's long history of support and involvement with Israel, Soviet Jewry and other Jewish causes." Are Lantos and Solarz also part of an "Unholy Alliance"?

There are arguments to be made for and against the single issue Jewish PACs. They ought be made however in reasoned arguments, not in self-righteous arguments fashioned with a hatchet.

Sincerely,

Nathan Perlmutter
National Director

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THE NEW REPUBLIC

UNHOLY ALLIANCE

The new role of Jewish PACs and how they may save the Republican Senate.

by Robert Kuttner

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How Jewish PACs may save the Republican Senate.

UNHOLY ALLIANCE

BY ROBERT KUTTNER

. . . Now there arose a new king over Egypt, who knew not Joseph
—Exodus 1:8.

The 27th Annual Washington Conference of the American Israel Public Affairs Committee, held April 6-8 at the Washington Hilton, was a luminous success. The VIP reception drew dozens of congressmen, senators, and candidates for office, eager to demonstrate their commitment to Israel. Invitations circulated on good stiff paper inviting the recipient, for example, "to join Senator Chris Dodd, a friend of Israel and a member of the Foreign Relations Committee, for champagne and strawberries in the Lincoln East Room." The national security briefing was conducted by CIA director William Casey himself. The discussion of terrorism was led by the attorney general, Edwin Meese III. On the dais in the cavernous grand ballroom, before an audience of over 1,000, Senators Edward Kennedy and John Heinz brought down the house by vowing to block an arms sale to Saudi Arabia that neither AIPAC nor the government of Israel actively opposes.

The Reagan administration had begun by sponsoring an ultimately futile quest for détente with the radical Arabs; the sale of an advanced flying surveillance system, the AWACS, to the Saudis; and a delay of delivery of advanced fighters to Jerusalem to punish Israel for retaliatory raids into Lebanon. The early 1980s had seen a campaign-finance environment awash in petrodollars, new Republican secretaries of state and defense fresh from the Arab-oriented Bechtel Corporation, and a Senate with several right-wing Republican freshmen entirely unknown to the Jewish community.

Yet by 1986 AIPAC's executive director, Thomas Dine, could report euphorically, "Despite the budget-cutting mood here in Washington, the [1985 foreign aid] legislation contained the most generous Israel aid package ever: three billion dollars in regular aid plus an additional $1.5 billion in emergency economic aid. All the funds are grants. The three billion dollars in aid represents an increase of $400 million over the previous fiscal year, and a doubling of grant assistance since 1983." He could report further that the House had approved the Israel free trade agreement 422 to zero; that the Senate had consented to the long-delayed Genocide Convention; and that joint U.S.-Israel military maneuvers have become routine.

As Israel has seemed more strategically and economically vulnerable, AIPAC and a new spate of pro-Israel political action committees have emerged as the dominant forms of Jewish political activity. (AIPAC, despite its name, is not a PAC. It is a registered lobby, but gives no funds to candidates.) Since 1981 some 70 pro-Israel PACs have been founded. By 1985, in a general political climate of pro-incumbent campaign-finance and single-issue politics, they were giving about 60 percent of their funds to Republicans and over 90 percent to incumbents. So successful has this strategy been that only a handful of far-right legislators cannot be counted today as friends of Israel.

Yet these achievements are not without their political complications. American Jews, while undoubtedly more politically centrist now than, say, two decades ago, still voted almost two-to-one for Walter Mondale in 1984. Yet the Israel connection is now delivering Jewish financial backing to candidates far to the right of positions that most Jews hold on most issues. Incumbent conservative Republicans have discovered a cynical formula. They have only to demonstrate sufficient loyalty to Israel, and they can all but lock out their Democratic challengers from a substantial fraction of Jewish support, even when the challenger is more sympathetic to such other deeply held Jewish concerns as separation of church and state. In fact, in this new environment even liberal candidates whose dedication to Israel is, if anything, more authentic—even liberal candidates who are Jewish—are at a disadvantage compared to conservative converts, because there is no need to reward loyalty that comes naturally. If the Republicans keep control of the Senate in 1986, a lopsided year when 18 Republicans are seeking reelection, the Israel nexus will be a significant factor.

Not only is substantial money flowing from Jewish PACs to far-right Republicans, but in several key states the most viable Democratic challengers have been dissuaded from making the race. The GOP has no such problems. Republican challengers can count on an ocean of business support. Democrats depend on labor and wealthy idealistic liberals, many of them Jewish.

Within the community of mainstream Jewish organizations, the continuing rise of AIPAC and the sudden rise of pro-Israel PACs has prompted an anguished debate about whether Jews are being perceived as a single-issue community. The Israel-first strategy has created odd alliances between Jewish organizations and New Right Christian evangelicals, whose philo-Semitism with regard to the Middle East has thus far failed to translate into sensitivity to Jewish domestic concerns such as school prayer. (And in practice, even Israel is such a low priority for the evangelicals that the Christian Voice congressional scorecard fails to include a single Mideast vote.) There is today a startling

alliance between some Jewish organizations and right-wing evangelicals who are pro-Israel yet residually anti-Semitic. Meanwhile, the Christian right has targeted one pro-Israel liberal after another for defeat, because of their votes on abortion, civil liberties, social spending, and war and peace.

CONSIDER THREE KEY Senate races: New York, Wisconsin, and Florida. In New York the incumbent is the prodigious Alfonse D'Amato, a freshman Republican who has been a superb pork-barrel senator for New York despite a voting record that parallels Jesse Helms's on most social and fiscal questions. D'Amato, who received an estimated four percent of the Jewish vote in 1980, has also become a magnificent supporter of Israel. Beyond voting right, he has performed important behind-the-scenes services, such as blocking Arab arms sales hidden in secret appropriations. He went to the length of sponsoring a House-Senate resolution giving a Congressional Medal of Honor to *Achille Lauro* victim Leon Klinghoffer, which had to be awkwardly withdrawn after D'Amato learned that the medal was limited to military personnel.

D'Amato has formed very close alliances with key Jewish leaders in New York, as one potential Democratic contender after another has discovered. Last December the Democratic Senate Campaign Committee invited Arthur Levitt Jr. to Washington for a breakfast meeting. Levitt had been weighing a Senate race against D'Amato. Levitt, the son of a famous Democratic politician, the president of the American Stock Exchange, a political moderate, and a Jew (though not particularly active on Israel), was thought to be a fairly serious contender. But Levitt told the surprised senators that he had gotten a phone call from a prominent Jewish leader and campaign financier, advising him not to run against D'Amato. Levitt had then called two other key Jewish leaders, Howard Squadron and Kenneth Bialkin, both prominent New York lawyers and recent chiefs of the Conference of Presidents of Major Jewish Organizations, who reiterated the advice. If Levitt ran, he would run without the substantial Jewish financial backing that usually goes to New York Democrats.

Other New York Democrats testing the waters, such as former representative Elizabeth Holtzman, who has a strong pro-Israel record, got similar advice. (Although to some Jews the commitment of anti-defense Democrats to a strong Israel is as suspicious as the pro-Israel enthusiasm of the New Right is to other Jews.) Malcolm Hoenlein, the very influential head of the Jewish Community Relations Council of New York, says, "I know a number of candidates who sounded out Jewish leaders, including traditional liberals. . . . The Jewish community was a very significant factor in their decision not to take D'Amato on."

Consumer activist Mark Green, the front-runner for the Democratic nomination almost by default, is widely discounted by insiders, partly because he is considered too liberal, partly because he starts with a few hundred thousand dollars while D'Amato begins with over five million dollars. Green, who is Jewish, says, "Jews prosper most in a society based on pluralism, and on tolerance of what Frankfurter called 'despised minorities.' Jews have a special set of values and a special tradition. D'Amato may back Israel, but he's at war with that tradition. When I say this to many Jewish leaders, they avert their eyes and shuffle their feet."

Conservative Republican Robert Kasten of Wisconsin shares top billing with D'Amato as a must-reelect for AIPAC and most of the pro-Israel PACs. Kasten not only votes in favor of Israel, but he chairs the important appropriations subcommittee on foreign aid. Kasten is given substantial credit for carrying the bill that shifted Israel aid from loans to outright grants, a bill that will do more for Israel than every nickel raised by the United Jewish Appeal. One possible Democratic contender, Herbert Kohl, a Milwaukee businessman, took soundings similar to Levitt's, and received a similar message: stay out. So did several others.

The current Democratic front-runner is Edward Garvey, formerly executive director of the National Football League Players Association. Last October, at a Democratic Party reception, Garvey was rebuffed when he tried to meet Morris Amitay, the former director of AIPAC and the current director of WashPAC, one of the largest pro-Israel PACs. Amitay's newsletter had described Wisconsin as a priority race, and Garvey as "not good on our issues." Asked what evidence he had for this assessment, Amitay explained to an incredulous Garvey aide that the Football Players Association had failed to oppose the sale of AWACS planes to Saudi Arabia!

Unlike the New York contest, the Wisconsin campaign is expected to be a horse race. Kasten was arrested last winter for drunk driving, and the polls show him with very high negatives. Eventually WashPAC's newsletter conceded that Garvey had put out "a good position paper on our issues." Although the Wisconsin Jewish community is split between Garvey and Kasten, virtually every penny of out-of-state Israel-PAC support has gone to Kasten, with the exception of two "multi-issue" Jewish PACs, about which more in a moment. Garvey adds: "Kasten has co-sponsored a bill to cut the interest rate on Israel's debt to the U.S. from 13 percent to seven percent. We have farmers going bankrupt in my state. Nobody is offering to cut their interest rate to seven percent. It looks to me like Kasten is playing with dynamite."

THE FLORIDA race, also a toss-up, suggests a quite different formula. There, Republican incumbent Paula Hawkins, another right-winger who supports Israel, will get the lion's share of out-of-state Israel-PAC money; but her Democratic challenger, Governor Bob Graham, a man with long-standing ties to Florida's Jewish community, will get substantial other Jewish support, both nationally and locally. "We will help Paula, but nine-tenths of our Florida members will give to Graham," concedes the director of a Jewish PAC. "They're both fine. It's a no-lose proposition." To an extent, this pattern holds in other states: Israel PACs support the pro-Israel

incumbent; Jews, as individuals, support whom they please.

But as the Israel PACs become a more dominant influence on Jewish giving and as Republican Senate control continues, it remains to be seen whether the future portends more races like Florida's where Jews give to both sides, or more elections like the ones in Wisconsin and New York, where the Israel PACs throw much of the weight of the Jewish community behind the right-wing incumbent.

In fairness, the Israel PACs went all out to defeat Jesse Helms in 1984 and are now going all out for such longtime Democratic allies as Jim Jones of Oklahoma, Daniel Inouye of Hawaii, Chris Dodd of Connecticut, and Alan Cranston of California, as well as Republican moderates Bob Packwood and Bob Dole. However, in the latter two cases, the early support by the Israel PACs for the incumbents had substantial influence in persuading two potential Democratic challengers, both Jewish, to forgo the race. Sources close to Democratic congressmen Dan Glickman of Kansas and Ron Wyden of Oregon indicate that both men were told that little if any Jewish PAC money would be available to them, should they challenge Dole, or Packwood.

The tilt toward Republican incumbents became vivid this year, partly because the large New Right freshman class of 1980 is up for reelection. Many Jewish PAC leaders feel they have educated these legislators, and now have a substantial personal and political stake in their future. However, 1986 is no anomaly. The partisan tilt and the alliance with right-wingers is likely to intensify the longer Republicans control the Senate. At present, only four Republican incumbents are unacceptable to the pro-Israel community—Helms, Steven Symms, Jeremiah Denton (the three most right-wing members of the Senate), and James Abdnor (who is of Arab descent)—and all are trying to make amends. If Republicans keep control of the Senate, and the new crop of GOP freshmen follows the formula, fewer and fewer right-wing incumbents may ever face Democratic challengers who can expect the kind of help from Jewish PACs that such people used to get. That prospect certainly isn't good for the Democrats. But is it good even for the Jews?

THAT QUESTION HAS been the subject of an intense debate during recent months within leading Jewish organizations and in the Jewish press. After the 1984 election a number of prominent Jewish leaders, including Ted Mann of the American Jewish Congress, Hyman Bookbinder of the American Jewish Committee, and Rabbi David Saperstein of the Union of American Hebrew Congregations, decided to challenge the single-issue PACs head-on. They organized MIPAC, which stands for Multi-Issue PAC. MIPAC argues that support for Israel should be a "threshold" issue—necessary to qualify for Jewish backing, but not sufficient. Before 1984 only one other Jewish PAC took this approach: the Joint Action Committee, or JAC, an organization of several thousand Jewish women. JAC refuses to support candidates from the New Right, even if they are friendly to Israel. The leaders of JAC took a great deal of criticism from the largely male leaders of AIPAC, who considered their strategy naive. One prominent AIPAC leader told a JAC sponsor: "It would be better if you just gave your contributions to your husbands."

According to Hyman Bookbinder, "Israel's cause is best served by a multi-issue approach, and not just because it looks nicer. We need allies. You don't get allies when you're seen as only caring about one issue." Campaign-finance politics seems to drive out coalition politics. A mainstream Democratic congressman from a farm state told me, "AIPAC is in town this week. They're going to want to exempt Israel aid from the Gramm-Rudman cuts. I'm going to say, 'Where were you when we needed you?' And they're going to say, 'We only care about one issue.' And I'm going to tell them, 'My other constituents happen to care about a lot of issues.' "

PROPONENTS OF THE AIPAC/Israel-PAC strategy make several points in rejoinder. First, they contend, Israel is the overarching issue for virtually all American Jews. "Jews agree on little else, but there is a total consensus on the survival of Israel," says Richard Altman of NatPAC. "If we didn't stand up and be counted on Israel, nobody else would do it." David Brody, the Washington representative of the Anti-Defamation League, adds: "The problem is not unique to the Jewish community. When the environmentalists target their 'dirty dozen,' all that matters is their record on environmental issues."

Second, PAC leaders say, if a legislator has been loyal on the Israel issue, it is bad politics to embrace his opponent based on secondary concerns. "It would suggest that we can't be trusted," says one lobbyist. If that logic tends to help Republicans in the present environment, that is also seen as a net plus, because Jews have probably been too loyal to Democrats anyway. In any case, the AIPAC/Israel-PAC network tends to view the single-issue/multi-issue formulation as something of a canard, the work of professional liberals. "It's this year's hot Jewish self-flagellation topic," says Malcolm Hoenlein. America is a pluralist society. As Jews, people contribute to pro-Israel PACs. As liberals or conservatives, they work for gun control or against government spending. Jewish PACs are not the only way Jews participate in American political life.

Finally, the PAC people reject the charges that pro-Israel activity creates the perception that Jews have only one thing on their mind, or that it creates an unseemly alliance between Jews and the hard right. The preponderance of Jewish political giving is still on the liberal side, according to Morris Amitay of WashPAC: "If anything, American Jews are still overrepresented, both in numbers and in financial support, in the civil rights, pro-choice, nuclear freeze, and similar movements, and have nothing to be ashamed of." The fact remains, though, that pro-Israel money has moved well to the right of most Jewish voters. Carole Boron, national director of MIPAC, says, "I believe we have to work with the party in power, even Jesse

continued on page 24

Helms. But the other PACs cross over from working with people in power to using the Jewish community to keep them in power."

A RELATED CONCERN IS the growing alliance between some mainstream Jewish groups and the evangelical New Right, also based largely on a common support of Israel. When California Republican congressman Robert Dornan, one of the most reactionary members of Congress, uttered his infamous slip of the tongue on the House floor in March, describing Radio Moscow commentator Vladimir Posner as a "disloyal, betraying little Jew," the Anti-Defamation League, of all people, leapt to Dornan's defense. In a letter to the *Los Angeles Times*, ADL regional director David A. Lehrer wrote: "I can assure you, were Congressman Dornan's remarks uttered with anti-Semitic animus, we at the ADL would have been among the first to condemn them." In a tortured exegesis of Dornan's syntax, Lehrer explained that what Dornan really meant was that Vladimir Posner was disloyal to the Jews.

Dornan, however, is a solid vote for Israel, and a kind of bridge between the Jewish community and the evangelical right. Many in the AIPAC/Israel-PAC community think it is shrewd politics to develop such alliances, even with far-right evangelicals whose main domestic mission is to "Christianize" America. Last year Representative Mark Siljander of Michigan signed a "Dear Pastor" letter, sent to church leaders in an adjoining congressional district. The letter urged them to "send another Christian to Congress." The incumbent happened to be Democrat Harold Wolpe, a Jew. But Siljander, another congressional far-right evangelist, continues to be one of the largest recipients of Israel-PAC money.

The Anti-Defamation League, in particular, seems to have decided that the Christian right, which supports the state of Israel as part of its theological view of Armageddon, can be domesticated and sensitized to other Jewish concerns. In the course of an hour-long interview, ADL's national director, Nathan Perlmutter, spent most of the conversation defending the likes of the Reverends Jerry Falwell, Pat Robertson, and Bailey Smith, whose remark "God does not hear the prayer of a Jew" engendered bitter feelings when it was uttered in 1982. Perlmutter pointed out that Smith, the head of the Southern Baptists, had subsequently apologized for the remark, and had made a trip to Israel accompanied by several Jewish leaders. (In Israel, Smith made one more gaffe. Learning of an Israeli police program to etch serial numbers on personal belongings as part of an antitheft program, Smith wondered aloud why they didn't just etch the numbers on people's arms.)

Another prominent television preacher and prayer-breakfast sponsor, the Reverend Jimmy Swaggart, writes in his new book, *The Coming Peace in the Middle East*, that there has been so little peace in the Middle East because "Israel as a people turned their back on the God of Abraham, Isaac and Jacob and embraced pagan idols," and because Jews too often yielded to "philosophies that have proved harmful to mankind.... Consider, for example Karl Marx, Sigmund Freud, Leon Trotsky, and John Dewey [sic]."

Swaggart, in one broadcast, used footage of the death camps to demonstrate what befalls people who fail to embrace Jesus Christ. As the film ran, Swaggart, in a voice-over, intoned the names of Jewish victims. This was too much even for the ADL, which wrote a very tactful letter expressing delight with the Reverend Swaggart's support for the state of Israel, but advising him that the program had apparently offended some Jewish viewers. Swaggart wrote back that his intent had been misunderstood. The death camps, he said, did not represent God's punishment of the Jews, but rather the devil's work: "Whenever a person does not accept Jesus Christ, he takes himself away from God's protection. He then places himself under Satan's domain, who kills, steals, and destroys (St. John 10:10)."

From Perlmutter's perspective, the Christian right needs to be educated, not condemned. In an article in the December 1985 *Reconstructionist*, Perlmutter noted that many fundamentalist preachers had opposed the AWACS sale, and wondered how many liberal religious leaders could be counted on to do the same. Perlmutter told me: "I'm not so sure Jerry Falwell is out to Christianize America. Lumping all these people together as the radical right has become the contemporary counterpart of Red-baiting. Sixty percent of Americans favor school prayer. Are they all the radical right?" This perspective appalls many civil libertarians. Tony Podesta, president of People for the American Way, says, "Jerry Falwell is hostile at his core to religious liberty, to the separation of church and state, that are traditionally associated with the Jewish community."

Although advocates of this strategy insist they are making headway educating right-wingers on other Jewish sensitivities, the message is slow to take hold. According to Herbert L. Solomon, writing in the December 1985 Zionist periodical *Midstream*, of the 12 most conservative senators, all voted for the school prayer amendment, only two voted to deny arms to Jordan, and only two supported the resolution urging Reagan to cancel the Bitburg visit.

AS AIPAC and allied PACs have become more bipartisan, it often happens that prominent Republicans associated with AIPAC are just as eager to deliver the Jewish community to the Republicans as they are to deliver votes for Israel. AIPAC leaders who are Democrats, such as Tom Dine, a former aide to liberal senators Kennedy, Frank Church, and Edmund Muskie, bend over backward not to seem partisan. A decade ago, when most politically active Jews were Democrats and most pro-Israel Republicans were liberals, agenda-mixing was not a problem.

For example, Robert Asher, the chair of AIPAC's board, leans Republican. He is particularly close to Republican senator Mark Andrews of North Dakota, who faces a tightening reelection race this year. Andrews's Democratic opponent, Kent Conrad, also pro-Israel, is unlikely to get much Israel-PAC money. In a 1985 letter to major Jewish donors, Asher urged Jews to send $1,000 to Andrews-for-

Senate. He added, "I look forward to greeting you personally at the AIPAC Policy Conference." Four years ago, as a favor to Andrews, Asher steered some money to the opponent of North Dakota Democratic congressman Byron Dorgan, whose record on Israel is excellent.

There are numerous other such cases of mixed agendas, where Republican Jewish leaders have donned their AIPAC hats in order to pitch for right-wing GOP incumbents. Not long ago Senator Rudy Boschwitz of Minnesota, a favorite of the Israel lobby, sent a letter to leaders of Jewish PACs urging them to support Senator Symms, whose record on Israel (and everything else) is terrible.

Last year Tom Dine asked for the resignation of AIPAC political director Chris Gersten. Sources say this was partly a personality conflict, but mainly the result of Gersten's being too crassly partisan on company time. Gersten, while at AIPAC, was using "AIPAC chits" with key legislators to promote his wife, Linda Chavez, for the job of secretary of education. Gersten now heads something called the National Jewish Coalition, which is effectively an arm of the Republican National Committee.

Gersten has helped set up meetings between New Right leaders and prominent Jews. He admits Republicans still have a hard sell where a few hard-right senators are concerned. "We're still playing catch-up with Symms, Helms, and Denton. Our role is to introduce them to the Jewish community, to key people in New York and California, to take them to Israel, and maybe raise some money for them."

Statistically, if one looks at the overall balance of Jewish giving, PAC and individual, Democrats still out-raise Republicans. But that picture is misleading. Of the 18 Republican senators facing reelection in 1986, Jewish PACs will actively oppose only three. In four or five of the seven open seats, Jewish PACs will still support the Democrat. On balance, single-issue politics has substantially neutralized the once-liberal influence of the Jewish community.

TO PLACE ALL these dilemmas in perspective, a little history is in order. Jews, of course, have been primarily Democrats and liberals ever since the New Deal. They have also contributed a disproportionate share of Democratic Party finances, probably a fourth to a third of the total. Jews, because of their unique heritage, have been the one group in America to vote consistently against their ostensible pocketbook interests. Jews, according to a famous quip, are the only people who live like Episcopalians and vote like Puerto Ricans.

But this picture has been steadily eroding since the early 1970s. Hubert Humphrey was the last Democratic presidential candidate who could count on over 80 percent of the Jewish vote. The new Jewish bipartisanship and the shift toward the political center have multiple roots: national security concerns (most notably Israel); prosperity; the affirmative action controversy; a perception that Democratic Party standard-bearers George McGovern and Jimmy Carter had tilted toward the Arabs; and most recently, the role in the party of Jesse Jackson. *Commentary* magazine and the network of conservative Jewish intellectuals like Irving Kristol have endeavored to package all of the above into a generalized Jewish neoconservatism. Operations like Gersten's National Jewish Coalition provide the partisan shock troops.

Finally, there has been a change in the nature of the Israel issue itself. For most of its history, Zionism was a liberal cause. Until the election of Menachem Begin's Likud government in 1977, Israel had a democratic socialist government. As Israel came to be perceived as a cold war ally, and as the worldwide left took up the Palestinian cause, the political coloration of support for Israel began to change. The combination of Likud in Israel, Reagan in the United States, and the ascendancy of PACs and single-issue politics in Congress all served to move Jewish interest-group activities to the right of the Jewish electorate. Were it not for the Israel nexus, most American Jews would have nothing to do with a Kasten or a Hawkins—much less a Falwell.

THE THEME OF Jewish history, of course, is the theme of survival. For several thousand years Jews have been justifiably anxious about new pharaohs who knew not Joseph, new czars, new popes, new *Reichskanzlers*, and new presidents of the United States. Jews have depended on back channels to the palace ever since Queen Esther. Accommodation with the party in power is a necessary habit, not a shameful one. Liberal Democratic congressman Sam Gejdenson of Connecticut, the son of Holocaust survivors, a major recipient of Israel-PAC money, and a critic of single-issue politics, says: "The single-issue phase was probably a necessary phase. The danger is that it goes too far—the legislator says, 'Beat it, kid, we already took care of you.' Coalition building with intolerant groups does not make sense for the long run. You can't do business with people who are fundamentally intolerant of you. There needed to be a course correction, and the good news is that it is happening already."

For Democrats, the new ability of right-wing pro-Israel Republicans to deny their liberal challengers Jewish support presents a real problem. It comes at a time when other liberal Democratic constituencies have eroded. Organized labor is depleted; the public sector is on the defensive; the young are skeptical; the poor fail to vote. AIPAC's selective alliance with the far right has been the subject of anguished conversations between prominent Democratic legislators, and leaders of the Israel lobby. Still, there is a salutary effect for the Democrats as well. In the past, the ability to raise money from the same pool of well-known donors, many of them Jewish business leaders, too long allowed Democrats the luxury of ignoring different strategies of electioneering. "Democrats," says one critic, "know just how to write direct-mail pieces aimed at a few zip codes in New York, Miami, Cambridge, and Beverly Hills. They haven't learned how to write direct mail for Des Moines." If Democrats broaden their fund-raising, and Jewish political activists can learn to hold conservative Republicans accountable on more than one issue, Democrats and Jews both stand to gain. □