

UPDATE

COMMITTEE FOR THE SUIT AGAINST GOVERNMENT MISCONDUCT

P.O. Box 254, Peter Stuyvesant Station,
New York, N.Y. 10009 212-675-5000

August, 1979

CLARK V. USA IN COURT

On July 6, 1979, Clark et. al. v. USA had its first public hearing in court, where motions from the government and the other defendants to dismiss the case were argued. Although the judge rendered no decisions on the many issues raised by our suit, the day itself was a victory.

During the fourteen months since we filed our suit, the government has attempted to "blow us out of court," both through legal and technical maneuvers and through outright illegal actions. They have tried to use the impasse in the criminal proceedings against former FBI officials Gray, Felt and Miller to argue that our case cannot move forward, and they have justified their refusal to provide us with the bare beginnings of discovery materials--such as our Freedom of Information Act files--with baseless claims of national security. At the same time, we have experienced covert attacks such as break-ins, the fire, threatening phone calls, harassment of our legal team, and disruption of our mail.

But this day in court made it clear that none of these tactics could succeed in derailing the suit; that the issues raised by this case are far too basic and profound to be swept away with technical arguments and stalling tactics; and that their attempts to wipe us out only further expose the fact of continu-

ing COINTELPRO activities.

The day began with a demonstration against COINTELPRO in front of the courthouse--to focus on the fact that COINTELPRO continues and that nothing exposes this more clearly than the continued imprisonment of Afrikan Prisoners of War such as Assata Shakur, Sundiata Acoli, Geronimo Pratt, the RNA 11, and Dharuba Moore. Our suit is one part of a larger strategy to defeat COINTELPRO, to free Prisoners of War, and to strike at the heart of the government's ability to maintain its deadly counter-intelligence operations unimpeded.

The arguments then proceeded before a packed courtroom. In their motions to dismiss, the defendants could not deny the basic validity of the case because it is based on facts that they themselves have been forced to admit. Thus, their strategy was to try to whittle away at the scope of what the suit is about and who it is directed against, to try to argue that the illegal actions against us were isolated incidents, that they were excesses committed by individuals, and, moreover, that although they may have been illegal, they

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GERONIMO PRATT: GOVERNMENT CONTINUES COVER-UP

Critical developments in the suits filed by Geronimo Pratt are bearing out the truth that Geronimo has been fighting to prove: that he has spent the last eight years in prison, almost all in solitary confinement, on completely trumped up charges that grew out of COINTELPRO operations against him, the Black Panther Party, and the Black liberation movement as a whole. Geronimo is a former leader of the Black Panther Party in Los Angeles, and an outspoken fighter for the liberation of Black people.

He has been a target of intense counter-insurgency operations by federal and local police, including a military assault in 1969 against the Panther headquarters in L.A., which was unsuccessful in its attempt to murder Geronimo and others; charges stemming from that assault in which the state was unable to convict Geronimo of any serious charges; counter-intelligence operations to foster splits within the Panthers and isolate leaders such as Geronimo. He was eventually jailed on charges stemming from an old unsolved murder case that police dug up despite no evidence linking him to the crime and despite testimony that he was 350 miles away at a Black Pan-

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Clark, cont'd.

were justified because they were part of the government's fight against terrorism.

The defendants tried to argue that Nixon should not be liable in this suit because he was acting within the bounds of his discretion as president. In arguing this position, the U.S. attorney actually stated that a president is justified in committing criminal acts such as kidnapping under the cloak of fighting terrorism and protecting national security! This indeed spoke to the heart of what this case is about.

In the same manner, the government attempted to protect the agencies of the government, such as the FBI and the Justice Department, and former acting FBI head L. Patrick Gray and former Attorney General John Mitchell from liability in the suit. But we as plaintiffs made clear, through the legal arguments themselves, through the demonstration and the support in the courtroom, and through forcing the government to put out its true position, that the case was not an argument over finer points of law or even a contention over which individuals are responsible for a few illegal actions in the past. The suit is about the continued function of an illegal, covert military apparatus, involving all the agencies and officials of the government, past and present, and that its continued functioning poses a basic threat to the human and civil rights of people in struggle in this country.

The fact that our position is well founded in the law itself was brought home by a recent ruling in another suit, that in fact the president can not be protected from liability for criminal actions under the cloak of presidential immunity. On July 12, in the

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case of Morton Halperin, the US Court of Appeals rejected Mr. Nixon's contentions that presidents and former presidents were immune from civil damage suits. Quoting from the opinion: "Presidents are scarcely immune from judicial process...The President is the elected chief executive of our government, not an omniscient leader cloaked in mystical powers."

Whether the court in our case will be willing to go with the law and hold liable all those responsible for their crimes will have to be seen. The offensive strategy of the suit and the commitment to maintain our position on what lies at the heart of the case has indeed forced the government's hand. A hearing in judge's chambers was held a week after the open court date. The subject was our related Freedom of Information Act suit, filed in response to the government's refusal for over two years to give us even the minimum files guaranteed us under the Freedom of Information Act. The FBI admitted to withholding about 60 volumes of files (about 200 pages per file) on the five plaintiffs in the FOIA suit. Unable to offer a credible reason for withholding almost all of this material for over two years since we filed, they stated that we would receive these files over the next two months. As plaintiffs, we protested the tremendous burden of costs and time lost by having to file an additional lawsuit to receive information that should have been handed over long ago.

Finally, we see that the litigation of our lawsuit is clearly a threat as it catches the government in its own web of crime and potentially cracks open the massive government conspiracy respon-

sible for holding political prisoners captive and continuing the daily attack against their human rights while in prison. This is why the hearing on July 6 has significance far beyond the narrow questions of law. In reality this is a major battle in the fight to stop illegal government activities.

Pratt, cont'd.

ther Party meeting at the time of the murder. Once jailed, the state's counter-intelligence operations have intensified: he has been kept in isolation, portrayed as a "dangerous criminal and terrorist" and harassed by a series of unsubstantiated charges.

Geronimo Pratt, and the National Task Force for COINTELPRO Litigation and Research have waged a strategic offensive to expose the counter-intelligence operations against the Black movement, and Geronimo and other POWs. A suit that he instituted against the California Department of Corrections has forced the government to admit that he was kept in isolation illegally, under charges that were fabricated by the prison authorities and intelligence agencies, in a plot to deny Geronimo his constitutional and human rights. A trial in that case is scheduled to begin by the end of the year.

Geronimo also has a suit pursuant to the Freedom of Information Act, to gain access to files that will prove not only that he was not even in Los Angeles at the time of the murder he is in jail for, but that the FBI knew

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GRAND JURY SUBPOENAS DROPPED

On May 21, 1979, Puerto Rican freedom fighter and POW William Guillermo Morales escaped from Bellevue Hospital prison ward in NYC. His freedom was and is a victory for the Puerto Rican people in their struggle for independence as well as for all oppressed and progressive peoples.

The government's response was a heightened repression against the independence movement and its supporters. Grand jury subpoenas were served on Dylcia Pagan, an independentista, member of the National Committee to Free Puerto Rican POWs, and William's wife; Henry Lopez, William's 17-year old brother; and Susan Tipograph, one of William's lawyers, who is also chief counsel for Clark v. USA and Biberman v. FBI. All three filed motions to quash based on the illegal use of the grand jury as part of the FBI's

harassment. The CSAGM understands that part of the FBI's continuing COINTELPRO attacks against Clark v. USA has been to attack the lawyers and legal workers in an effort to sabotage their ability to successfully prosecute the lawsuits.

One month later, in the face of growing support for William and opposition to the grand jury, the government was forced to drop all three subpoenas. This is a major victory for all who have fought to end repressive grand jury attacks and to support struggles for human rights.

Opposition to all government repressive programs, COINTELPRO, grand jury attacks or other methods was key in defeating this attack on the Puerto Rican independence movement.

Members of the Committee for the Suit Against Government Misconduct are available to speak to groups, organizations, classes, etc. If you would like to arrange a speaking engagement, please contact the CSAGM.

I would like to arrange to have a speaker from the CSAGM.

Name _____

Org. _____

Address _____

City/State _____

Telephone _____

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The media blockade has begun to be broken---the July 25th issue of the SoHo News ran a major feature article on Clark v. USA entitled "Tightening the Noose on COINTELPRO"

URGENT APPEAL FOR MONEY

The success or failure of Clark et al. v. USA will set the terms for future litigation against government counter-intelligence programs. We cannot allow limited financial resources to determine how far it can be pursued. As the legal battle heightens, so do the expenses. Depositions and transcripts cost a minimum of \$500 each. Appeals cost \$1000s. And we know that the government and their private attorneys will attempt to force us to drop the suit through inundating us in legal papers. We must not let that happen.

Your help--and the help of every person who is opposed to illegal government surveillance and harassment--is needed.

SEND MONEY TO SUPPORT THE WORK OF THE COMMITTEE. Tax deductible contributions can be accepted; please contact the Committee for information. Make checks payable to the Committee for the Suit Against Government Misconduct.

Enclosed is my contribution of \$ _____.

Please send me information for making a tax deductible contribution. _____

Name _____

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Pratt, cont'd.

this--because they had surveillance records of him showing that he was at a Panther Party meeting in Oakland at the time--and that they willfully hid this information in order to convict him. Up until this point the Justice Department has produced files on Geronimo that start the month after the alleged crime, contending that they have no files on him for that period.

On August 6th a hearing was held in the Washington, D.C. FOIA case to determine whether the FBI's index of the materials they hold on Geronimo was adequate. A Vaughn motion requires the government to index the files maintained and the exemptions claimed withholding the release of files. Though no final decision has been reached, the judge expressed an inclination toward not accepting the sufficiency of the FBI's Vaughn affidavit--challenging the FBI's claims of having disclosed all information.

Simultaneously, major developments have occurred in Geronimo's California case against the Department of Corrections. For the last 6 months, Geronimo has been struggling to force the Department to release do-

cuments which he asserts are critical to his defense. At first the officials refused to release them saying that they were irrelevant, but later when that argument was defeated, they claimed not to possess the files which Geronimo is demanding. The judge in this case, Judge Conti, was infuriated by the blatant lying and deceit of the government and on August 10th held Deputy California Attorney General Kirk in contempt and fined him \$500 for lying to the magistrate. An additional hearing will be held shortly to determine whether Kirk should also be held in contempt for lying to the Judge. Judge Conti also held the other California officials who signed the legal papers for the government in contempt, including the Attorney General and three top appointed officials, and recommended their disbarment for their part in the cover-up. In his statement, Judge Conti expressed that he was "saddened and sickened" by this "deceit" on the part of California government officials and recognized that this was clearly a major cover-up on their part. Representative Paul McCloskey has begun to pressure government officials in Washington in relation to Geronimo's case as well, recognizing that he has been denied

his rights through the continuing COINTELPRO attacks and cover-up.

Geronimo's case is a major case amongst several that the National Task Force for COINTELPRO Litigation and Research is pursuing--others include those of Assata Shakur and the Republic of New Afrika 11 (who have recently won a struggle to get more of the FBI's information on them released). These cases are reaching the point of making significant breakthroughs and of affecting the Justice Department's ability to maintain its cover-up. Contributions toward this work are very much needed. Send contributions to the National Task Force for COINTELPRO Litigation and Research, P.O. Box 65, Bronx, New York 10473.

The Committee has prepared several pieces of literature for distribution:

The tape/speech by Assata Shakur, CSAGM Forum 5/4/79, Women and COINTELPRO. 25¢

Speech by Judy Clark, CSAGM Forum 5/4/79, Women and COINTELPRO. 25¢

How to file for your FOIA file. 50¢

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Government Misconduct
P.O. Box 254, Peter Stuyvesant Sta.
New York, N.Y. 10009