

CARTON 1:12

PERSONAL

"DOWNDRAFT", ANTI-DRAFT NEWSLETTER 1966-1967
MANUSCRIPT MATERIALS, CORRESPONDENCE

BORN, MAX
RUSSELL, BERTRAND
HAUGHTON, JIM
LYNN, CONRAD
END THE DRAFT

2017/193
c

INTER-OFFICE COMMUNICATION

NATIONAL GUARDIAN

FROM: Bob Allen DATE: 3/23/67
TO: Jim
RE: _____

Jim Haughton and I are working on an anti-draft newsletter to be circulated in Negro communities. We would like permission to reprint the Guardian story (3/4/67) "Jury indicts 7 SNCC aides in draft cases." Full credit would be given.

OK -
~~Jim~~

Outline of Lyann's speech

BLACK YOUTH AND THE DRAFT

I. McNamara - Moynihan - Young Program

A. The Black Family in 1967

B. Unemployment

C. Education

D. The Armed Forces as a Solution

II. The War as a Program For the
Government.

A. Our Corporate Society

B. The Black Man's Place.

C. Utopian Separatist Programs

D. Can we be integrated into this
social structure?

III The Armed Forces & the Gov't's Program

A. The volunteers

1. Inducements to Black youth
2. White supremacy.

B. The Draft.

1. Importance
2. How to beat the draft.
3. The Selective Service Machinery
4. The Courts.

objectives

(Jim Houghton)

1. On-going organizational apparatus (Black) to deal with all aspects of war - also establish an office manned by at least one person to disseminate information and coordinate activities.
2. 500 Black women in Washington at time of Draft ^{law} expiration to protest war.
3. Think in terms of on-going political consciousness and organization.
4. How to raise money for organization. theatrical people: Dick Gregory, Ossie Davis, Abbie Lincoln.
5. House organ to communicate to Black.
6. Should coordinating comm. have any form of power? To make stands and organize activities specifically concerning anti-war / anti-draft activity, and with some kind of line of Blacks opposed to war?

Guide lines

1. Time limits on speeches
3-5 minutes.

Theme — This conference will concern itself with how we as people who are opposed to the war in Vietnam and the draft can establish lines of communication and coordination between us

Agenda

Conference of Blacks opposed to
The Vietnamese war + the Draft

Theme →

11 AM - 12:30 pm Get-acquainted-session; informal discussion

12:30 - 1:30 pm Lunch

1:30 pm Business Session

Speakers:

~~Mark Simmons~~

Introduction, Bob Allen - moderator

Mike Simmons - National and regional conferences

Robert Browne - The Vietnam War & how it relates to blacks

Conrad Lynn - The Draft, how to fight it & alternatives.

10 minute break

Discussion - ~~The speakers will address themselves to the theme of the conference~~ A question and comment should also be related to ~~this~~ the theme and should be limited to 3-5 minutes. so that each participant will have an opportunity to speak.

A Continuations committee should be established to keep ~~members~~ ^{participants} informed of National conference plans and other matters related to the ~~theme~~ conference theme. This ~~key~~ ^{key is} in continuations committee should ~~be~~ communication with other regional continuations committees.

Methods of funding the continuations committee should be discussed.

Whites + black power

1. Whites can no longer be spokesmen or in control
2. Confront problem of racism
3. Whites go into white communities and organize
4. Confront power structure

think thru opposition to
all war.

Problem of victims
and oppressor and
non-violence. First
appeal should be to
the oppressor. Hypocritical
to demand ghetto dwellers
to be non-violent when

they are attacked or
quietly accept suffering
imposed on them. Would
be more logical to
disarm the police. If
you want a truly non-
violent society you should
first work to disarm
the police, the armies
not the victims.

January 13, 1967

Dear Brother,

The Afro-Americans Against The War in Vietnam is an organization actively engaged in disseminating information surrounding the Black man's participation in the Vietnam War. and in developing consciousness in the Black community of the following conditions the Black soldier faces;

1. discrimination surrounding draft.
2. death while defending a country which has refused to recognize him as a human being.
3. a postponement of our urgent fight for human and civil rights in America, while being tricked into fighting for " freedom " in Vietnam.

The A.A.A.W.V. also provide draft counselling services for Black men who refuse to take an active part in the Vietnam war or the man's army.

Statement of Purpose

" In three hundred years the U.S. has never granted Afro-Americans equal rights or recognized Negroes as dignified human beings. Why should Black people fight for " freedom" in Vietnam when we don't have it at home?

No Black people should take part in U.S. international wars until complete human rights are gained in this country for the Black American. We endorse and support Black men who refuse to fight in any U.S. war.

We demand that our Black G.I.'s currently serving in Vietnam be brought home now where they can really fight for freedom and democracy."

We are looking forward to attending the conference on the 21st. We believe that nationwide communication between Black people, who feel the time has come to do something about oppression in this country, is very necessary. This conference is an important first step.

Yours in struggle,

Johanne Eubanks
Johanne Eubanks

Sec'y A.A.A.W.V.

INVITATION LIST CONT #3

INDIVIDUALS

NY 116th St.

- ✓ 1. Paul Boutelle #3W
c/o Nightingale
1919 7th Ave.
N.Y., 10026
~~NY 1-2226~~; 982 - 0051 666-6888
SWP
2. Joe Carnegie
32 - 17 106 St.
E. Elmhurst, N.Y.
NIG - 3210
3. Bob Brown
214 Tryon Ave.
Teaneck, N.J.
201-763-1718
4. Conrad Lynn
401 Broadway, N.Y.
CAG - 5226
5. Phil Hutchins
273 18th Ave.
Newark, N.J.
201 - 242 - 9170 (office)
201 - 248 - 5074 (home)
- ✓ 6. Mae Mallory
212 W. 129 St., #12 E
N.Y.C.
866 - 0430
7. Pat Robinson
1 Brookdale Ave.
New Rochelle, 10801
NE5 - 4887
8. Bill Epton
1470 Amsterdam Ave.
N.Y.C.
FIS - 2254 (work)
AV6 - 3419 (home) JU 6-3419
9. Ralph Hendrix, (Lower E. Side Group), Bernard Hughes
253 Henry St., #9
N.Y.C., 10002
233 - 1999
10. Queen Mother Audley Morre
957 Caldwell, #3
Bronx 56, N.Y.
11. Larry Stewart
52 Walcott Terrace
Newark, N.J., 07112
12. Charles Shelton
211 Franklin Ave.
Mt. Vernon, N.Y.
13. Anglyn Torrance, (Miss)
28 Bern Terrace
Atlantic City, N.J.

For those who don't know, a Black Anti-Draft Conference of nation-wide scope is scheduled for May 26th in Detroit, Mich. The conference will concern itself with implementing a program of active opposition to the draft and the racist war against the colored people of Vietnam. Details concerning this conference will be sent to any Black person who sends us his name and address. Plans are moving ahead for having other Black anti-draft conferences around the country. So far regional conferences are scheduled for Washington, D.C. (March), Atlanta, Ga. (March), and Los Angeles, Calif. (April). It is hoped that other meetings will be set up in other ~~xxx~~ cities in the near future.

Brother William Johnson was given a bad conduct discharge from the Army and sentenced to a year in the stockade by a court-martial Feb. 21 because of his opposition to the war in Vietnam and his protest against racism in the Army. Johnson went AWOL last April to demonstrate his opposition to the racist Vietnam war and because he believed that racism and discrimination were rampant in the U.S. Army. In October he voluntarily turned himself in to the authorities after he had written many letters to congressmen, senators, newspapers and the military authorities setting forth his views.

The heavy sentence imposed on Bro. Johnson indicates that the U.S. Army is very much afraid of Black men who fight against racism and will go to great lengths in its attempt to suppress. However, we have learned from his family the Bro. Johnson is working in the stockade to enlighten other Brothers to their true interest, and getting them to fight against the racist system which imprisons us all.

Please send us whatever leaflets & other material
you have!

Dear Friends,

*please put us
on your
mailing list →*

We feel that there should be much more communication within the peace movement. One easy way to initiate improved communications is to exchange newsletters and other mailings between local, regional and national organizations. So if you will put us on your mailing list we will do the same.

We are enclosing a list of the literature and other items we have available. Do you have literature, bumperstickers, etc. for sale or films, slides or tapes for rental? We can list such items on the resource page in our regional newsletter or, within the limits of weight, we can enclose literature with our newsletter mailings. (We have now 1600 names, mostly in the east midwest region.)

2100

*any info
appreciated*

We are also compiling a list of peace centers as well as bookstores and button shops which would be interested in being informed about literature and peace gimmicks to sell.

As there are such frequent changes of personell and addresses in the movement, it would be very helpful to have current information about contact people for groups in your area.

We are also sending this letter to individuals across the country to determine who would find our newsletter useful and would like to recieve it regularly. If you haven't seen a copy, we will be glad to send you a sample. It comes out every two or three weeks. We would appreciate a contribution to help cover expenses of sending it to you.

We are also compiling a list of both short-term and long-term movement-type jobs available. We hope to co-ordinate it with the Antioch College work/study programs. If you know of any opportunities, would you please send us a description of the job?

For Peace and Freedom,

Dayton Area Coordinating Committee
221 Xenia Avenue
Yellow Springs, Ohio 45387

The war in Vietnam, both ~~the~~ north and south is obviously a racist war, but even more important than that, it is an attempt on the part of the U.S. government to surround China, and eventually to attack her.

This war becomes all the more sinister when one realizes that in conjunction with the systematic attempts to ~~the~~ wipe out the Vietnamese people, the U.S. government is attempting to destroy the black youth of this country--~~the~~ using the war as the vehicle to accomplish their purpose.

When one reviews the areas of the country where the draft is the highest one finds that it is in the northern industrial ~~the~~ cities that ~~the~~ have had rebellions. And it is quite obvious that the rebellions were spearheaded by the "drop-outs", unemployed, and youth who have no stake in the system. So the government has deliberately lowered the physical ~~the~~ and mental requirements to be sure that they are able to get all of these rebellious youth in ~~the~~ their draft dragnet. On to Vietnam and very possibly death.

As a result of the obvious nature of this war and its effect on black youth many organizations and individuals have come together to wage a struggle against the draft and against the war. ~~the~~ Many proposals have been ~~the~~ put forth on ways and means to beat the draft or to organize resistance in a meaningful way. It is our thinking that we can do both, and one more in addition.

1. A serious concerted effort must be made to organize the high school ~~the~~ youth in the high schools to resist the draft.
2. the "drop-outs" and unemployed youth must be reached and organized to resist.
3. Mothers must be organized to resist sending their children to the army, and organize other mothers also.
4. As long as the anti-war movement does not contain the workers it will never be effective, because as long as production continues the war effort will never be hampered. Therefore we must begin to direct more of our attention to the black workers.

5. Finally, last but surely not the least important,--to the contrary-we have a army in Vietnam of some 400,000 troops. Possibly, among the front line troops, the majority being black. In Santo Domingo, 60% of the troops were black. It is not too difficult to imagine what effect it would have on morale, etc. if black troops who were opposed to the war ~~at~~ and all that it applies began to protest in an organized fashion in any way they chose. This has happened many times, in every war among black troops. This takes people who are dedicated and conscious who can see the possibilities of aiming their blows at the government from the best possible strategic position.

Bill Epton

January 18, 1966
New York City

Mr. Bob Allen
201 E. 165 St.
New York, N.Y.

Companero Allen:

Many thanks for your comradely letter inviting us to participate in the conference of Black People against the Vietnam war and against the draft, to be held next Saturday in New York. We consider of great importance that Black and Puerto Rican People should jointly struggle against the U.S. imperialist and racist war. We are looking forward to meet you and exchange views next Saturday.

We are sending you a short statement of our position on the war, in the hope that it won't be too late for it to be printed for distribution at the conference:

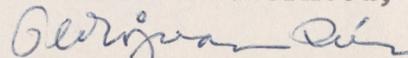
" At the Conference of Solidarity of the Peoples of Africa, Asia and Latin America held during the last year in Cuba, the National Front of Liberation (NFL) of south Vietnam and the Movement For Puerto Rican Independence (MPI) formalized an agreement of mutual support. The statement of the agreement fully expresses the position of MPI: 'The NFL and the MPI struggle against a common enemy, the enemy of both our Peoples, and the enemy of the whole of humanity, U.S. imperialism. We both struggle for national independence, peace and social progress... The MPI expresses its full support to the patriotic struggle of the Vietnamese People under the banner of the National Front of Liberation, sole representative of the 14 million of south Vietnamese'".

" The Puerto Rican People have translated their pledge of solidarity to the Vietnamese into concrete actions. Among the most significant ones has been the refusal, a few months ago, of nearly 1000 young Puerto Ricans to observe the law of compulsory military service and enter into the U.S. Army. So much has U.S. imperialism feared the mass character of this refusal, and the mass support it has received, that up to this point it has not dared to indict even one of our young patriots."

" As an imperialist war, the war in Vietnam is a class war, it is conceived and organized by the big U.S. monopolies and directed against the interests not only of the Vietnamese peasants and workers, but all oppressed masses of the world and very particularly the Black and Puerto Rican masses. While the monopolies, particularly the weapon producers, extract billions in super-profits, their political and military instruments - the U.S. government and army - commit genocide against the Vietnamese and utilize the Black and Puerto Rican masses as top notch cannon-fodder."

" Because all the masses of the world, in one way or another, are affected by the U.S. imperialist ventures and aggressions, that is why all the oppressed must join hands to utterly and resolutely crush U.S. imperialism and monopoly capitalism. Done this, the origins of war shall be abolished and the Peoples of the world shall peacefully pursue their welfare and social progress."

In true Brotherhood,



Pedro Juan Rua,
Sec. of Organization, M.P.I. (N.Y.)

142 Vine Street NW
Atlanta, Georgia
2/21/67

Dear Bob,

Sorry I've been lax in communicating with you. It seems that the only time Black people move is when the "man" is coming down on our heads. And this is exactly what he is doing in Atlanta.

The Federal Government has indicted Larry, myself, and 5 others. The charges are: "destruction of federal property" and "interference with the administration of the universal military training act". The charges stem from the demonstration this summer at the Atlanta Induction Center.

Our attorney has made arrangements for us to turn ourselves into the Federal Marshall on Thursday. We are to make bond at that time. We don't know what bond is going to be but it'll probably be sort of steep. To avoid spending time in jail we are trying to get the money up immediately. All that wouldn't be used now would be used for the appeal bond - knowing in advance that the racists courts are going to find us guilty.

Please encourage people to send money from \$.01 to \$1,000,000, 000,000,000,000..... as soon as possible.

Hopefully some type of offensive can be mounted so that pressure will be put on the Federal Government.

I've enclosed a press release sent out and some other things that go a bit more into detail. More information will be coming.

Your Brother,

PS Make checks payable to Gwen Robinson
68 Electric Ave NW
Atlanta, Georgia

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF GEORGIA

UNITED STATES OF AMERICA
VS

JOHN P. TILLMAN
ROBERT BARBER MOORE,
JOHNNY C. WILSON
LARRY FOX
DONALD P. STONE
MICHAEL W. SIMMONS, AND
SIMUEL BRENT SCHUTZ

CRIMINAL NO. 25009

Filed in open court
February 16, 1967
Claude L. Goza, Clerk
By - D.K.K.
Deputy Clerk

THE GRAND JURY CHARGES:

Count One

That, on or about August 18, 1966, in the Northern District of Georgia, John P. Tillman, Donald P. Stone, Johnny C. Wilson and Larry Fox, aided and abetted by each other, wilfully and knowingly, by force and violence did attempt to hinder and interfere with the administration of the Universal Military Training and Service Act by restraining Verbon Grimes who had been ordered by his local board to report to the Armed Forces Entry and Examining Station, 699 Ponce de Leon Avenue, N.E., Atlanta, Georgia, for induction into the Armed Forces of the United States, from entering the said Armed Forces Entry and Examining Station, 699 Ponce de Leon Avenue, NE, Atlanta, Georgia, in violation of 50 appendix U.S.C. 462.

Count Two

That, on or about August 18, 1966, in the Northern District of Georgia, John P. Tillman, Robert Barber Moore, Johnny C. Wilson, Simuel Bent Schutz, Larry Fox, Michael Simmons, and Donald P. Stone, aided and abetted by each other and by persons to the Grand Jury unknown, wilfully did injure property of the United States, that is, a glass door with an aluminum frame, located at an entrance on the north side of a building at 699 Ponce de Leon Avenue, N.E., Atlanta, Georgia, by means of pushing against the said door, thereby causing damage of less than \$100.00, in violation of Section 1361 Title 18, U.S.C.A.

A True Bill

Royce Donald Fair
Foreman

Charles L. Goodson
United States Attorney

Charles B. Lewis, Jr.
Assistant United States Attorney

PRESS RELEASE

From: The Atlanta Project of the SNCC
142 Vine Street NW
Atlanta, Georgia

February 20, 1967

STOP THE TORTURE OF OUR BLACK MEN!

How long will the torture of Black men continue

Seven Black men who dared to object to the drafting of Black men to serve as hired killers for this white racist government are being tortured

Seven Black men who dared to say "Freedom, Justice, and Equality for Afroamericans are being tortured

Seven Black men who dared to say "VietCong never called me Nigger" are being tortured

On February 16, 1967, in Atlanta, Georgia, USA, Donald Stone, Larry Fox, J.P. Tillman and John Wilson have been indicted by a Federal Grand Jury for "Interfering with the administration of the Universal Military Training Act", plus "Destroying Federal Property". On that same day, Robert Moore, Michael Simmons, and Simuel Schutz have been indicted for "Destruction of Federal Property".

This is but another link in the chain conspiracy against twelve young Blacks by the racist City, State and Federal officials.

It all began August 18, 1966, when 10 Black men and 2 Black women were arrested and charged with disorderly conduct, disturbing the peace, and resisting arrest; 4 of the 12 were also charged with assault and battery on police officers, and one with Insurrection which carries the death penalty here in Georgia, as a result of their protesting the illegal drafting of Black men to fight in racist wars of oppression. The twelve were tried August 19, 1966 and convicted in racist Judge T.C. Little's court in Atlanta. They were given the maximum penalty for the charges (Judge Little at time of sentencing said that he wished he could give them life in prisonment) - 3 months in jail at the Atlanta Prison Farm.

The twelve served two months because Judge Little would not allow the posting of an appeal bond for the twelve even though their cases were being appealed.

The twelve spent most of their time at the Prison Farm in solitary confinement known as the "hole". It's an area 5'x7' with no sleeping or sanitary or toilet facilities (a tin can with jagged edges was provided to contain bodily excrement). Bread and water was the food. The bread was left over and partially eaten by other prisoners. The bread was thrown upon the floor. Prisoners were expected to scramble for these partially eaten morsels or else loose them to the roaches. The water was not fresh; water was served in a can which had not been sanitized; it often tasted of other ingredients such as urine, spit, etc. A few of the men soon fell sick of hemmoroids and swelling joints from a combination of damp quarters, pig-pen like food, and Vermin producing unsanitary facilities. These and other conditions forced the men to go on hunger strikes against these inhuman -concentration camp-like treatments. These men ate no food and drank only water for periods lasting up to 15 consecutive days.

Phase II of the conspiracy

On February 1-2 of this year, Johnny Wilson was tried in Fulton County Superior Court on 4 charges - assault and battery (2 counts), abusive and profane language (2 counts) stemming from the August 18th demonstration. Racist Judge Alverson presided over the all white jury - State, eliminated 8 perspective jurors who were Negroes. The State's witnesses, white policemen and white army officers failed to positively identify Wilson as even being present at the scene of the demonstration. Nonetheless the all white jury brought in a verdict of guilty on all counts. The 19 year old Wilson was sentenced to three years on the chain gang.

Wilson, a native of West Point, Mississippi is well known for his strenous and serious dedication to the Civil Rights Struggle in the South. Wilson has been arrested 35 times by the state of Mississippi for work in Voter Registration campaigns and

and political organization.

Phase III

Simuel Schutz, Larry Fox, and Donald Stone are due to be tried February 21, 1967 at Fulton County Superior Court before Judge Dan Dukes on assault and Battery charges stemming from the August 18th Demonstration. (Since its a common practice for additional charges to be brought against Blacks in the racist Kangaroo Courts of Georgia, it wouldn't be suprising if more Assault and Battery Charges were brought against the three. Since the Judge, State's Attorneys and the Police Department work in conspiracy together, its likely that additional charges will be brought against the three. Th ee were between 20 and 30 cops at the demonstration scene. It's possible in Georgia that Stone, Schutz, and Fox will be charged with assaulting all of them. The white racist have the power to give these men twenty years on the "chain gang" or "concentration camp" When you have time, do some research on the the methods that were used on the jews

Phase IV

The seven named above who were indicted on February 16th by the Federal Grand Jury on the charge of "Interfering" and Destroying Federla Property are the latest victims of the conspiracy. Conviction of interference brings a penalty of 5 years in the Federal Penitentiary and a \$10,000 fine. The destruction of property brings 1 year in the Federal penitentiary and \$1,000 fine.

The following is a list of the names and ages of all 12 victims of the racist conspiracy:

John Wilson -19 years; Donald Stone-31 years, Simuel Schutz-20 years, Michael Simmons-21 years, Larry Fox-23 years, Dwight Williams -22 years, Bob Moore-22 years, Donald Howard-22years, Bob Smith-23 years, Regina Pleasant-19years, and Flora Goodloe-19years.

These are young men and women of America. They are of African Descent. They are too young to accept the conditions which oppress them and their not too much older parents. They are too young not to protest and too young not to resist; too young not to make known their feelings. They are young, strong Afro-american. They are the future of the Afro-american Nation. They have been active in the Civil Rights Movement ofor several years facing the racist Mississippi-Alabama-Georgia officials; the police dogs, the fire hoses, the cattle prods, the billy clubs, the night sticks, the rifle butts, the snipers bullets and now openly the racist US government has entered into the conspiracy to destroy the Black Youth

As proof of the conspiracy take the case of Simuel Schutz. After serving nearly two months in the Atlanta Prison Farm's "hole" Schutz was removed therefrom by the Federal Agents and taken to jail in Montegomery. The charges: Draft Evasion. Schutz had been one day late in reporting for induction. Schutz was working as a Field Secretary for the SNCC in Lowdnes County, Ala. He had been involved with the Black Panther Party since its beginning. On May 3rd, the day of the elections Schutz was organizing the County Convention in order to gain a political voice for the Afro-american in Lowdnes County. He was told on that day that it was rumored that he had received an induction notice and was suppose **to report either "today, yesterday, or tomorrow"**. The contradictions of fighting against racism in Lowdnes County while being forced to fight in the racist armed forces were the contradictions facing this young man and all Black young men who are concerned about Blacks in this country. Fighting within the armies (reserve, national guard, army, navy, airforce) which have already been used to enforce racist polices in Lowdnes County, Atlanta, Montegomery, Mississippi, New York, Baltimore, Philadelphia, Cleveland, Watts, and in every City, County, and State where Afroamericans have had to do battle with racists for the right to organize other afro-american. This is the contradiction that Schutz and all concerned Black youth have reaped in this country of vicious white sowers. Schutz reported the next day and was informed by the clerk that he was one day late. Schutz said that he had been called out of turn and was a victim of a racist conspiracy to get rid of him.

Schutz was tried and convicted, October 21, 1966 in the United States District Court for the Middle District of Alabama, Eastern Division, Judge Virgil Pittman, presiding. Racist Judge Pittman would not permit Schutz's attorney to permit any evidence proving that Schutz was a victim of a conspiracy perpetrated against him by racist selective service officials, FBI and local police.

Judge Pittman refused to permit the files of the selective service (which had been gotten by a court order)which proved that Schutz had had been called out of turn to be put in the record or offered as evidence. After the testimoney had been given, Pittman said: "Guilty as Charged; is there anything you would like to say before I pass sentence." He then sentenced Schutz to three years in the Federal Penitentiary. Schutz is presently out on appeal bond.

Southern white racist, northern white racist, Federal agents, selective service boards and officials and white america in general see men like these ten as a Vanguard, or an extension of the collective WILL of Black People to be FREE. These agents, clerks, whites are going to make examples of these young men whose penalty is thinking, moving, and organizing Afro-americans for Freedom, Justice and Equality.

They will through them in jails, beat them, starve them, torture them and use, finally kill them until we do something about it.

Only you can stop the torture of Black men.

Bail money should be sent to the Legal Aid and Defense Fund of the SEVEN 360 Nelson Street SW Atlanta, Georgia.

The Student Nonviolent Coordinating Committee

~~Atlanta, Georgia 30304~~

~~Atlanta, Georgia 30304~~



Robert Allen
185 East 3rd Street
New York, New York

Stories:

Conrad Lyman

Bob Brown

Jack Smith

SNCC in Atlanta

~~April 15~~

Other meetings

Plans for

National Conf.

Stories on

Black draft refusers

Meet Jim

Wednesday 7 pm

at his house

THE BLACK MAN AND VIET-NAM

As we all know, thousands of Black men are being sent to die in Viet-Nam to establish the same form of United States racist imperialism in Asia, as is now practiced on Black Communities in this country. The economic powers behind this expanding American imperialism, as represented by President Johnson and the Democratic party, maintain a system of apartheid practices in this country which includes the use of Black men as forced mercenaries, fighting for the very system which has enslaved them.

Domestically, this country has evolved a police state system in the South, a Democratic machine in the North which manipulates lesser power structures generally through economic pressure of one sort or another, and a special educational system which fosters substandard academic achievement among impoverished Black people. These facts, apparent to everyone, have been in force in varying degrees, since the United States government established itself on the North American continent. It is clear by now that the dreamy notion of Federal Government concern over bettering the Black man's condition does not in fact have any basis in reality. Verbal protest of these conditions has been demonstrated to be completely futile. A revolutionary approach has become the only alternative to peaceful protest.

To counter the expansion of United States racist imperialism, and halt the further loss of more Black lives, I call for immediate action on the following resolutions:

- 1) Initiate Black political action, independent of major United States political structures.
- 2) Form secondary alliances with other oppressed groups in this society, such as workers, women, and appropriate minorities.
- 3) Form alliances with all peoples of the world struggling against United States racism and economic exploitation.
- 4) Ask all Black men to resist racism in this country, and bring about a United States defeat in Viet-Nam by refusing to bear arms against any peoples fighting United States imperialism.
- 5) Provide basic leadership to initiate extensive political organization during and after revolutions such as Watts.

Through these resolutions, I feel the United States will be forced to face two inter-related, yet distinct war fronts thousands of miles apart, i.e. one front in Asia, which will have lost much power, and another front in the United States, which must face the Black man and possible war on the American continent.

yours for the Revolution,

1/14/67

Mellina Jackson

Why YOU are being

Drafted —
You may well be wondering: 'Why am I here?' You are here because you were classified 1-A by the Selective Service. You all know plenty of other young men who will never be drafted because they have all kinds of fancy deferments. You are here because the Selective Service people didn't think you were worthy of a deferment; your life is not as valuable as certain other young men. Therefore, you must fight and die 'for your country' while your fellow countrymen sit back and relax. If you are lucky, you may be rewarded with a military burial.

You are being drafted to fight a racist war against the colored people of Asia. For over twenty years the people of Vietnam have been fighting white oppressors from France and the United States. Your job will be to fight these Vietnamese and if necessary to give your life in order to deny them their freedom and independence. Your job will be to help keep General Ky in power even though he is a dictator who was never elected to office and doesn't even have the support of his own people. Your job will be to kill Communists although our diplomats are being very friendly with the Communists in Europe. Your job will be to fight in an undeclared and illegal war that you never had a chance to vote for or against. Your job will be to fight in a war which even President Johnson says cannot end in victory, but only stalemate.

Wars have been fought since the beginning of time. The United States has fought Britain, Spain, Mexico, Germany, and Japan. Now all of these countries are our good friends and allies. Tomorrow the Vietnamese may be our friends. Why should you die today fighting the people who may be our allies tomorrow?

-- Bob Allen

ATTENTION BLACK MEN!!

If you are sent to Vietnam remember that the Vietnamese are our colored brothers who are fighting for their national independence. Our job is to help them in their struggle because the Black Man in America cannot be really free until the colored peoples of the world are free of white oppression. Remember that while you are in the U.S. Army fighting "for your country" the U.S. Army will NOT be protecting your Black brothers and sisters at home against attacks by racists. Black blood will be flowing in the streets but not because of the Vietcong. Remember that it's not the Vietcong that keeps your family in the slums and humiliates you at every opportunity. The Vietcong never called you a nigger and never will.

Remember all these things, brothers, and learn well what the Army has to teach you.

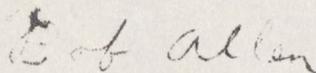
As indicated on the preceding page the purpose of this meeting is to establish lines of communication and cooperation between militant Black groups. It is also hoped that this meeting will help provide preliminary groundwork for a national Afro-American conference on the war and the draft to be convened in the Spring. Approaches and views which we have in common as well as common policies, problems and strategies would represent one important focus of discussion. We also urge each participant to raise those issues and problems which he feels are important and relevant to the theme of the conference. The discussion will be completely free and open. Some background information will be provided by speakers (Robert Browne and Conrad Lynn) familiar with Vietnam and the legal aspects of the draft. There will also be a brief report on other regional meetings and the plans for the national conference.

In order to facilitate the discussion we are asking each group invited to send us a brief statement (one page or less) of its position on Vietnam and the draft. These statements should be sent to Robert Allen, 201 East 165th St., Bronx, N.Y. 10456, as soon as possible, so that they can be copied and distributed to other participants prior to the conference. This procedure should enable all participants to familiarize themselves with each other's positions and thus facilitate the interchange of ideas.

Each invited participant is responsible for notifying us as to whether he will attend and arranging his own transportation and meals. No other expenses are anticipated.

We sincerely hope that you will be able to attend the conference and aid in creating an independent voice for Black people who are opposed to the racist war in Vietnam and the U.S. Government's exploitation of Black youths as cannon fodder.

Yours for Freedom



Robert Allen

Sponsors:

Gilbert Banks
Robert Browne
Jim Haughton
Conrad Lynn
Robert Allen

Parents

Lt. Alan Kjelleren ✓
AMSEL-RD-DO
United States Army Electronics Command
Fort Monmouth, N.J.

John Studstill ✓
~~B.P. 1571~~ B.P. 522
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110 West 86th Street N.Y.C.

Mr. Jim Haughton ✓
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Nashville, Tenn. 37203

Mr. Tim Correll ✓
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Miss Ann Cannon ✓
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Margaret Hampton ✓
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Mrs. Mae Mallory ✓
212 West 129th Street #12E
N.Y.C.

Radford Rosebrough ✓
Lanny Anderson
Mermie McKay

Damaris Allen ✓
2028 Mass Ave #2
Cambridge, Mass

Miss Keene Stassen ✓
21 West 85th Street N.Y.C.

Larry & Pat Pool ✓
Thompkins Square Bookshop
97 Avenue B, N.Y.C.

Edie Black ✓
45 Tiemann Place #3A
N.Y.C.

The Bosticks ✓
1428 Whittier Dr. N.W.
Washington, D.C.

Horace + Carolyn Sims ✓
4447 Clement Dr. S.W.
Atlanta 30331

Alice Walker ✓
640 E 12 St.
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Mr. Steve Sellers ✓
Box 213
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Lenny Anderson
3596 Walker Ave #17
Nashville - Tenn

Staughton Lynd ✓

Mrs. Mattie Beard ✓

Edward Luckie ✓

Rev. Waldo D. Parker ✓

Ed. Fox ✓
New Hope Gazette
New Hope, Pa.

David Kendall ✓

Casey Menn ✓

Ike Miller

Bob Steele ✓
ETS, Cambridge

Rebecca Allen ✓

Mrs. Marvyn Smith
2033 N.E. 61st Ave ✓
Portland, Ore

201 East 165th Street, Apt. C
Bronx, New York 10456
March, 1966

Dear

Please excuse the somewhat impersonal nature of this letter. We are sending it to several friends and for this reason have had it duplicated. We are writing to you because we feel an urgent need to express to you our views and feelings about the conflict in Vietnam. We think that the current situation there and the attitude of the U.S. government make it imperative for American citizens to act to bring about an end to this tragic war.

Our position on the Vietnam war can be roughly summed up in a few paragraphs. We believe that this war is morally unjust, politically disastrous, and that the U.S. government has consistently lied to the American people about its aims in Vietnam and the nature of the conflict. It is really incorrect to separate these three elements since they are closely interwoven; but for purposes of discussion they will be separately considered. The U.S. position is morally unjust and hypocritical because the U.S. has supported a series of undemocratic and dictatorial governments in South Vietnam while piously claiming to uphold "freedom" and "democracy!" None of these governments were elected by the South Vietnamese people and none of them enjoyed broad popular support. On the contrary, these governments tended to be composed of men who fought against the Vietnamese and on the side of the French during the Indo-chinese war. They are in a word puppets whose only real support is to be found in the U.S. government, not among their own people.

We further feel that innocent South Vietnamese civilians are the greatest victims of this war. Everyday the newspapers report that B-52 bombers are destroying "suspected" Viet Cong positions; which means that they are bombing villages and farms where it is not even certain that any Viet Cong are to be found. But there are people in these villages and farms, and these people are being killed by the thousands. Everyday the newspapers report that giant "sweeps" are made by U.S. Marines and government troops, but "disappointingly" few Viet Cong are killed or captured. But villages are razed, farms destroyed, and the lives of innocent peasants wrecked by these "sweeps!"

The political "realists" tell us that this war is really directed at China. Its aims are to "contain" China and prevent the spread of Asian communism. The "reality" of this position can be better appreciated if one stops to reflect for a moment on how the U.S. would react if China sought to "contain" the U.S. and limit its influence in South America. Southeast Asia is a valid area of primary interest for the Chinese just as South America is of great interest to the U.S. The U.S. obviously would not tolerate Chinese intervention in South America, and we may well fear that, conversely, the Chinese may not much longer tolerate U.S. escalation of the war in Vietnam. But let's put aside these considerations for now and accept the "realistic" position at face value for examination. In brief, this position holds that the war really has very little to do with the Vietnamese people per se, but it is actually aimed at proving to the communists that we will not stand by idly and watch communism spread throughout Southeast Asia. Is this aim being accomplished by the war? To answer this question we must first discover for whose benefit is this little "demonstration" being carried out. It is apparently being done for the benefit of communist leaders and agitators, the theory being that these are the people who infiltrate the countryside and stir up the peasants to revolt (or "terrorize" them into doing so). It seemingly has not occurred

to these "realists" that objective social and economic conditions existing inside a country may be a cause of revolution with or without the presence of "outside agitators!" For example, there is reason to believe that the so-called "land reform" program of Diem precipitated the renewal of guerilla warfare in South Vietnam, and this was unrelated to the presence or absence of communists. (See the excellent booklet by Robert Scheer, "How the United States got involved in Vietnam!" A free copy can be obtained from the Center for the Study of Democratic Institutions, Box 4068, Santa Barbara, California.)

We may further ask: Is present U.S. policy winning friends for this country and demonstrating that communism is an evil force? We think that the answer here must be no. The air raids against North Vietnam, without even the benefit of a declaration of war, are not likely to win friends. U.S. support of Diem's decision not to hold elections in 1956 has not won any converts for American-style "democracy!" Massive U.S. intervention in South Vietnam is not winning friends among the people of Asia who might well fear that the U.S. may someday arbitrarily decide that they are being threatened with "communist" subversion and intervene with bombs and soldiers in their own countries. Asians are not stupid and what they see in Vietnam is a story which has been repeated many times since the beginning of the colonial era: The only foreign troops to be found in Vietnam in massive numbers come from a rich and fat country thousands of miles away. Asians also realize that these troops are fighting for the "national interests" of the United States regardless of whatever may be the real interests of the local people.

On the other hand, as has been documented many times, the South Vietnamese have consistently fared better in areas controlled by the Viet Cong than in areas controlled by the Saigon government. The Viet Cong are native Vietnamese guerillas. They fully realize (as our own military strategists will admit) that a guerilla war can succeed only if the guerillas have the support of the peasants and local people. The guerillas gain this support by meeting the people's demands for improved economic and social conditions. The guerillas make little use of terrorism in the countryside (except against local tyrants) because they know that terrorism will turn the people against them. It is for these reasons that the Viet Cong presently controls more than half the countryside in South Vietnam.

We conclude this discussion of political factors by noting that U.S. intervention in South Vietnam may indeed have had some effect on communist leaders, but this will not prevent further revolutions from occurring in countries where, for example, poor peasants are exploited by ruthless landlords. The communists take advantage of such situations but they do not create them. By our support of dictatorial and undemocratic regimes around the world WE are helping to create the conditions for revolution.

The U.S. government has consistently lied to the American people about its aims in Vietnam and the true nature of the conflict in that country. This is immediately obvious from reading newspaper reports over the past few years. Let's look at just one of these deceptions. The basic argument given for U.S. presence in Vietnam is to repel "aggression from the North!" A picture is drawn of North Vietnam infiltrating and attempting to subvert the government of South Vietnam. However, no mention is made of the fact that the U.S. entered South Vietnam in 1954-55 after the French pulled out, set up a puppet govern-

ment, and sabotaged the 1956 elections (Eisenhower later pointed out that if these elections had been held the communists probably would have won a landslide victory). No mention is made of the fact that the insurrection in the South was initiated by local people, and that the people who did come from the North in 1960 were southerners who had gone north in 1954 as provided by the Geneva Agreement and had now, in 1960, lost hope that North and South would be peacefully reunited, as called for at Geneva. The U.S. government was unable to document the presence of any North Vietnamese in the south until the beginning of 1965, well after the U.S. buildup in Vietnam had started. The fact of the matter is that the struggle in South Vietnam is a civil war in which the U.S. has illegally intervened. North and South Vietnam are two parts of one country, and there is no outside aggression except on the part of the U.S. The Geneva Agreement clearly states that the division at the 17th Parallel is not to be understood as a political division between two states. It was a temporary measure used to expedite French withdrawal. Reunification through elections was to have taken place in 1956. So the presence of North Vietnamese forces in the south (which did not happen until 1965, and even now their numbers are relatively small) cannot be construed as outside aggression. This "aggression from the North" is analogous to the "aggression from the North" which occurred in the last century in this country. It was a civil war then and it is a civil war now. Of course it is obvious why the government will not admit that a civil war is taking place in Vietnam: the American people would then demand to know why the government is unilaterally intervening in a civil war. So this question is kept carefully hidden by senseless talk about defense against "aggression" and upholding "freedom" and "democracy!"

What about the more recent statements by government officials? On February 17th General Maxwell Taylor, a Presidential advisor, said in the Senate Foreign Relations Committee hearings that the U.S. "could, should and would achieve military and political successes of sufficient magnitude to force the Communists to accept an independent and non-Communist South Vietnam!" On February 18th in these same hearings Dean Rusk spoke glibly about "true self-determination and freedom" for the people of South Vietnam. General Wheeler, Chairman of the Joint Chiefs of Staff, said recently that "in the long term, we can achieve military victory" in South Vietnam. But President Johnson has told us: "We know, as our adversaries should also know, that there is no purely military solution in sight for either side!" Where is the truth? Why should we now believe government officials who have been lying to us about Vietnam since 1954, and even earlier?

Two more points warrant consideration. There is serious doubt as to the constitutionality of this war. The Constitution explicitly reserves to the Congress the right to declare war. Congress has made no such declaration (yet we are daily bombing North Vietnam). President Johnson claims that the legality of his actions is based on the resolution passed by Congress in August, 1964, in response to the Gulf of Tonkin incident. That resolution grants to the President the power to take "all necessary measures" in pursuing the conflict. This "blank check" resolution has been brandished by Johnson as, in effect, a declaration of war, in spite of the fact that many congressmen have declared that this was not their intention in passing the resolution. Thus, it is quite possible that Johnson's actions have violated the Constitution.

To make matters worse, the President is the ONLY elected official actively participating in making decisions about the war. A few appointed officials and top military advisers are the other members of this decision-making clique. Is this the brand of "democracy" which we are trying to export abroad?

The war in Vietnam has also caused casualties here at home. Much needed funds for the War on Poverty have been cut back, and we can look forward to higher taxes as a side effect of the war. The war is also taking a more direct toll on the poor. It is the poor boys, high school drop-outs, and the unemployed who are being drafted in disproportionate numbers. You may also have noticed from photographs and reported figures that the battlefield in Vietnam is about the only place where white Americans and black Americans are truly integrated. Is this how a great nation "solves" its poverty and race problems? -by sending the poor and despised to die fighting for a country which has done little to give them a fair chance?

But not everyone suffers. The makers of war armaments are enjoying a boom year, and profits are soaring. Every time an American soldier dies in the war someone at home makes a buck. We decry war profiteering in Saigon, but what about the same thing at home?

What should be done? All of us who oppose this war must write to our Representatives and Senators and express our opposition. This is the very least that must be done. Silent opposition is meaningless since no one will know of your opposition. We must also talk with friends and write letters to our newspapers explaining the true nature and meaning of this tragic war. We run the risk of losing the freedom and democracy for which we are supposedly fighting if we do not speak out against having the destiny of this country determined and controlled by a clique of military advisers and appointed officials.

Please write to us and let us know your feelings and thoughts on this matter. We strongly believe that communications like this between friends are an important means for preserving democracy and liberty. We are looking forward to hearing from you.

Peace,

Opposition Grows Across the South**Many Challenge War, Draft**

(From Staff Correspondents)

As mass movements fade across the South, individual acts of protest are becoming more significant — to the individuals concerned and to the people who witness them. These protests are centering more and more around the war and the draft.

In some ways, opposition is stronger here than elsewhere in America. This is because many young Southerners, black and white, feel that the enemy and the struggle are here—at home. They want to fight to erase white racism and the social system it has produced rather than in the jungles of Southeast Asia.

No one knows how many people are fighting to avoid being drafted or to get out of the armed services. Those who succeed seldom make headlines. It is certainly a very large number. The cases described below are a sampling of those that have come to the attention of the Patriot staff during the last few months. They show some of the reasons why people are protesting the war and draft, and how they are going about it.

The DuVernay Case

Raymond DuVernay, a 21-year-old New Orleans youth, has just been sentenced to five years in prison for refusing to be inducted. He has been active in the

civil-rights movement — as a vice-president of the New Orleans NAACP Youth Council, on the local OEO poverty program, and on the Greater New Orleans Coordinating Council, a voter registration group.

His ground for refusal is that his draft board was, contrary to law, completely segregated.

He is not a pacifist and told the Patriot, "This country should not be in Vietnam. I simply refuse to be a black mercenary for white imperialism."

He is currently free under \$5,000 bond and his attorney, Ben Smith of SCEF and ACLU, is appealing his sentence.

Simuel Schutz of the SNCC staff has a case in court charging discrimination by his draft board in Tuskegee, Ala. John Sumrall is challenging the legality of Mississippi's draft boards on the same ground (see January Patriot).

The Levy Case

Opposition to the Vietnam war, the feeling that Negroes in particular should not take part, and retaliation for civil-rights work are all involved in the case of Capt. Howard Levy, a 29-year-old army physician.

Dr. Levy is not a Southerner, but friends believe his problems with the army stem from his involvement in civil-rights activity in Columbia, S.C., where he is stationed.

They believe that white political leaders, unhappy over a sharp increase in black voters after a registration drive there, complained to army authorities about his part in it.

Levy is charged with promoting disloyalty among the troops by statements to the effect that the United States is "wrong" in Vietnam, and that special forces personnel are "killers of peasants and murderers of women and children".

If convicted, Levy faces up to eight years at hard labor, dishonorable discharge, loss of all pay and allowances—and loss of his license to practice medicine.

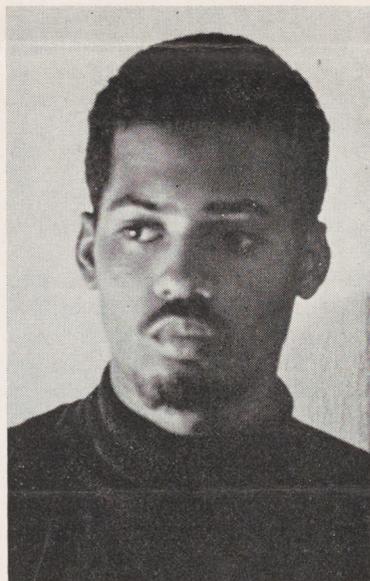
An army friend who disagrees with his stand on the war nevertheless points out: "The American answer to Nazi atrocities when Nazi leaders said they were 'merely following orders' was, 'If the orders were morally wrong, you should not have followed them.' Without passing judgment or agreeing with what Levy did, I ask: 'If Levy is to be crucified because of following his conscience, how can we pass judgment on the Nazis?'"

The Flowers Case

Many Southerners who take a stand against the draft, or war, suffer from the same feelings of isolation as early civil-rights activists did. Often they are not aware that other people are taking the same stands — thinking the same thoughts—and they feel very much alone.

This is one result of the long years of silence in the South. Lack of discussion on the race question has produced a society closed to discussion of most issues.

Tom Gardiner is doing a study of draft resistance in the South for the U.S. National Students Association. He told the Patriot about his first meeting with

**Raymond DuVernay**

Marion Charles Flowers, a North Carolina resident recently sentenced to two years for refusing to be inducted:

"He told me he wasn't a C.O.; he was 'just tired of the whole mess.' He said he had read some of Albert Camus. I got the feeling that I was the first person he had talked to who could have echoed, reinforced or expanded some of his thinking, or that I was witnessing the birth of the first pacifist."

Pvt. Clemens G. Brysky, 19, didn't discover he was a pacifist until after he was inducted. His lawyer says, "Brysky discovered he was not a killer during bayonet drill, put down his rifle, refused to pick it up, and is being court-martialled for refusing to obey an order." He is stationed at Fort Polk.

Some men have refused to be drafted on very clearly thought-out pacifist grounds. Murphy Dowouis of New Orleans will leave a Texas federal prison in July or August after completing a two-year term. In a recent letter, he said "I wish they would stop talking about all those men who have been 'destroyed' by going to prison rather than to war. . . ."

"If a man is to be destroyed, let him choose his own means of destruction."

This is the kind of conclusion young men are coming to across the South. Most are coming to it alone, for there is far less anti-war organization here than in the North and West. One group that is trying to develop a program of opposition to the war and to the draft is SNCC.

Mike Simmons and Larry Fox, who were among the 12 people arrested in Atlanta last summer for protesting outside the induction center (see November Patriot), are travelling across the country to build black resistance to the draft.

They are attempting to form a unified program of resistance, working through local conferences which they hope will grow into a national conference. One such meeting has been held in New York, another is scheduled for Atlanta late this month, to be followed by meetings in Washington, the Midwest and the West.

Simmons points out that this resistance is not based on the same premises and arguments as the traditional peace movement. He said: "We're trying to focus upon the idea that a black man is committed to fight here—of America as the battleground."

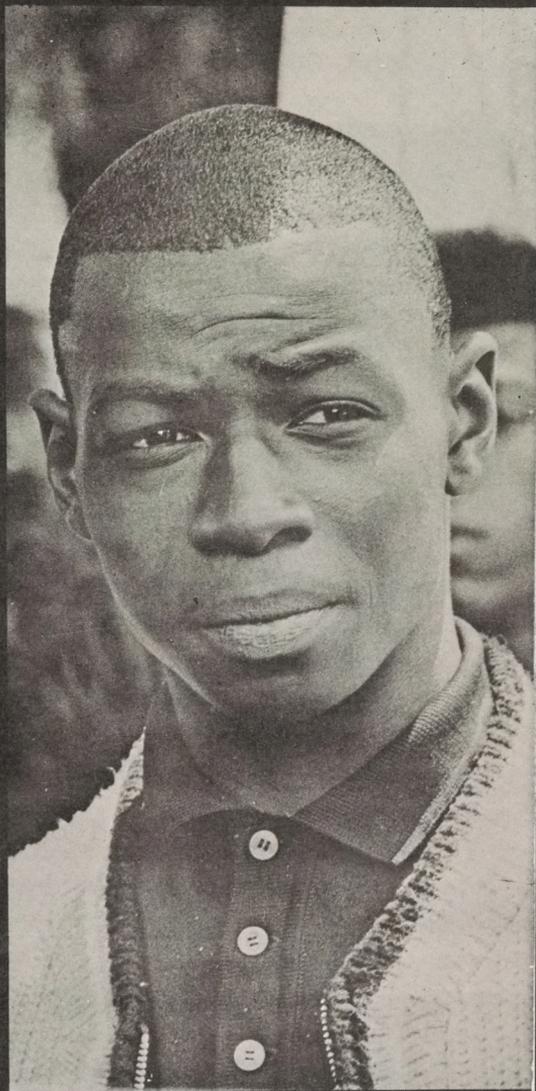
HAVE YOU

EVER

BEEEN

ONE

DAY LATE ?



ONE BLACK BOY from Tuskegee, Alabama
came ONE DAY LATE
to ONE WHITE DRAFT BOARD'S INDUCTION
and ONE WHITE CLERK
ordered him classified DELINQUENT!

TODAY - RIGHT NOW - this very minute,
this same BLACK BOY is serving 1,095
DAYS IN JAIL because he was ONE DAY
LATE ! Yes, that's right - ONE BLACK
BOY came ONE DAY LATE and ONE WHITE
JUDGE sentenced the boy to 1,095
DAYS (26,280 HOURS) in a FEDERAL
PENITENTIARY. He was sentenced to
26,280 HOURS away from his friends,
family and loved ones.

MAYBE YOU also have been late for an
appointment.

MAYBE YOU also have been late for an
induction.

BUT, YOU SHOULD NOT expect a 1,095 Days
prison sentence for being ONE DAY LATE.

UNLESS you, like Simuel B. Schutz
have tried to move BLACK STUDENTS to help
BLACK PEOPLE in your own home town.

UNLESS you, like Schutz, have risk-
ed death in Mississippi in 1964 as you
worked for your BLACK PEOPLE'S right to
FREE ELECTIONS.



(Bombed church, Indianola, Mississippi)

UNLESS you, like Schutz, have worked
in 1965, 1966 in Lowndes and Macon County
Alabama to help BLACK PEOPLE there get
FREE ELECTIONS.

UNLESS you, like Schutz, have been
strangled, threatened and jailed for 60
days because you were opposed to the
needless murder and abuse of BLACK G.I.'S
in PRESIDENT JOHNSON'S war on the Viet-
namese People.

PEOPLE have always been getting STRANGLED,
THREATENED, and JAILED. You know that
BLACK MEN have always been CATCHING HELL
from white judges, white juries and white
draft boards.

TODAY, Schutz has to serve 1,095 days in
prison unless he can RAISE \$2,000 DOLLARS
to appeal this WHITE JUDGE'S RACIST deci-
sion.



chutz at time of his brutal Atlanta Arrest)
August 18, 1966

TODAY, you and your friends can help this
ONE BLACK BOY who was ONE DAY LATE.

TODAY, you and your friends can contri-
bute your time, money and support to:

SIMUEL BRENT SCHUTZ, JR.
DEFENSE COMMITTEE
360 Nelson Street Atlanta, Georgia 30313
Ph: (404) 688-0331

in jail 2 mos

United States District Court
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

against

EDWARD ANDRE OQUENDO

Defendant.

DEFENDANT'S TRIAL MEMORANDUM

CONRAD J. LYNN,
Attorney for Defendant,
401 Broadway,
New York City.

CA 6—5226

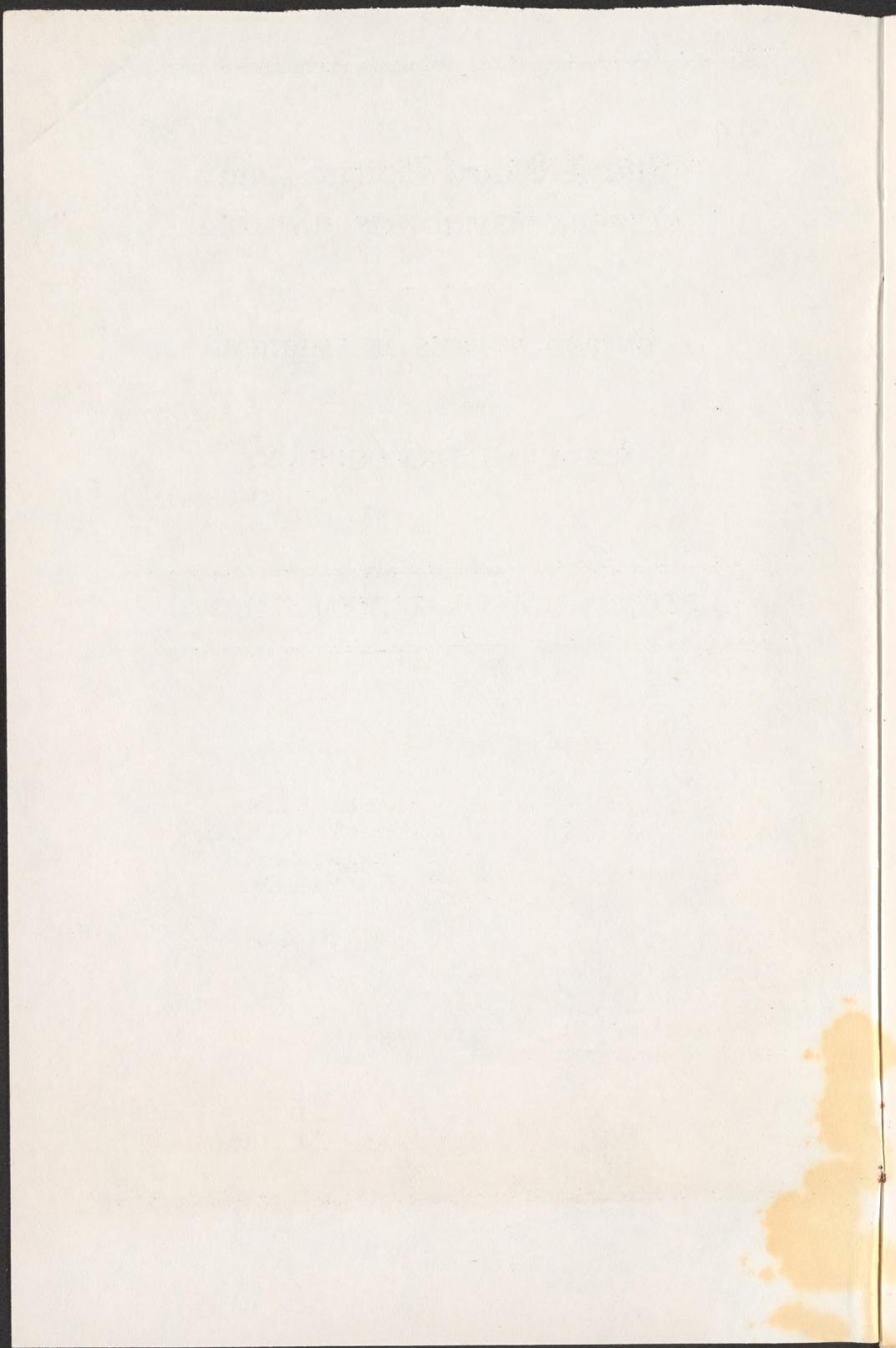


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United States District Court
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

against

EDWARD ANDRE OQUENDO

Defendant.

DEFENDANT'S TRIAL MEMORANDUM

Statement

Edward A. Oquendo duly registered under Selective Service regulations in 1965. When he received notice that he had been classified as eligible for the Armed Forces - 1-A - he wrote a letter to his draft board accusing the United States of waging an unprincipled war of aggression against a small colored nation many thousands of miles from American shores. As a youth of Afro-American and Puerto Rican extraction, he made it plain that he could not conscientiously participate in the war crimes his country was committing.

He was ordered to report for induction. He requested a hearing before the board with representation by an attorney. By letter of March 7, 1966 the draft board notified his attorneys that no counsel would be permitted at any hearing. In August 1966 the Grand Jury indicted defendant for failure to report for induction as directed on May 20, 1966. The defendant has remained free on his own recognizance, pending trial.

Issues Involved

1. Was the draft board's order to report valid?

2. May the defendant refuse to serve in this war?
3. Is the Selective Service Act, as applied, constitutional?
4. Was the defendant entitled to a hearing, represented by counsel?

POINT I

The Local Draft Board, No. 48, asserting jurisdiction over this defendant is composed of citizens of the Borough of Brooklyn in New York City. SSS Regulation, Sec. 1603.1 But its membership is practically all-white. No Puerto Ricans serve on the Board. About one-quarter of Brooklyn's two million population consists of Negroes and Puerto Ricans. When so large a segment of the body politic is barred from the institution sending its sons to war, a prima facie case of racial discrimination is presented. 50 U.S.C.A., Appx. Sec. 455. Cf. U.S. ex rel. Lynn v. Downer, 140 F. 2d 397, cert. denied 64 S. Ct. 1263. In the cited action the majority of the Court of Appeals for this Circuit ruled, in effect, that the history of segregation in the Armed Forces excused discrimination on account of race in the Selective Service System. The executive order of President Truman in 1948 ostensibly abolishing segregation in the Armed Forces, however, made the dissenting opinion of Clark, Ch. J. the dominant judicial view. A structural defect in the composition of the Board is incompatible with constitutional requirements of due process under the Fifth Amendment of the United States Constitution.

On November 14, 1966 the question of an all-white draft selection board was raised in a suit filed in the Federal District Court in Jackson, Mississippi, by the Lawyer's Committee for Civil Rights under Law on behalf of a twenty year-old Negro, Otis Sumrall, facing induction into the Armed Forces. "The New York Times," 11/15/66.

Here, as there, a black youth has a right under the Fifth Amendment and Sec. 544 of 50 U.S.C.A., Appx. not to be classified or inducted by a local board from which Negroes or Puerto Ricans have been excluded. When it is recalled that black Americans are serving in Vietnam in a far higher proportion than their numbers in the general population warrants, when the assistant secretary of labor openly advocates concentrating of sending black youth to army service ("The Negro Family-The Case for National Action", Daniel Moynihan, Office of

Policy Planning and Research - U.S. Dept. of Labor, March, 1965), when the Defense Department admitted as long ago as March, 1966 that the rate of Afro-American casualties is roughly twice the proportion of this race in the whole population, the objection of the defendant to being ordered to report for induction is seen to be no mere quibble but a fundamental assertion of his right to be selected for service without discrimination. "The New York Times", 3/10/66, p.4. Because of the lack of a fair cross-section of people on the draft board, its order to this defendant to report for service was invalid.

POINT II

The draft is being unconstitutionally applied.

Under well-settled principles of constitutional law the test of the validity of a statute is determined by an examination of its terms juxtaposed to provisions of the basic document. But that test is only the first impression. The application of the statute in practice must also meet constitutional safeguards. U.S. v. Gearey, 368 F.2d 144 (1966); Herndon v. Lowry, 301 U.S. 242; Barr v. City of Columbia, 84 S. Ct. 1734 (1964). The Universal Military Training and Service Act, which this defendant is charged with violating, is based upon the war powers of Congress. Article I, Section 8, of the United States Constitution specifies that

"The Congress shall have power to lay and collect taxes... to pay the debts and provide for the common defense and general welfare of the United States... to declare war... to raise and support armies... to provide and maintain a navy... to make rules for the government and regulation of the land and naval forces; to provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions; to provide for organizing, arming and disciplining the militia..."

Here, it must be noted that the war power is limited to providing for the common defense. Nowhere in the fundamental law is there authorization for waging aggressive war. The men who wrote the Constitution well knew the abuses attendant upon sole executive control of armies. The prerogative of the monarch in levying upon men and property and waging war at his whim were all too recent in their memories. A representative assembly of the people

was considered a safe depository of the war-making power. Hence, the sole power in Congress to declare war. In times past the Supreme Court has recognized these plain limitations in the Constitution. Chief Justice Taney, writing the majority opinion in a case arising out of the Mexican War stated:

“... the genius and character of our institutions are peaceful and the power to declare war was not conferred upon Congress for the purpose of aggression or aggrandizement, but to enable the general government to vindicate by arms, if it should become necessary, its own rights and the rights of its citizens.” Fleming et al. v. Page, 9 How. 603.

Is this government now waging a war of self-defense in South-east Asia? Unless words have lost their meaning this country is pursuing an aggressive military intervention in Vietnam. Mr. Justice William O. Douglas of the United States Supreme Court declared in a speech before Middle Tennessee State University on March 8, 1966 that the “United States is violating the United Nations Charter by waging aggressive war in Vietnam.” “The Nashville Tennessean”, March 9, 1966. He continued: “... too often, the United States accepts the rule of law only when doing so is to our advantage.” “The Nashville Banner” March 9, 1966.

Nor is it any answer to assert that Congress can draft soldiers in peace time also. The purpose of any draft must be the common defense. When the purpose has clearly become the use of the draft to raise armies for aggression, it is being unconstitutionally applied. The Selective Service System has become the chief instrument enabling the government to maintain the largest armed forces of any nation in the world. It is true that a minority of the men in service are draftees. But the threat of conscription makes many men volunteer in order to select a particular service and to end their eligibility for drafting.

“The blackmail aspects of the draft were bluntly admitted during the 1959 House Armed Services Committee hearings by Assistant Secretary of Defense Charles G. Finucane who stressed the value of the draft as a threat in encouraging enlistments...”

“We are criminal when we dominate or threaten to dominate small nations, both in terms of the people’s right to self-determination (e.g. Cuba, South Vietnam) and in terms of the possibility of guerrilla aggression escalating into nuclear war...” ‘Extension of the Draft and Related

Authorities,' H.R. 2438 (S.846), March 12, 1963,
pp. 72, 73.

By refusing to obey the order of his draft board to report for induction the defendant is acting in the highest traditions of a citizen in a democratic society. He feels obligated to point out by his action the trampling of law and constitution by his government. He is summoning his fellow citizens to join with him in his effort to stop this fatal course.

POINT III

The government is violating international law and committing war crimes.

Not only does the government flout the constitution by its invalid application of the draft law, it also violates the fundamental law in its disregard for treaty obligations. In the American governmental scheme a treaty is accorded the same status as a provision of the constitution itself. After the carnage of World War I the Supreme Court foresaw the necessity of curbing national sovereignty in order that man might survive upon the earth. Justice Oliver Wendell Holmes, in writing the opinion of the Court in *Holland v. Missouri*, 252 U.S. 416, placed treaties on a par with the United States Constitution:

"Acts of Congress are the Supreme Law of the Land only when made in pursuance of the constitution while treaties are declared to be so when made under the authority of the United States..."

At the same time treaties are a part of the body of international law:

"... it is clear that all tribunals in the United States will 'apply and enforce the principles of international law as a part of the law of the land.'" I Hyde, *International Law Chiefly As Interpreted and Applied By the United States* 17 (1947).

Other Western countries have long recognized the necessity of subordinating municipal law to international law. In France,

Italy, the Federal Republic of Germany and the Netherlands the view prevails that treaties override all municipal or internal law. The French Constitution of 1946 incorporates this position. 49 American Journal of International Law, 347.

On August 27, 1928 the United States ratified "The General Pact for the Renunciation of War." Known as the Kellogg-Briand Pact it was later accepted by nearly all the nations of the world. L.I.Snyder, "Fifty Major Documents of the Twentieth Century," pp. 65-67. Article I reads:

"The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another."

Article II reads:

"The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means."

In many succeeding treaties the United States renounced the use of war as an instrument of foreign policy. Finally, the United States took the lead in organizing the United Nations. The Charter of the United Nations constitutes the most ambitious effort in history to effect international peace and order by treaty. Article 2 thereof states:

"The Organization and its Members, in pursuit of the Purposes stated in Article I, shall act in accordance with the following Principles...

3. All Members shall settle their international disputes by peaceful means...
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state..." Snyder, *supra*, pp. 152-154.

In view of the Hague Regulations of 1907 and the Geneva Protocol of 1925 banning asphyxiating or poisonous gases on civilians, prohibiting the bombardment of undefended towns and villages and the destruction of foodstuffs or the humiliation, murder, and torture of prisoners, it is impossible for the United States to answer the noble New Year's message of Ho Chi Minh, Chief of State of North Vietnam directed to the American people at year's end in 1966:

"The Vietnamese and American people should have lived in peace and friendship... but the United States government has brazenly sent over 400,000 American troops along with thousands of aircraft and hundreds of warships to wage aggression against Vietnam.

Night and day it has used napalm bombs, toxic gases, fragmentation bombs and other modern weapons to massacre our people, not sparing even old persons, women and children. It has burnt down or destroyed villages and towns, perpetrating extremely savage crimes..."

POINT IV

The individual is obligated to repudiate the war crimes of his government.

The convention setting up the International Military Tribunal for the Nuremberg trials ushered in a new era in the age-old effort of man to curb governmental savagery. Because of the horrors enacted by German fascism, attended by the lack of conscience of the German people, the international community was moved to create legal precedent for the principle of individual guilt and responsibility above the laws of a criminal state. Charter of the International Military Tribunal, Art. 1, R. K. Woetzel, "The Nuremberg Trials in International Law," Appx., p.273. Twenty-three nations drew up the indictment of war crimes, crimes against peace and crimes against humanity. A major precedent was thus laid for the judgment and prosecution, not only of the heads of governments for war atrocities but also of individuals who knowingly participate in the war crimes of their rulers.

Article 6 of the Charter of the IMT states:

"... The following acts, or any of them are crimes

coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

a) Crimes against peace: namely, planning, preparation, initiation or waging of a war of aggression...

b) War crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor... of civilian populations... killing of hostages, plunder of public property, wanton destruction of cities, towns or villages or devastation not justified by military necessity.

c) Crimes against humanity: namely, murder, extermination... and other inhumane acts committed against any civilian population, before or during the war..."

Scholars in the field of international law have long held that international law would merely remain a body of moral precepts if its rules did not directly apply to individuals as contrasted to governments. Woetzel, *supra*, p. 98. By its adherence to the Permanent Court of International Justice the United States has implicitly recognized that the atrocious war crimes being committed by its leaders may require that they be brought to justice before an international tribunal. The impending War Crimes Hearings scheduled by the Bertrand Russell Foundation only adumbrates the future. In the case of Jurisdiction of the Courts of Danzig the Permanent Court has already ruled "that there is nothing to stop the application of international law to the individual where the intention to make a right or duty apply to an individual was manifest in the treaty." Woetzel, *supra*, p. 99.

The whole thrust of the book of the Chairman of the Senate Foreign Relations committee is that the United States makes a possibly fatal mistake in believing that it can escape this judgement. J. William Fulbright, "The Arrogance of Power" (1967)

Nor can there be any doubt that daily atrocities are being committed by U.S. government forces. The horrors are delivered to the living rooms of many millions of Americans every day through their television sets in an obvious attempt by the government to inure the people to officially-sanctioned savagery.

Edward A. Oquendo will have no part of this noisome business. By his example he seeks to stir the somnolent

conscience of the American people.

His conscience has not slept because he has observed in his own experience the inhumanity of American authorities in his own country to the oppressed black minority. As a worker for the Mississippi Freedom Democratic Party, he witnessed the brutality of Southern white officials determined to prevent the exercise of democratic rights by the black masses in the Delta. He is aware that the murderer of an NAACP officer, Medgar Evers, is now a candidate for Lieutenant Governor in the State of Mississippi. And it is not at all unlikely that this scoundrel, Byron de la Beckwith, will be elected on the platform 'He Kept the Nigger in His Place.'

In his own community of Brooklyn Oquendo's activity with the Congress of Racial Equality has demonstrated to him that the real ideology which animates the majority war-fever is hatred for people of color. He knows that the brown and yellow people of Asia are his brothers and he will not participate in their slaughter.

In his memoirs, "Mandate for Change", Eisenhower admitted that had an election been permitted in July, 1956 as specified by the Geneva Agreement "possibly 80% of the population would have voted for Ho Chi Minh..." (Page 273). Now, contrary to our own revolutionary traditions the United States government is determined to prevent the Vietnamese people from living under the aegis of the father of their country. The defendant's stand with these sorely-beset brothers makes it apparent that he is rightfully the accuser rather than the accused.

POINT V

The denial of right of counsel at board hearing violated due process.

When defendant, through his counsel, made written request for a hearing with counsel present, the draft board informed him that regulations would not permit a counselor-at-law to be present. Sel. Svce. Reg. 1624.1. Such a restriction is a violation of the Sixth Amendment. It is true that Selective Service System processing is not considered a criminal proceeding but violation of orders issuing therefrom are felonies. To be deprived of counsel at an inter-

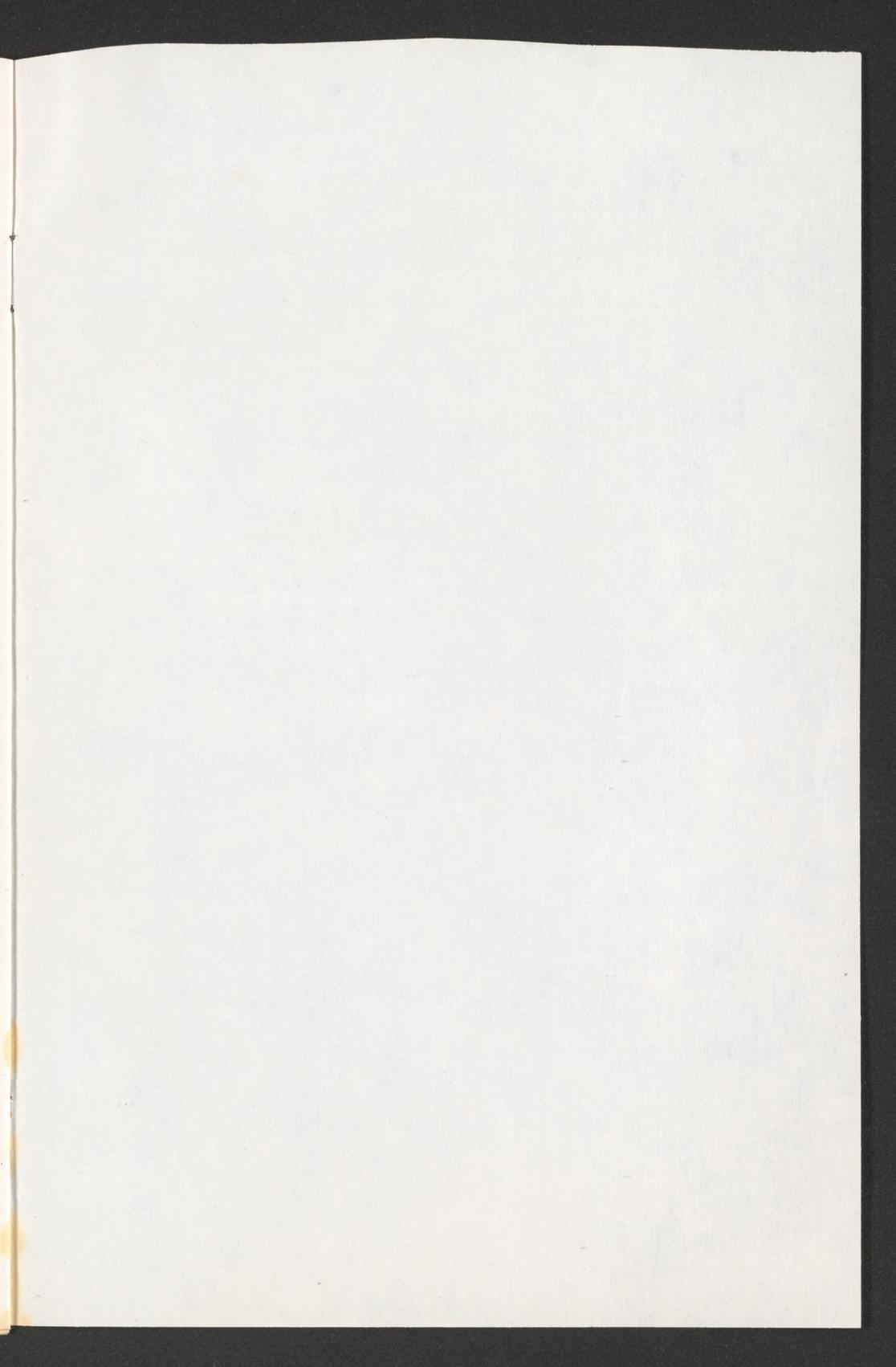
rogatory stage of these proceedings is to be denied the effective assistance of counsel. Cf. *Powell v. Ala.*, 287 U.S. 45; *Gideon v. Wainwright*, 83 S. Ct. 792 (1963); *People v. McLaughlin*, 291 N.Y. 480. On this ground alone the indictment should be dismissed.

But the defendant is urging no merely technical stand. He urges the Court to consider the decisive substantive issues he has raised to the end that the needed public dialogue may result in a reversal of the government's reprehensible course.

Dated: March 1, 1967

Respectfully submitted,

Conrad J. Lynn
Attorney for Defendant



regulatory scope of these proceedings is to be denied the effective assistance of counsel. Cf. *Rowell v. Ala.*, 287 U.S. 43; *Claw v. Wainwright*, 85 S. Ct. 792 (1963); *People v. McLaughlin*, 291 N.Y. 460. On this ground alone the indictment should be dismissed.

But the defendant is arguing no merely technical ground. He urges the Court to consider the decisive administrative issues he has raised to the end that the needed public dialogue may reach its reversal of the government's responsible course.

Dated March 1, 1967

Respectfully submitted,

Charles J. Long
Attorney for Defendant

NATIONAL CONFERENCE ON THE DRAFT

NATIONAL CONFERENCE ON THE DRAFT
c/o American Friends Service Committee
160 North 15th Street
Philadelphia, Pa. 19102
Telephone: 215-563-9372

Sponsored by the American Friends Service Committee
in cooperation with:
Fisk University Student Council
The Executive Faculty of the College of Arts and Sciences
of St. Louis University
The Faculty of the College of Arts and Sciences
of Washington University
Webster College

The Draft: Its Impact on American Society / at Washington University, St. Louis, Mo., April 6, 7 & 8, 1967

Dear Friend:

War conscripts us in many ways, but perhaps most intimately when it reaches into our families and claims our young men for service which may require them to kill or be killed.

The Congress soon will be considering a renewal and an extension of the present selective service legislation; very likely there will be a number of proposals regarding changes in the present law.

Believing that the issue of conscription is one of the most important that our country faces, and that the decisions made now will affect the lives of all of us for years to come, the American Friends Service Committee, in cooperation with the Faculty of the College of Arts and Sciences of Washington University, the Student Council of Fisk University, the Executive Faculty of the College of Arts and Sciences of St. Louis University, and Webster College has initiated a National Conference on The Draft to be held at Washington University, St. Louis, Missouri, starting on Thursday, April 6, 1967 and continuing through Saturday, April 8, 1967.

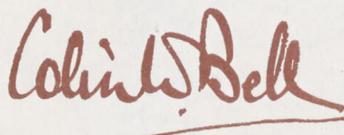
The Conference will present an opportunity for thoughtful examination of the effects of conscription on American institutions, individuals, values and foreign policy. With the involvement of resource people and attenders of diverse views, the Conference hopes to encourage and stimulate new perspectives and broaden dimensions of public dialogue on this issue.

We cordially invite you to attend. A registration card with return envelope is enclosed.

We anticipate an invited national audience of not more than two hundred persons. As time is short and the number to be included limited, those interested in participating are advised to return the registration form promptly and prior to March 25th.

Invitations are being sent to representatives of religious, educational, youth, peace, civil rights, political, business, professional and labor groups in every section of the country. A limited amount of scholarship aid is available.

Sincerely yours,



CB:alm
Enclosure

Colin Bell
Executive Secretary

NATIONAL CONFERENCE ON THE DRAFT

AGENDA

Sponsored by the American Friends Service Committee
in cooperation with:
Fisk University Student Council
The Executive Faculty of the College of Arts and Sciences
of St. Louis University
The Faculty of the College of Arts and Sciences
of Washington University
Webster College

The Draft: Its Impact on American Society / at Washington University, St. Louis, Mo., April 6, 7 & 8, 1967

THURSDAY, APRIL 6

3 - 5:30 p.m. Conference Registration, Wohl Center - Washington University, 6515 Wydown Street
and George Washington Hotel, 600 North Kings Highway
6 p.m. Dinner, Wohl Center
8 - 10:45 p.m. **First Plenary Session**, Steinberg Hall
Welcome, Chancellor Thomas E. Eliot
"The Issues This Conference Must Face" — 3 Overviews

FRIDAY, APRIL 7

7:30 a.m. Breakfast, Wohl Center
8:45 a.m. - 12:15 p.m. **Second Plenary Session**, Steinberg Hall
(8:45 - 10:15) "The Draft and American Traditions of Individual Liberty"
(10:30 - 12:15) "The Draft and Education"
12:30 p.m. Luncheon, Wohl Center
2 - 5:30 p.m. **Third Plenary Session**, Steinberg Hall
(2 - 3:30) "Socio-Economic Effects of the Draft"
(3:30) Punch and Cookies
(4 - 5:30) "The Draft and Human Values"
Discussion Groups
6 p.m. Dinner, Wohl Center
8 - 10:45 p.m. **Fourth Plenary Session**, Steinberg Hall
"The Draft and Foreign Policy"

SATURDAY, APRIL 8

7:30 a.m. Breakfast, Wohl Center
8:45 a.m. - 12:15 p.m. **Fifth Plenary Session**, Steinberg Hall
(8:45 - 10:15) "Effects of the Draft on Young Americans"
(10:30 - 12:15) "Responses to the Draft"
12:30 p.m. Luncheon, Wohl Center
2 - 3:30 p.m. Regional Workshops
3:30 p.m. Punch and Cookies
4 p.m. **Sixth Plenary Session**, Steinberg Hall
Five minute summing up
Final Address — "Building the Human Community"
4:30 p.m. Adjournment

PARTIAL LIST: SPEAKERS AND RESOURCE PEOPLE

Congressman Thomas B. Curtis, Republican, Missouri
Dr. John Swomley, Professor of Social Ethics, St. Paul School of Theology
Arlo Tatum, Executive Director, Central Committee of Conscientious Objectors
Dr. Edgar Friedenber, Professor of Sociology, University of California
Colonel Daniel Omer, Deputy Director of Selective Service
Colin Bell, Executive Secretary, American Friends Service Committee
Walter Millis, Staff member, Center for Study of Democratic Institutions
Sister Thomasine Cusack, Professor of Economics, Rosary College
Carl Oglesby, Antioch College (Invited)
Bruce Chapman, Author, *Wrong Man in Uniform*
William R. Keast, President, Wayne State University
Levi Kingston, Watts Freedom Draft Movement
Herbert Marcuse, Professor of Philosophy, University of California
Julian Bond, Member of Georgia Legislature

I WILL ATTEND THE **NATIONAL CONFERENCE ON THE DRAFT** TO BE HELD
AT WASHINGTON UNIVERSITY, ST. LOUIS, MISSOURI, APRIL 6-8, 1967

Name (please print) _____

Address _____

City _____ State _____ Zip # _____

Organization or School and Title _____

Age Group 18/26 _____ 27/35 _____ Over _____

I enclose conference fees (Includes room and board): _____

Student \$22.50 _____ Non-Student \$50 _____ Deposit _____

I request scholarship aid (indicate amount) _____

I will share sleeping quarters _____

**NATIONAL
CONFERENCE
ON THE
DRAFT**

THE AMERICAN FRIENDS SERVICE COMMITTEE INVITES YOU TO A NATIONAL CONFERENCE ON **THE DRAFT: ITS IMPACT ON AMERICAN SOCIETY** IN COOPERATION WITH THE FACULTY OF THE COLLEGE OF ARTS AND SCIENCES OF WASHINGTON UNIVERSITY, FISK UNIVERSITY STUDENT COUNCIL, WEBSTER COLLEGE AND THE EXECUTIVE FACULTY OF THE COLLEGE OF ARTS AND SCIENCES OF ST. LOUIS UNIVERSITY, AT WASHINGTON UNIVERSITY, ST. LOUIS, MISSOURI, ON APRIL 6, 7 AND 8, 1967. REGISTRATION AND TOTAL CONFERENCE COSTS ARE \$22.50 FOR STUDENTS, \$50 FOR NON-STUDENTS.

**NATIONAL
CONFERENCE
ON THE
DRAFT**

PLACE
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STAMP
HERE

NATIONAL CONFERENCE ON THE DRAFT

American Friends Service Committee

160 North 15th Street

Philadelphia, Pennsylvania 19102

NATIONAL CONFERENCE ON THE DRAFT
"THE DRAFT: ITS IMPACT ON AMERICAN SOCIETY"

American Friends Service Committee
160 North 15th Street
Philadelphia, Pennsylvania 19102



Prof. Robert. S. Brown
Economics Department
Fairleigh Dickenson University
Teaneck, N. J.

See p. 16

September

25¢

downdraft

GUNTHER ANDERS: Nuremberg and Vietnam--A Mosaic

MARK LANE: Appeal Briefs for U.S. vs. Mitchell

STANLEY FAULKNER: Civil Court Preempted by Military Arrests

Joint Declaration on the Mitchell Case

The United States Government is using gas, chemicals, poisons and other atrocious weapons in an aggressive war against the people in Vietnam. This is being done in violation of International Agreements including the Geneva Agreements of 1954, the Geneva Convention, the United Nations Charter, the Kellogg-Briand Treaty and the Nuremberg Agreements of London.

The stand of David Mitchell in refusing to become a war criminal through compliance in this war of atrocity is entirely justified and desires the widest possible support. Both in legal and moral terms we declare our full endorsement of his action and we hold that it is not David Mitchell but the United States Government and its crimes against humanity which are on trial.

We urge the American people to support David Mitchell. We appeal to American youth to follow his example.

Gunther Anders

Vladimir Dedijer

Max Born

Danilo Dolci

Josue de Castro

Bertrand Russell

End The Draft's

d o w n d r a f t

etd, c/o Mitchell
150 Crown Street
Brooklyn, NY 11225

September 1966. . . . Vol. III, No. 4

Contents

JOINT DECLARATION ON THE MITCHELL CASE.....cover: In the past many of you responded to our call for signatures for a New York Times ad in support of David Mitchell's case and the Nuremberg principles. Unfortunately, due to the debts incurred (and still outstanding) in continuing the court battle, we were never able to raise the thousands necessary for such an ad. The Declaration on the cover represents the start of a project initiated by Bertrand Russell, who has also initiated the upcoming War Crimes Tribunal in Paris (see p. 24). We hope many of you will aid this effort by sending your signatures to us and contacting others to do the same. Again we are aiming towards a wide circulation of this Declaration as part of an ad, if we can find enough money above that needed for the debts and continuing expenses of the case itself. Even if you have sent us your name in the past--please send it again now--in order to save our overburdened staff the time and postage of seeking a confirmation on the use of your name for this specific text (use coupon on p. 14).

NUREMBERG AND VIETNAM: A Mosaic--by Günther Anders.....pages 3-9: Dr. Günther Anders is a world famous philosopher and author now living in Austria.

MARK LANE'S APPEAL BRIEFS: U.S. vs. Mitchell.....pages 10-14.

CORRESPONDENCE FROM
AROUND THE WORLD
.....pages 14, 15.

ANTI-DRAFTERS:
Robert Allen;
Robert McCormick
.....pages 16, 17.

**Holt's Stand on Vietnam
Is Opposed in Melbourne**

Special to The New York Times
SYDNEY, Australia, March
28--Demonstrators rocked the
car of Prime Minister Harold
Holt tonight after he bitterly

criticized Opposition attacks on
the Government's plan to send
draftees to Vietnam.

The Prime Minister was able
to enter the car, in Melbourne,
only after the police linked arms
and cordoned it off from an un-
ruly crowd of about 500.
Mr. Holt was in Melbourne

to open the Liberal party cam-
paign for a by-election.
The meeting was the rowdiest
in Australia for many years.
Shouting, heckling and stamp-
ing almost drowned out the
speakers.
Labor party supporters carried
scores of anti-Vietnam
posters.

CIVIL COURT PREEMPTED BY MILITARY ARRESTS--by Stanley Faulkner.....pages 18-21:
Stanley Faulkner is legal counsel for Robert Luftig and the Fort Hood Three.

DO GIs HAVE RIGHTS? The Case of Lt. Howe.....pages 22, 23.

.....

LATE NEWS:

from Aug 10 NCC Worklist: Marine Refuses to Serve in Armed Forces--In a letter to his commanding officer, L/Cpl John M. Morgan stated that "The Nuremberg trials established a precedent, namely, a man must be held responsible for his acts against humanity, even though he commits these acts under official orders. I feel that my continued support of the United States administration would place me in the same position as an Eichmann, a murderer." (Morgan's statement at 8/6 peace rally in 8/20 Nat'l Guardian.)

Aug 18, NYC: Ed Oquendo plead not guilty in his draft refusal case. Contact: Gil Banks, c/o BAND, 448 Nostrand Ave., Bklyn, NY--(212) 857-9200.

Aug 21, Rockland County, NY: The Picnic for Peace, a benefit for the David Mitchell case, was a success, more than 200 people showing up to "Remember Nuremberg." Originally to be held in the Orange County home of the John C. Adlers (publishers of The Dove), the picnic was switched to the homes of Vera Williams, Lanoue Davenport and Robert Folley, because of hostile elements in Orange County.

Sept 10, Rockland County, NY: benefit for Ft. Hood 3. Contact: Leo Koch 914-ST6-5020.

Sept 18, NYC: Geoffrey Conklin (see 6/66 downdraft) is organizing an audience participation discussion of the draft. Contact: ECLC, 421 7th Avenue, NY--(212) OX 5-2863.

We were saddened to learn of the death of Al Uhrie, fellow peace/rights activist, who was killed, presumably in a robbery attempt, on the Lower East Side, where he had lived.

NUREMBERG AND VIETNAM

A Mosaic by Günther Anders

'Most of you will know what it means to see 100 corpses lying around, or 500 corpses or 1000 corpses. To stand this test... and nevertheless to remain decent -- this is what has made us hard. This is a page of glory in our history which has never been written and can never be written.' (Heinrich Himmler in a speech to SS leaders in Posen on October 4, 1943.)

'I would like to see them (American students) develop as much fanaticism about the U.S. political system as young nazis did about their system during the war.' (President Johnson in a speech to American students, NY Times, February 6, 1965.)

I

NUREMBERG LAWS BECOME PART OF
U.S. LAW.....BUT ONLY IN THEORY. FOR:

August 8, 1945: The United States, Great Britain, France, and the Soviet Union conclude an executive agreement by treaty establishing the International Military Tribunal St Nuremberg. Its purpose is to conduct 'the just and prompt trial and punishment of the major war criminals of the European Axis.' Article 6 of the Charter of the IMT at Nuremberg stated: '...the following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

a) Crimes against peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

b) War crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public property, wanton destruc-

'One of the most infamous methods of torture used by the government forces is partial electrocution-- or 'frying,' as one U.S. advisor called it. This correspondent was present on one occasion when the torture was employed. Two wires were attached to the thumbs of a Viet Cong prisoner. At the other end of the strings was a field generator, cranked by a Vietnamese private. The mechanism produced an electrical current that burned and shocked the prisoner.' (Beverly Deepe, in the New York Herald Tribune, April 25, 1965)

'At 12:00 o'clock, a helicopter came in and the shirtless Marine in the tent said it was going to Da Nang ...A young redheaded machine-gunner sat in the doorway, chewing on a chocolate cracker from a C-ration tin. He kicked a small spool of wire out of the doorway and made room. 'We just rode Nuongs, you can tell that by the wire here,' he said. 'Why' he was asked. Nuongs are Chinese mercenaries from Formosa. ...'They always want wire for the prisoners,' the kid said. 'Don't you know that? They get a VC and make him hold his hands against

tion of cities, towns or villages, or devastation not justified by military necessity.

c) Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crimes within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.'

'...the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by individual States.' (Nuremberg 'Opinion and Judgement')

Dec. 11, 1945: On motion of the United States, the Charter and Judgement of the Nuremberg Tribunal and its principles of international law are unanimously reaffirmed by Resolution (2) (95) of the United Nations General Assembly.

'International law is part of our law' (Supreme Court decision 1957)

his cheeks. Then they pull the wire out through the other cheek and stick it through the other hand. They knot both ends around sticks. You never seen them with prisoners like that? Oh, you ought to see how quiet them gooks sit in a helicopter when we got them wrapped up like that.' (Jimmy Breslin in the New York Herald Tribune September 29, 1965)

'Silk stockings full of sand are swung against temples and men are hooked up to the electric generators of military HQ's'. (London Sunday Mirror, April 4, 1965)

'Other techniques, usually designed to force onlooking prisoners to talk, involve cutting off the fingers, ears and fingernails or sexual organs of another prisoner.' (Beverly Deepe, in the New York Herald Tribune, April 25, 1965)

'If you're going to worry about killing women and kids you'd go crazy in a week.' (American pilot to a correspondent of the London Daily Mail, June 28, 1965)

II

AMERICANS REMINDED OF NUREMBERG CHARTER.....BECAUSE THEY VIOLATE IT IN VIETNAM

Towards the end of 1961, David Henry Mitchell, 18 years of age, student at Brown University and a resident of New Canaan, Connecticut,

'In the central Vietnam highlands where the loss of crops could mean hunger for the guerrillas...American planes have been used in spraying

received a Classification Questionnaire from his local draft board. Two months later, Mitchell sent a letter to the board stating that he must disaffiliate himself from the draft. In the course of the next two years, Mitchell received several delinquency notices and replied to each of these by repeating his statement that he must disaffiliate himself from the draft.

On May 18, 1964 Mitchell received an Induction Order stating that he must report for induction on June 10, 1964. Instead of appearing Mitchell wrote a letter to the board: 'I realize that I could employ means to gain exemption from induction, but this does not interest me. My purpose is not to be classified quietly within the draft system, but rather to oppose the draft... I oppose the draft, not as something wrong for just me ..but as something wrong for the peace and survival of the world. Selective Service is the criminal in this case as can be judged by American militarism throughout the world...I refuse to cooperate in any way...'

On September 25, November 10 and December 14, 1964, the draft board sent further 'Orders to Report' to Mitchell. He did not follow these orders.

defoliant chemicals on trees and brush on the road to Cap Saint-Jacques, a seaside town. In about two more weeks, the roadside growth should start shedding leaves, depriving the guerrillas of the concealment needed for their ambush observations. Aerial observers said that the trees already were changing color..One farmer complained to the Americans that the spray was destroying his rubber plantation..' (Homer Bigart in the NY Times, January 24, 1962)

'We supply a phosphorus explosive fired from artillery and from fighter bombers which erupts in a white cloud, burning everything it touches.' (AP dispatch from Saigon, March 21, 1964)

'Supposedly the purpose of the fortified villages is to keep the Viet Cong out. But barbed wire denies entrance and exit. Vietnamese farmers are forced at gunpoint into these virtual concentration camps. Their homes, possessions and crops are burned..In the province of Kien-Tuong, seven villagers were led to the town square. Their stomachs were slashed, their livers extracted and put on display. These victims were women and children. In another village, a dozen mothers were decapitated before the eyes of compatriots. In still another village expectant mothers were invited to the square by Government forces to be honored. Their stomachs were ripped and unborn babies removed...' (Dallas Morning News, Jan. 1, 1963)

'I non-cooperate with my government, not because I am a pacifist or occupy a position somehow uninvolved with the world, but on the contrary, because I am very involved and specifically condemn the U.S. for crimes against peace and humanity. I refuse to cooperate with any Koreas, Cuba invasions or blockades, Vietnams, or with the nuclear arrogance with which we threaten to blow up the world.'
(David Mitchell, June 10, 1964)

On June 14, 1965 Mitchell was arraigned. He pleaded not guilty and demanded a jury trial.

The trial of David Mitchell took place between Sept. 13 and Sept. 15, 1965. Mitchell's defense was that the Charter of the International Military Tribunal and the Nuremberg trials unequivocally established that an individual is bound by responsibility to international law and morality regardless of the orders and laws of his nation.

'I would like to see them (American students) develop as much fanaticism about the U.S. political system as young nazis did about their system during the war.' (President Johnson in a speech to American students, NY Times, Feb. 6, 1965)... 'There is a new breed of Americans that most of us don't know about and it is time we got used to it. The 18 and 19 year olds, fashionably referred to as high-school drop-outs, have steel in their backbones, and maybe too much of what prize fighters call the killer instinct. These kids seem to enjoy killing Vietcongs.' (Warren Rogers in the NY Journal American, Sept. 16, 1965)

'In (a) delta province there is a woman who has both arms burned off off by napalm and her eyelids so badly burned that she cannot close them. When it is time for her to sleep her family puts a blanket over her head. The woman had two of her children killed in the air strike which maimed her last April and she saw five other children die. She was quite dispassionate when she told an American 'more children were killed because the children do not have so much experience and do not know how to lie down behind the paddy dikes.' (Charles Mohr in the NY Times, September 5, 1965)

The judge referred to Mitchell's defense as 'tommyrot', 'degenerate subversion' and found the Nuremberg laws in this trial to be 'irrelevant'. Mitchell was sentenced to five years in prison and was fined \$5000.

III

WHAT IS IRRELEVANT? JUDGE JACKSON'S ARGUMENT?.....OR HUMAN BEINGS?

'But further you must put no man on trial if you are not willing to hear anything relevant that he has to say in his defense and to make it possible for him to obtain evidence from others.' (Speech by Supreme Court Justice Jackson before the American Society of International Law)

'In one known case, two Viet Cong prisoners were interrogated on a plane flying toward Saigon. The first refused to answer questions and was thrown out of the airplane at 3,000 feet.' (Beverly Deepe, in the NY Herald Tribune, April 25, 1965)

WHAT IS DEGENERATE? MITCHELL'S OBSERVATION?.....OR THE MARINES' OPERATION?

'Millions find it easier to accept the draft, easier to accept nuclear war and even easier to accept death than to get into political trouble.' (David Mitchell)

'The marines set crops on fire and burned or dynamited huts in a scorched earth operation.' (Herald Tribune, May 23, 1965)

WHAT IS TOMMYROT? MITCHELL'S STATEMENT?.....OR BABIES?

'I certainly wouldn't have worked in a Nazi concentration camp just because I would not have to tend the ovens or the gas but could be a guard or a clerk.' (David Mitchell)

'Can anyone imagine any greater bitterness than that of the parents of little children choking away their last few moments of life after being poisoned by 'Humane nauseating' gas spread by our military leaders? The weakest, young and old, will be the ones unable to withstand the shock of this supposedly humane weapon. They will writhe in horrible cramps until their babies' strength is unequal to the stress and they turn blue and black and die.' (David Hilding, MD, Professor at Yale University School of Medicine, in the NY Times, March 26, 1965)

IV

The Court of Appeals reversed the conviction and sent the case back for retrial. It also upheld Mitchell's right to choose his own plan of defense: Nuremberg had become relevant.

JUST ONE MITCHELL?

'Mom, I had to kill a woman and a baby.. We were searching the dead Cong when the

wife of the one I was checking ran out of a cave..I shot her and my rifle is automatic so before I knew it I had shot about six rounds. Four of them hit her and the others bounced off the rock wall and hit the baby. Mom, for the first time I felt really sick to my stomach. The baby was about two months old. I swear to God this place is worse than hell. Why must I kill women and kids?' (Marine Cpl. Ronnie Wilson 20, in a letter to his mother.)

V

ANOTHER JUDGE DECLARES NUREMBERG LAWS IRRELEVANT

On March 15, 1966, the second trial began. It ended on March 16. Although the judge did agree to allow references to Nuremberg and to question prospective jurors as to whether they would be prejudiced towards one who argued the Nuremberg law, he refused to allow testimony or proof from witnesses and ruled the Nuremberg law itself out as 'irrelevant'.

IRRELEVANT?

'The Viet Cong fighters are as protected by the Geneva Conventions as the American GI's are. Dramatic protests against violations of the Geneva Convention should have been made when the first Viet Cong prisoners were shot, when they were tortured, when the American Army started to destroy Viet Cong hospitals and to cut off medical supply.' (Hans Henle, former executive of the Red Cross in Geneva, NY Times, International edition only, Oct. 14, 1965)

'As a scientist and a father of five children I deplore the perversion of technology which permits the military to use a relatively defenseless people as a laboratory for developing counter-insurgency weapons. In principle this act is not very different from that of the Nazi doctors experimenting on their hapless concentration camp victims. If we persist, we will not only lose our own soul, but the world as well, for we cannot defend principles if we do not have any.' (Dr. Tom Stonier, nuclear physicist, NY Times, March 25, 1965)

WHO IS GUILTY?

'We do not accept the paradox that legal responsibility should be the least where power is the greatest

APPARENTLY IRRELEVANT

'The government regards Vietcong hospitals as fair targets for ground or air attack. If Vietnamese commanders order an air strike on a medical center, the planes bomb and strafe it, even when Americans are along. When asked if Americans officially condone these attacks, a U.S. military spokesman said: 'There has not been a definite policy ruling for Vietnam.' Planes of the Vietnamese Air Force are frequently piloted by Americans.' (NY Times, July 25, 1962)

'Prisoners are sometimes castrated or blinded. In more than one case, a Viet Cong suspect has been towed after interrogation behind an armored personnel carrier across the rice fields. This always results in death in one of its most painful forms.' ('The New Face of War' by Malcolm Browne, Bobbs-Merrill Co., 1965)

'I would like to see them (American students) develop as much fanaticism about the U.S. political system as

...With the doctrine of immunity of a head of state usually is coupled another, that orders from an official superior protect one who obeys them. It will be noticed that the combination of these two doctrines means that nobody is guilty.' (Supreme Court Justice Jackson in a report to President Truman, 1945)

young nazis did about their system during the war.' (President Johnson, NY Times, February 6, 1965)... 'I don't like to hit a village. You know you are hitting women and children, too. But you've got to decide your work is noble and that the work has to be done.' (American pilot to NY Times correspondent, July 6, 1965). 'To stand this test...and nevertheless to remain decent--this is what has made us hard. This is a page of glory in our history which has never been written and can never be written.' (Heinrich Himmler in a speech to SS leaders in Posen on Oct. 4, 1943)

The case of the USA against David Henry Mitchell will eventually go to the Supreme Court. To foretell the decision of the judges is impossible. One thing, however, is certain: in whatever legalistic idiom they may couch their language, their decision will confirm:

either President Johnson's urging American youth to burn with the fanaticism of the Nazis,

or David Henry Mitchell's urging American youth to burn with holy fire against the burning of human beings.



U.S. vs. Mitchell

Mark Lane's Appeal Briefs

[The following excerpts from News Of Anti-Drafters (NOAD) releases to the press serve as introduction to the briefs, excerpts of which appear on pages 11 - 14/

NOAD #8 "Simple" Case on Second Appeal

6/19/66 -- The U.S. vs. Mitchell is again in the jurisdiction of the 2nd Circuit Appeals Court. On Friday, June 17, Mark Lane submitted his appeal brief for the defense, repeating Mitchell's position that he, Mitchell, an individual, was obeying Nuremberg law by refusing induction, that he was refusing criminal participation in U.S. aggression, for which there is individual responsibility.

In two trials so far, the Courts have maintained that Mitchell's position is irrelevant and that the case is simple: did he or did he not report. Lane, in the brief submitted Friday, identifies the true nature of the trial Court's persistent silencing of Mitchell's evidence:

"While the Court rulings, in refusing to issue subpoenas, permit testimony and allow depositions to be taken, spared the government the embarrassment of seeking to deny that which the facts establish with painful clarity, those rulings did violence to the right of the defendant and denied to the jury the right and obligation of examining the very basis for the defendant's refusal to participate in such unlawful activity."

The first Court's simple-minded approach resulted in a juridical short-circuit. The 2nd Circuit Appeals Court said "it is not 'a simple case,'" reversed the decision, and returned the case to the District Courts of Connecticut stating "that, under the circumstances, Chief Judge Timbers, in the interest of sound judicial administration, would be wise to re-assign the case to another judge for re-trial."

However, the interests of sound judicial administration turned out, in reality, to mean a smoother railroading of Mitchell. Judge Clarie, the judge for the second trial, again asserted that the sole issue was the order-to-report syndrome and that the jury must ignore the treaty obligations referred to at the trial. Lane observes:

"In other words, the trial Court repeated the substance of the position taken by the trial Court at the first trial--that this was a very simple case. The task confronting the jury was indeed rendered simple by the Court's exclusion of the evidence offered by the defendant and by the Court's charge that international treaties signed by an American president and ratified by the United States Senate have no place in an American Court and may not be utilized to demonstrate the invalidity of the order issued to the defendant."

The next step in the appeal of the March re-trial and Mitchell's 5-year sentence is the government's reply, in the form of a brief, to Lane's arguments.

NOAD #9 Mark Lane Challenges Government on War Crimes Issue

7/26/66 -- Mark Lane, counsel for David Mitchell, today spotlighted the government's failure to deal with the war crimes issue basic to Mitchell's "Nuremberg" defense: that were Mitchell to cooperate with the administration's policy in Vietnam he would be "guilty of violating international treaties and thus subjecting himself to the charge that he too was a war criminal."

Lane's statement was made in the context of appeal proceedings in the Mitchell case and was submitted as Appellant's Reply Brief to the 2nd Circuit Court of Appeals in New York, thus completing the written debate which precedes the hearing itself.

Procedurally, this aspect of an appeal consists of three briefs: Appellant's Brief--

Lane's first brief, submitted June 17; Appellee's Brief--the government's response; and Appellant's Reply Brief--Lane's rebuttal.

The government's position has been a defensive one; their brief is an attempt to justify the trial Court's rulings denying Mitchell's right to present evidence of U.S. war crimes. Lane's rebuttal counters the government's four rationalizations for ignoring law, constantly returning the argument to the basic issue:

"The issue here is not the defendant's subjective reaction to war in general or even to a specific war but the application of international law and the responsibilities imposed by law upon the individual."

The text of Lane's rebuttal (Appellant's Reply Brief) is attached appearing here on pages 12, 13, 14/.

The appeal hearing itself has not as yet been scheduled although an October date is anticipated.

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APPELLANT'S BRIEF--U.S. v. Mitchell--excerpts from Lane's 21-page brief of 6/17/66.

The Court's Charge to the Jury

The Court instructed the jury that the draft law was the one statute with application to this case... While the Court specifically referred to other statutes it did so not for the purpose of assisting the jury to understand their meaning but to enjoin them from considering them.

"I might add at this point one further instruction, and that is that as a matter of law, I charge you that none of the treaties referred to in the evidence in this case, namely, the Treaty of London, referred to as the Nuremberg Trial; the Treaty of Paris, referred to as the Kellogg-Briand Pact; the United Nations Charter; the Geneva Agreement of 1954, or the Hague Convention, interfere in any manner in respect to this defendant fulfilling his duty under this order" /page 7/

Questions Presented

1. Is the United States bound by international treaties which it has ratified?
2. If it is, may not a citizen refuse to obey a national law rendered invalid by a treaty in order to avoid possible punishment under existing treaty obligations?
3. In these circumstances is it not mandatory for the trial Court to permit the jury to hear evidence that the defendant believes will prove that the national law, as applied is rendered invalid?
4. Should not the Court have the obligation as well to charge the jury regarding the meaning of the treaties and the obligations that they impose and is it not error for the Court to instruct the jury to disregard the treaties and the obligations that flow from them?
5. In the absence of an affirmative answer to each of the above four questions is not the Court stating that if the Government of the United States emulated the Nazis in every respect, including the commission of the specific war crimes for which many Germans were tried and punished by the International Military Tribunal, that citizens of the United States would have a solemn obligation to participate in such criminal activity and cooperate with those who organize them? /pages 8, 9/

ARGUMENT

Point I The defendant was not given a fair trial because the trial Court did not permit him to present evidence to the jury regarding the nature of the American military efforts in Viet Nam. The defendant's Offer of Proof regarding the testimony of the

proposed witnesses established beyond doubt that the witnesses would have testified to facts that would have proven that the United States is involved in acts of aggression contrary to treaty obligations that it has assumed. The government would have been obliged to prove that the American presence in Viet Nam is not in violation of treaty obligations and that American personnel are not engaged in using methods of war proscribed by international agreement, including the use of poison gas, toxic chemicals, bombing of civilian targets and the torture of soldiers and civilians. While the Court rulings, in refusing to issue subpoenas, permit testimony and allow depositions to be taken, spared the government the embarrassment of seeking to deny that which the facts establish with painful clarity, those rulings did violence to the right of the defendant and denied to the jury the right and obligation of examining the very basis for the defendant's refusal to participate in such unlawful activity.

Point II The Court erred in instructing the jury that it must, as a matter of law, ignore those treaty obligations which were referred to at the trial. The Court, in essence, stated that it had examined the facts presented by the defendant and had found them to be unrelated to the matter before the jury. Yet, the Court never did examine the factual basis for the defendant's refusal to comply with the order to report for induction, for the Court permitted no such evidence to come before it. /page 20/

APPELLANT'S REPLY BRIEF--U.S. v. Mitchell--complete text (except for case citations and page references) submitted by Mark Lane, attorney for David Mitchell, on 7/26/66.

Question Presented

At the trial the defendant stated that the known facts were persuasive that the very presence of American armed forces personnel in Viet Nam was violative of international agreements that were binding upon the United States government and that in addition such personnel were participating in specific acts which had been clearly proscribed by international treaties to which the United States was signatory. The defendant alluded to the use of poison chemicals and poison gas, the bombing of civilian villages and the destruction of crops.

The defendant stated that he would not participate in such unlawful conduct since he was a law abiding citizen.

The defendant stated that the Selective Service system "is a major instrument in the carrying out of all these policies." He said that if he complied with the demands of government and became part of the effort to wage an illegal war in an illegal manner, he would be "violating specific laws which apply not to just the Germans, because the Germans were tried by them, but, to all men and Americans."

The Government's Response

The government brief fails to respond to the one question that had been raised by the defendant at the trial level although the question was raised with singular clarity. The brief for the appellee asserts that it is no defense, in the present circumstances, for the defendant to raise questions of his "personal philosophical or political views." Of course, the appellee may be quite correct in that assertion but the appellee is in error in understanding that the defendant ever sought to raise such questions as personal as his own views. The appellant's defense rather rested entirely upon his inability to cooperate with the administration's policy in Viet Nam without being guilty of violating international treaties and thus subjecting himself to the charge that he too was a war criminal.

The issue here is not the defendant's subjective reaction to war in general or even to a specific war but the application of international law and the responsibilities imposed by law upon the individual.

The government cites eight cases in support of its allegation that the defendant "has totally failed to exhaust his administrative remedies." The citations follow: ***.

The cases do relate to the appellee's contention that a conscientious objector must exhaust his administrative remedies if he wishes to ~~secure~~ secure relief under not from the Selective Service system but they have no application to the instant matter. The case first cited by the government, as an example, stands for the proposition that if one is erroneously classified, as a conscientious objector rather than as a minister, he must pursue and exhaust those administrative remedies provided before seeking judicial review. One need hardly argue with that determination to understand that it relates not at all to the matter here before the Court.

In none of the cases cited by the government did the question arise as a result of the defendant's refusal to comply with a governmental order due to the fear that such compliance would render him guilty of other crimes.

The government also contends that the defendant "seeks to allege and prove that the Armed Forces will require him to take certain actions which he believes to be in violation of international law." Neither that assertion nor the case cited in the brief in support (***) is relevant to the defendant's posture in this matter since the defendant does not refuse to do that which he has not as yet been ordered to do. He refuses, at this point, to do that which he has been ordered to do--to cooperate with a system which is an essential instrument of illegal conduct. In any event, it hardly seems fair to expect a citizen to earn the right to question the illegal conduct of government only at that moment when he may well subject himself to summary execution by so doing. Surely, a democratic society must provide a forum for the determination of so basic an issue without the threat of so final a reprisal.

The third assertion made by the government as Argument C bears a striking similarity to the first proposition urged upon the Court by the appellee. "His own private ideas of philosophy, morality, politics or law are not relevant to the charge that he knew what he was doing when he failed to obey Selective Service requirements."

The defendant does not contend that he did not know what he was doing; indeed, he asserts that he knew that to do otherwise would be violative of the responsibilities imposed upon him by law. While it may appear that the government has yet to fully comprehend the reason for the defendant's refusal to comply, the reason and the necessity of that action has been clear to the defendant for some time. Further, the defendant does not urge upon the Court special consideration due to "his own private ideas" but rather asks that the law of the United States, not his private idea of it but the objective majesty of the law, be applied evenly to him without regard for his private beliefs or the secret operation of his own personal conscience.

And finally in three sentences the appellee presents the fourth argument. The government adopts the position that the only defense raised by the appellant is "inappropriate for judicial examination" for it is of a "most sensitive nature." In support of that argument two cases are cited. ***

Yet, in the latter cited case, the Supreme Court held that the use of power--both legislative and executive--in the field of international relations, "like every other governmental power, must be in subordination to the applicable provisions of the Constitution."

And how could it be otherwise in a democratic society? It is true that in some societies the ruling regime exercises unlimited power, including the power to violate national and international law without redress being afforded to citizens who might dissent. It is true that in such societies such acts are considered to be of such a "sensitive nature" that it is considered "inappropriate" that the courts review them.

The defendant believes that were he to follow the orders issued to him, he would be in violation of the law. Surely, the judiciary which is obligated to pass upon questions of law should not be urged to ignore the only question raised by the defendant because the issue that is central to his case is deemed "most sensitive" by the prosecuting authority.

The defendant asks no more of this Court than a ruling in respect to the one legal question that he has consistently raised. Should he not be permitted to present evidence at the trial level regarding the nature of the American military effort in Viet Nam so that the jury might exercise the right and obligation of examining the very basis for his refusal to participate in unlawful activity?

Conclusion

Appellant respectfully requests that the decision below be reversed and that the Court below be ordered to grant a new trial.

.....
DURING THE FALL: Demonstration in Foley Square, NY at Mitchell's appeal hearing.

OCTOBER 6, 1966: Meeting--U.S. Crimes and Nuremberg Therefores--at Community Church.

- Add my name to the Joint Declaration on the Mitchell Case.
- I am interested in helping--send me etd meeting announcements.
- I am enclosing \$2 for downdraft/ergo subscription--12 issues. (ergo, publication-mate to downdraft, will reappear with the next downdraft.)
- Send me ... copies of the original Mitchell brief for \$1 contribution each.
- ... "I'd Rather Fight Here Than There" buttons--25¢ each.
- January/March/June 1966 downdraft(s)

CONTACT etd ABOUT STARTING LOCAL etd GROUPS.
Send--to downdraft--material for publication: your press releases, anti-draft statements, comments, suggestions.

F U N D S U R G E N T L Y N E E D E D ! Make checks payable to: End The Draft, c/o Mitchell, 150 Crown Street, Brooklyn, N.Y. 11225--phones: 778-5935 and 622-3565.

c o r r e s p o n d e n c e f r o m a r o u n d t h e w o r l d

Comité David Mitchell, c/o P.A.C.S., 114, rue de Vaugirard, Paris-6e, France. 6/3/66.
[translated from the French/

We are enclosing with this letter the leaflet which we have given out among the American students in Paris, in the name of the committee we have formed. We think that it is necessary to continue this action of solidarity with the group of young Americans who refuse to take arms against the Vietnamese people. In France, and in Europe, the movement of solidarity is growing along with the avant-garde of the American people who have so courageously spoken out against the war. Our committee of support proposes to follow the struggle and to keep the American residents in Europe informed as to the true nature of the war which is being perpetrated against the Vietnamese. We will also take up a permanent defense of all American soldiers who courageously oppose the continuation of the massacre of the Vietnamese people. We salute you fraternally, le comite.

#

Committee of 100, 13 Goodwin Street, London, N.4, England. 16th February 1966.

We have been following your case with the greatest interest and we congratulate you on your success. Very best wishes for success in your future efforts. With sincere greetings from [24 individual signatures/.

THE GUARDIAN 15-4-66
LETTERS TO

Draft-dodging

Sir,—I was interested to see your article on April 12 about "draft-dodging" in the US now being "socially acceptable." I wonder if you have heard of the case of a very plucky young American — David Mitchell — who has carried this a significant step further.

He is not dodging the draft but on receiving his draft papers he invoked the Nuremberg Law as his reason for not being inducted and is suing the US Government for breaking this law in attempting to draft him!

This law states that "the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual State. . . . If certain acts in violation of treaties are crimes, they are crimes whether the United States does them or whether Germany does them, and we are not prepared to lay down a rule of criminal conduct against others which we would not be willing to have invoked against us."

Article VI of the US Constitution says: "This Constitution and the Laws of the US which shall be made in pursuance thereof; and all treaties made or which shall be made under the authority of the US shall be the Supreme Law of the Land."

At his first trial, David Mitchell's defence was that the Nuremberg Law took precedence of the US draft law. He was told that the defence was irrelevant to the charge and was sentenced to 5 years' imprisonment. He appealed, and the superior court reversed the decision and sent the case for re-trial. Also there was a recommendation that there should be a different judge and that Mitchell should be given time to find proper counsel to pursue his defence.—Yours etc.,

(Mrs) Peggie Denny.

London SE 7.

people from various Y.C.A.C. Committees throughout the Commonwealth have been prosecuted on this charge. In Australia the punishment is a lot less severe than that of the United States and really only amounts to a rather small fine or a short jail sentence. ***

###

Radio Habana Cuba, Maria Montero Triana, Apartado 70-26, La Habana, Cuba. March 10, 1966.

We have received your very interesting printed-letter dated October 9, 1965 and wish to thank you for it. We would also like to tell you that David Mitchell's letter, such as it arrived to us, was read over the air in our programme "OUR YOUTH" dated Wednesday February 3, 1966.***We would like to hear from you soon again and to know how your struggle for David's freedom is going on, as we know our listeners are very interested in your struggle and we get very little information from current sources. ***

###

Christian Group Committee of 100, Honorary Secretary: Mrs Peggy Denny, 27 Fairfield Grove, S.E.7, England. 15th April 1966.

I have at last managed to get a letter published in one of our National papers "The Guardian" about David's case. There will probably be some enquiries and repercussions as a result, so will you, please send me, as soon as possible details of what happened at the re-trial on March 15th? ***

###

Peace News, Rod Prince, Editor, 5 Caledonian Road, Kings Cross, London, N.1, England. Apr 21 1966.

We are anxious to know as quickly as possible the result of David Mitchell's retrial, and would be grateful for any information. People are gradually realising the importance of the case here; you might be interested to know that the French weekly, La Canard Enchaine, had a comment on it the other day. [The 10/1/65 issue of Peace News had an article on Dave's case written by Robert S. Calese.]

###

Youth Campaign Against Conscription, Barry Robinson, Secretary, 21 Club Chambers, 96 Phillip Street, Sydney. N.S.W. Australia. 30th May, 1966.

We have been meaning to write for sometime after reading about you and the End the Draft Committee in the March, 12th. edition of National Guardian [U.S. paper]. We have been interested in following up in Australia on similar lines to your legal case to challenge our Government over the position of Conscripts in Vietnam. As you more than likely know, our conscription bill is very similar to the selective service act of the United States. It allows the Government to send Conscripts overseas wherever they wish, for their two year training period with an extension of three years if the Government so desires.

We would appreciate all the information you may have on the trial and have enclosed a draft for two dollars for the printed pamphlets and badges you advertised in the N.G. Our Lawyers would particularly appreciate transcript of any of the court hearings your case may have been presented at so far.

We are, at present, fighting in court over the draft card burning issue. Several

**2,000 in Australia Cheer
As 12 Burn Draft Cards**

Special to The New York Times

SYDNEY, Australia, March 16—Two thousand people cheered, shouted and waved placards here tonight as 12 young men burned their draft cards in protest against Australia's part in the Vietnam war.

Demonstrators paraded with banners saying "No Conscripts for Vietnam" and "Make Love, Not War."

The demonstration was sparked by the Australian Government's recent announcement that 1,500 20-year-old draftees would be among the 4,500 Australian troops going to Vietnam in June.

Robert Allen's Draft Refusal

Press Statement, 8/4/66 -- My name is Robert Allen. I am 24 years old, married, and a full-time graduate student at the New School for Social Research where I am working on a Master's Degree in Sociology. I also own and operate a small bookshop in Harlem.

For more than a year I have been actively protesting the war in Vietnam. I have participated in marches, demonstrations, and written letters to friends, government officials and newspapers. I also communicated my views to my local board when I was called up for a physical examination in May, 1965. I regard this war as being unjust, immoral and fundamentally racist in nature. I am not a pacifist. I believe that men have an obligation to defend themselves with whatever means necessary if they are attacked.

I was ordered to report for induction on August 1, 1966. On Monday morning I went to the Induction Station here in New York and stood outside distributing a leaflet which denounced the war and the unfairness of the Draft. I then went inside and submitted to the physical examination. After I passed the physical examination I advised the Commanding Officer that I did not intend to submit to induction.

I will now read to you the statement which I gave to the Induction Station authorities as expressing my reasons for refusing induction:

August 1, 1966

To Whom It May Concern:

At this moment the United States is engaged in an immoral and racist war against the people of Vietnam. The U.S. is conducting a genocidal war against an heroic people who have struggled against foreign oppression for more than 25 years. The pretext for this aggression is the claim that the U.S. is protecting "freedom and democracy" in South Vietnam. This "protection" consists in propping up a dictatorial regime which was never elected to office and does not enjoy the support of the Vietnamese people. It consists in bombing the homes and fields of thousands of innocent peasants. It consists in attacking North Vietnam in an undeclared and illegal war of aggression. In short, this U.S. protection of freedom and democracy consists in destroying a people who are valiantly fighting for national liberation and freedom from oppression.

It is clear that the U.S. is involved in this war not to benefit the Vietnamese but to provide itself with another secure military base in the encirclement of China. The real objective of the war in Vietnam is to give the U.S. a base from which to carry out a war against China. It is the "yellow hordes" of China who are the target of this war, even though the Chinese have not attacked anyone and have no troops abroad. The Vietnamese, being a poor colored people, are dispensable in the brutal effort to achieve this objective. The racist nature of this war cannot be ignored nor denied.

To conduct this war the U.S. is drafting thousands of Black men to fight for "freedom" abroad while their freedoms at home are denied. These Black men are forced to fight for white imperialism in its attempt to destroy colored nations. They are forced to fight for the sole benefit of their former slavemasters. These Black men go to war knowing that their brothers and sisters at home will continue to be subjected to violent attacks by racists which will go unpunished. But an army which will not protect Black citizens at home and instead attacks colored people in Vietnam is not an army in which any self-respecting Black man should serve.

It is for these reasons that I refuse to accept induction into the U.S. Armed Forces. I would not allow myself to be drafted into the Ku Klux Klan and I will not allow myself to be drafted into the U.S. Army to fight a racist war. I support the Vietnamese in their just struggle for national liberation. I support the National Liberation Front and I will not fight against my colored brothers in their heroic struggle for freedom. On the contrary, I believe that their fight is my fight and I will do all

Robert Allen (continued)

that is within my power to help secure a well-deserved victory. I believe that the Black man in America--a minority--cannot be free until the colored peoples of the world are free of white oppression and take their rightful place as the democratic majority.

Robert McCormick's Draft Disassociation

March 25, 1966

Selective Service
Local Draft Board # 87
Cadillac Towers
Cadillac Square and Bates
Detroit, Michigan

Dear Sir:

I am eligible for and have received deferment from the Armed Services on several grounds. I feel, however, that I can no longer conceal my true opposition to United States policy in Vietnam by accepting these arbitrary deferments.

In the spirit of David Mitchell, who now awaits trial for his refusal to cooperate with the draft, I invoke the essence of the International Military Tribunal and the subsequent Nuremberg Trials. At these trials, Nazi war criminals were found guilty on the charge among others, that they participated in crimes against humanity while obeying orders of a national government. In finding these criminals guilty, the Court established a legal and moral precedent for individual responsibility and guilt which are placed above the laws of a given government when it behaves in an immoral fashion. It is the right and obligation of the individual to act according to the dictates of these higher laws when there occurs a conflict between one's conscience and national laws. To this individual sense of responsibility is associated the obligation and duty of the citizen to separate himself from acts of immorality and crimes of his government.

The United States is fighting a war without the consent of Congress, in which body lies sole authority for the declaration of war. The Administration cherishes the myth that we are not at war while it dispenses advice with carbines. The very presence of the U.S. in Vietnam directly violates the Geneva Accords of 1954, which strictly forbade "...the introduction of reinforcements...and other war materials." The conduct of American personnel there is in contradiction with the standards of human behavior as established by the International Military Tribunal at Nuremberg. The atrocities committed against the military as well as civilian population violates the provisions of the Geneva Prisoner of War Convention of 1949. Consistent with such familiar behavior is the U.S. support of an admittedly fascist government, ("I have only one hero... Hitler" by General Ky.) imposed against the will of eighty per-cent of the population (as estimated by President Eisenhower.) And in final brute irony, the U.S. draft demands of the Negro people that they fight to defend supposed "freedoms" in Vietnam which they do not enjoy at home if and when they return.

I must, therefore, disassociate myself from these crimes against humanity and categorically state my refusal to serve or aid in any way the United States effort in Vietnam, Santo Domingo and elsewhere.

Sincerely,
Robert McCormick

Enclosure: Draft Card

cc: Emergency Civil Liberties Committee
End The Draft Committee
Lt. General Lewis B. Hershey, Director Selective Service

Luftig vs. McNamara
Mora, Johnson, Samas vs. McNamara

CIVIL COURT PREEMPTED BY MILITARY ARRESTS

by Stanley Faulkner

These cases are now pending before the United States Circuit Court of Appeals for the District of Columbia with argument probably not before late fall of this year. In the meantime, the Department of the Army, without waiting for a decision on the merits of the matter before the Court, preempted the Civil Courts with an order to Mora, Johnson and Samas to go to Vietnam.

The Civil Court Actions

There are pending today two cases testing the legality of the war in Vietnam in which Secretary McNamara is a defendant. These actions seek injunctions to stop deployment to Vietnam or to the immediate area. They are Robert Luftig vs. McNamara and a joint action by Dennis Mora, James Johnson and David Samas vs. McNamara.

The plaintiffs in both cases brought actions with the hope that in a trial on the merits evidence could be introduced establishing the illegality of the war and, for a change, put the President's agent, Secretary McNamara on the defensive.

There is one difference in these cases however. Luftig is in the Army without any orders to go to Vietnam. However, his claim is that with the escalation of the war and the increased demand for fighting manpower he as well as every soldier is subject to being sent to engage in this war. In the other case of the three soldiers, they had actually received orders to go to Vietnam which they ultimately refused to take.

The Law Raised By These Actions

The actions for permanent injunctions raise questions of treaty obligations and constitutional provisions which the United States is breaking.

Article VI, Clause 2 of the Constitution provides:

This Constitution, and the Law of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Article II, Section 3 of the Constitution says of the President that "he shall take care that the laws be faithfully executed..."

The obligations under the following treaties have been violated by Secretary McNamara, an agent of the President:

1. Kellogg-Briand Pact of 1928:

The High Contracting Parties solemnly declare in the names of the respective peoples that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another.

2. Charter of the United Nations:

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of

any state or in any other manner inconsistent with the purpose of the United Nations. [Chap. 1, Art. 2(4)]

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression, and shall make recommendations or shall decide what measures shall be taken...to maintain or restore international peace and security. [Chap. VII, Art. 39]

3. Nuremberg Judgment which defined as an international crime:

...the planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing...

4. Geneva Agreement of 1954, to which the United States was not a party but offered its own declaration that it would:

refrain from threat of the use of force to disturb them, in accordance with Article 2(4) of the Charter of the United Nations dealing with the obligations of members to refrain in their international relations from threat or use of force... (Extract from Verbatim Records of Eighth Plenary Session)

5. Southeast Asia Collective Defense Treaty (SEATO) never voted for any action to be taken in Vietnam. If it had such action would have required the prior approval of the Security Council of the United Nations, pursuant to Chap. 8, Article 53, which reads as follows:

(1) The Security Council shall where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against an enemy state, as defined in paragraph 2 of this Article. (enemy state applies to an enemy of any present Charter member during World War II)

Secretary of State Dean Rusk testified before the Senate Foreign Relations Committee that under the Tonkin Bay Resolution the President was given power to carry on the war in Vietnam. This resolution of August 6, 1964, was not a declaration of war, nor did Congress divest itself of its sole constitutional right in this area. The resolution clearly states that whatever action is taken must be "consonant with the Constitution of the United States and the Charter of the United Nations in accordance with its obligations under the Southeast Asia Collective Defense Treaty."

Consonant with the Constitution can only mean that the law will be upheld, which includes treaty obligations, outlawing wars and wars of aggression, or an actual declaration of war by Congress.

A "Political Question" In The Civil Courts

In both of these cases the Court dismissed the actions on the grounds that the war in Vietnam raises a political question of foreign policy and not a judicial one. This attitude by the Courts was described by Mr. Justice Douglas in 1960 in this way:

But the political question should no longer be used as a thicket behind which the judiciary retreats... The Chief Executive, as Commander in Chief, makes decisions in which no one else can participate. But what he does often give rise to claims that courts should adjudicate.

It is an interesting commentary on our judicial system that neither of the three judges who ruled at one time or another in these cases and the United States Attorneys who represented the government dared to distinguish a case which arose during the

Korean conflict. It cannot be attributed to an oversight because the main thrust of the actions was argued and briefed on the analogous situations that prevailed in the Youngstown Sheet and Tube Co. v. Sawyer. In that case President Truman, fearful of a steel strike, issued an Executive Order to seize the steel plants on the ground that steel was necessary for our defense during the Korean conflict. It provided for the Secretary of Commerce, Mr. Sawyer, to supervise the operation of the plants.

The Court held that such seizure could not be sustained "as an exercise of the President's military power as Commander-in-Chief of the Armed Forces. - - - Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President."

Mr. Justice Frankfurter, in a concurring opinion, held that the judiciary may have to intervene in order to determine where authority lies between the democratic forces in our scheme of government.

Mr. Justice Jackson, in a concurring opinion, held that as Commander-in-Chief the President had "no military prerogative, without support of law, to seize persons or property because they are important or even essential for the military and naval establishment."

Essentially, what the court held was that without a declaration of war the President lacks the power as Commander-in-Chief to seize property, and that such seizure was unlawful. The proposition raised in the Luftig and Mora cases is that, just as Justice Jackson held, it is unlawful "to seize persons" to perform an illegal act, so it is applicable in these cases where the war in Vietnam is illegal.

It is obvious that the Courts have avoided any mention of the Youngstown case, because of its applicability and controlling effect.

These cases are now pending before the United States Circuit Court of Appeals for the District of Columbia with argument probably not before late fall of this year. In the meantime, the Department of the Army, without waiting for a decision on the merits of the matter before the Court, preempted the Civil Courts with an order to Mora, Johnson and Samas to go to Vietnam.

Military Arrest--From A Storm Trooper's Handbook

On July 7, 1966, their order to report to Oakland, California, on July 12 was changed to report forthwith to Fort Dix. The implementation of this change of orders was done in a method taken from a storm trooper's handbook. Without any charges against the three soldiers, they were arrested on July 7 on the street and "forthwith" taken to Fort Dix. They were not permitted to return to their apartments for their uniforms or personal belongings, and both Johnson and Mora were put in hand irons. The answer given by the Army representatives was that since they had to report forthwith to Fort Dix and they had military police cars it was very convenient for the three soldiers to take advantage of this convenience.

From July 7 to July 14 they were kept under administrative restriction in a building reserved to them under constant twenty-four hour guard. Four guards outside and four guards inside with a light burning all night to keep the guards awake. They were not permitted to go to the latrine, which was in the building, without a guard, nor were they permitted to visit with relatives in another building except in the presence of guards. They were also prohibited from speaking with anyone except to each other.

After seven days of this confinement, on July 14 they were ordered to board a plane to go to Vietnam. Each one was told three times and each one refused three times. They were then put in solitary confinement in separate cells in the stockade. This confinement prohibited their talking to anyone even to speak to each other; their mattresses are removed during the day so that they have no place to rest; they are not

permitted any reading material except the Bible; and visits with relatives are again in the presence of guards. After their visits with relatives they must suffer the indignity of stripping and having their persons physically examined. This is the most extraordinary treatment ever given to a person in a stockade who has not been convicted of a crime.

On July 22 an investigative hearing was held under Article 32 of the Uniform Code of Military Justice to determine whether they disobeyed the lawful order of a commissioned officer. The results of this hearing will also determine the kind of court-martial they will be subjected to, that is whether it will be a general or special court-martial. If it is a general court-martial, which there is every reason to expect it will be, the penalty can be five years in prison, a dishonorable discharge and loss of pay.

The extraordinary part of these cases is that the "nervous nellies" in Washington are fearful that these young men may turn the tide of our participation in the war in Vietnam. Maybe they will!

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Available from the Ft. Hood Three Defense Committee:

**THE FORT HOOD THREE--THE CASE OF THE THREE
G.I.'S WHO SAID "NO" TO THE WAR IN VIETNAM**

a 32-page pamphlet on
Mora, Johnson and Samas



Photo by Finer

Pvt. Dennis Mora, PFC James Johnson, and Pvt. David Samas at June 30th press conference

- I am interested in receiving more information about the Fort Hood Three.
- I would like to become a sponsor for the case.
- I am enclosing a contribution of \$ _____
- I would like to order _____ copies of this pamphlet.
(single copies: \$.25 - 50 or more copies: \$.15 each)
- I would like to order _____ buttons (buttons in red, white and blue read: Free Samas, Johnson, Mora). Each button: \$.25; 10 or more \$.15.

Name _____

Address _____

Send to: Fort Hood Three Defense Committee
5 Beekman St. 10th Floor
New York, N.Y., 10038
Tel. (212) 227-8891

DO GIs HAVE RIGHTS?

THE CASE OF LT. HOWE



LT. HOWE PROTESTS THE WAR

On November 6, 1965, Lieutenant Henry H. Howe, Jr., of Boulder, Colorado, while assigned to Fort Bliss, joined a demonstration in El Paso, Texas, to protest the war in Vietnam. Off-duty and wearing civilian clothes, he carried a placard which read, "End Johnson's Fascist Aggression in Vietnam" and "Let's Have More Than a Choice between Petty, Ignorant Fascists in 1968." He alone among the 14 demonstrators was arrested and taken to the City Jail. This illegal arrest was made at the request of the Military Police, to whom Lt. Howe was subsequently surrendered.

THE COURT-MARTIAL

On December 22, 1965, following a 2½-day court-martial, Lt. Howe was convicted by a 5-man court on two charges: (a) Using contemptuous words against the President, and (b) conduct unbecoming an officer and gentleman. He was sentenced to dismissal (equivalent to a dishonorable discharge), two years confinement at hard labor, and forfeiture of pay and allowances (equivalent in two years to a fine of nearly \$10,000). This severe sentence was imposed upon a man who had violated no civilian laws, and had disobeyed no military orders. Lt. Howe says:

"I feel that there is a distinction between the duty of a military officer to obey Army orders and a higher responsibility to the country. Acceptance of a commission is a serious matter. As a position of trust and honor, it carries great responsibility to the people of the United States. I feel I have the obligation, both as a private citizen and as a military officer, to speak out on a policy that is totally wrong; that is, our involvement in Vietnam."

A third charge of designing "to promote disloyalty and disaffection among the troops and the civilian populace" was dropped. The law officer (who has many of the duties of a civilian judge)

[excerpts from brochure:]

Prepared by
FREEDOM NOW FOR LT. HOWE COMMITTEE
P.O. Box 6024, Denver, Colo. 80206

ruled that Lt. Howe's conduct did not "attack the war aims of the United States" because the United States *is not at war!*

THE CONSTITUTION AND THE SOLDIER

Lt. Howe's experience raises important questions about the constitutional rights of men in uniform. The First Amendment declares that "Congress shall make no law...abridging the freedom of speech..." It makes no exception for soldiers. The crucial point in Lt. Howe's court-martial occurred when the law officer refused to quash all the charges on the basis of the First Amendment, and ruled that the only rights soldiers have "are those which Congress has not taken away."

This decision is a threat to civil liberties in the U.S., especially when large numbers of young men are called into military service. We must not allow the constitutional rights of our servicemen to be swept away so flippantly. The demands of military discipline must not be allowed to turn our uniformed citizens into robots. Surely the Nuremberg Trials after World War II show us that military personnel must not lose their sense of human and social responsibility. The freedom to speak and to criticize is basic to the maintenance of democracy and freedom.

In July, 1963, Secretary of Defense MacNamara outlined conditions under which servicemen may participate in public demonstrations (now incorporated into official Army Regulations, AR-600-20). Lt. Howe's picket actions met all of these conditions. Clearly, Lt. Howe is being persecuted for his opinions, not his acts. He is a political prisoner, not a criminal.

When General Walker tried to block James Meredith's entrance into the University of Mississippi, was his conduct becoming to an officer and gentleman? Yet he was not court-martialed. He served no time in prison at hard labor. He lost no pay.

The Army has silenced Lt. Howe in order to prevent the spread of anti-war sentiments among U.S. troops. It wants to prevent a recurrence of the post-World War II troop demobilization. In 1945 widespread "Go Home" demonstrations by GIs forced cancellation of plans to maintain large standing armies abroad.

THE APPEALS

The American Civil Liberties Union is generously providing expert legal counsel and is covering all expenses involved in Lt. Howe's appeals. The ACLU considers the case so important that it is being handled personally by Melvin L. Wulf, Director of the Legal Department. (The ACLU is *not* involved in any campaign either for or against the war, but is very much involved in preserving and extending constitutional rights.)

On January 27, Maj. Gen. George T. Powers III, Commanding Officer of the U.S. Army Air

Defense Center at Fort Bliss, reviewed the court-martial record and reduced Lt. Howe's confinement to one year, leaving the rest of the sentence unchanged. Subsequently the case will be reviewed by the Army Board of Review and, if necessary, carried to the Court of Military Appeals.

Meanwhile, Lt. Howe is in confinement: From Dec. 22 until Feb. 4, in the Fort Bliss stockade; since then, in the Disciplinary Barracks at Ft. Leavenworth, Kansas (not the Leavenworth federal prison). This violates all standards of justice. By contrast a civilian criminal is usually free on bond until all appeals are exhausted. The ACLU is attempting to secure Lt. Howe's release on bond in the civilian federal courts.

FREEDOM NOW FOR LT. HOWE COMMITTEE
P.O. Box 6024, Denver, Colo. 80206

Put me on your mailing list.

Enclosed is \$.....as my contribution to the COMMITTEE.

Name.....

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.....
FREEDOM NOW FOR LT. HOWE -- NEWSLETTERS /excerpts/

#1 -- Lt. Howe Freed on Parole

4/22/66 -- Lt. Howe was released from the Fort Leavenworth Disciplinary Barracks on March 24, 1966 under a Commandant's Parole. This Parole is used by the Army to release prisoners, whose appeals are pending and are, therefore, not considered "sentenced" by the Army. Under the terms of the Parole, Lt. Howe may travel within the Continental U.S. without permission. Although he retains officer status, he may not wear his uniform. He is not required to perform Army duties. If his sentence is reversed, Lt. Howe's parole time would count as "excess leave," thus rendering him ineligible for pay during this period. Lt. Howe accepted parole since refusal to do so would have given the Army the unchallengeable argument that he did not want his freedom. The Parole undercut the American Civil Liberties Union's appeal before Supreme Court Justice Hugo Black on the bail question.

The questions yet to be resolved by the appeals are: Does the First Amendment guarantee of freedom of speech extend to military personnel? Does the court-martial procedure, whereby the accuser in effect appoints and controls the judge and jury, allow a fair trial?

#2 -- Army Threatens to Silence Lt. Howe With 10-Year Sentence

7/25/66 -- The U.S. Army has threatened additional prosecution against Lt. Henry Howe Jr. of Boulder Colorado. Howe, who is appealing a court-martial sentence for his participation in an El Paso, Texas demonstration against the war in Vietnam, was warned to keep silent in a letter from Army General Counsel Alfred B. Fitt. Fitt suggested that Howe might be prosecuted and sentenced to 10 years in prison, if he continued to speak publicly against the war in Vietnam and to criticize military justice.

In a strong reply, Lt. Howe's lawyer, Melvin L. Wulf of the American Civil Liberties Union, expressed astonishment that the Army would "so brazenly undertake to suppress Mr. Howe's right of free speech solely because he is critical of the Army and government policy in Vietnam." The Army has never threatened action against servicemen who speak out in support of the war.

Howe had served 3 months of his one-year sentence in Fort Leavenworth Disciplinary Barracks when he was paroled pending appeal of his case. Silence on the Vietnam war and his case were not conditions of the parole. Since his release Lt. Howe has spoken before large audiences on the West Coast and attended some 8 or 9 news conferences. In Denver he aired his views on a local TV station.

The Freedom Now for Lt. Howe Committee protests this further harassment of Lt. Howe. The anti-war movement must oppose this attempt to stop criticism of the massive destruction the U.S. has wrought in Vietnam and of its suicidal policy in Asia.

Copies of the Fitt-Wulf correspondence [may be obtained from the Lt. Howe Committee.]

Sartre on Panel to 'Try' U.S. Leaders

Jean-Paul Sartre and Simone de Beauvoir will head an unofficial "international war crimes tribunal" organized by Bertrand Russell to decide whether American conduct of the war in Vietnam constitutes a crime against humanity.

The tribunal, to convene in Paris in November, will consist of Europeans and Latin Americans prominent in world affairs, political science, religion and the arts.

The tribunal has no legal status. Its judges are private citizens, acting in no official or legal capacity.

In an announcement yesterday in which the tribunal has named, President Johnson, Secretary of State Dean Rusk and Secretary of Defence Robert S. McNamara were listed to be tried as "war criminals." The announcement said the judges would make their decision on the basis of the testimony of hundreds of witnesses and of complete scientific data on chemicals used in military operations.

Magazine Discusses Tribunal

The announcement was made by Russell Stetler, a representative of Earl Russell, and by David Dellinger and the Rev. A. J. Muste, editor and board chairman, respectively, of Liberation magazine. The August issue of Liberation contains an article by Lord Russell on the tribunal.

In charging that the American action in Vietnam involved frequent crimes against innocent victims, Mr. Stetler cited the use of "poison chemicals, gas, saturation bombing of an entire area with jelly-gasoline and

phosphorus, napalm which burns until the victim is reduced to a bubbling mass, and the Lazy Dog, a new bomb containing 10,000 slivers of razor-sharp steel."

Mr. Muste, a pacifist leader, said that the use of such weapons against the Vietnamese became even more sinister in view of the absence of an ethical justification for the war.

Mr. Muste said that the significance of the tribunal would lie not with "its questionable authority to find the United States guilty of committing war crimes but in the credibility of the evidence it uncovers."

"Never," he said, "has the American public been able to appraise this human element of the war for itself."

Mr. Stetler conceded that Lord Russell, who will be on the tribunal, and the other judges had already passed political judgment on America's "aggressive and unjustifiable role" in Vietnam, but he said they would evaluate the evidence impartially.

He said the tribunal would probably be conducted as a court of inquiry. Rules for admission of evidence and legal procedures have not yet been decided, he said, but prominent lawyers are working them out.

Although cases for the prosecution and for the defense are not likely to be scheduled, he said, Lord Russell will welcome any spokesman who would defend American policy on Vietnam. "We don't want to be accused of being unfair in this," Mr. Stetler added.

Those who will appear as witnesses, Mr. Stetler said, all have had experience in Vietnam.

"They will not be people of decision-making capacity, but ordinary people," he said. Among those scheduled to appear, Mr. Stetler said, were journalists, American servicemen, and war victims from North and South Vietnam.

The proceedings will be recorded on tape and published in full.

An international finance committee composed of followers of Lord Russell will provide transportation expenses for the witnesses, Mr. Stetler said. They have already started an appeal for contributions.

Although none of the judges announced today are Americans, Mr. Stetler said, "at least one American whose concern with social questions is well known" will soon be added to the list.

The judges named in addition to Lord Russell, Sartre, the French playwright and novelist, and Miss de Beauvoir, the French author, are: Lelio Basso of Italy, international lawyer and editor of the International Socialist Journal; Lazaro Cardenas, President of Mexico from 1934 to 1940; Dr. Josue de Castro, Brazilian scientist who headed the United Nations Food and Agriculture Organization Council; Vladimir Dedijer, Yugoslav political scientist and author; Isaac Deutscher, a Polish exile and lecturer in political science at the London School of Economics; Danilo Dolci, social activist in Sicily and author of works on world poverty, and Peter Weiss, the German-Swedish author of the play "the Persecution and Assassination of Marat as Performed by the Inmates of the Asylum of Charenton Under the Direction of the Marquis de Sade."

THE NEW YORK TIMES

AUGUST 3, 1966.

END THE DRAFT

% Mitchell, 150 Crown Street
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