

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Docket No. 87-1882

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GILLAM KERLEY,

Defendant-Appellant.

On Appeal from Judgment of Sentence, Dated May 29, 1987,
in Crim. No. 82-CR-47, in the United States District Court
for the Western District of Wisconsin (John C. Shabaz, J.)

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BRIEF OF AMICUS CURIAE
COMMITTEE AGAINST REGISTRATION
AND THE DRAFT

=====

CHARLES T. BUMER
Attorney at Law
1168 Union Street, Suite 201
San Diego, California 92101
(619) 234-1883

Attorney for Amicus Curiae

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STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus Curiae, the Committee Against Registration and the Draft (hereafter "CARD") is a non-profit corporation with tax-exempt status organized for charitable purposes, including the dissemination of information about the military draft and support of many forms of draft resistance. Its stated purposes are more fully set out in the argument below. The appellant was an employee of Amicus Curiae during a portion of the time he was under indictment; prior to his employment he was a volunteer with the organization.

The trial judge made appellant's conduct in the course of his employment with CARD an issue. He did so in a manner

contradicting the actual facts and impugning the purposes and nature of CARD. The trial judge misinterpreted the constitutionally protected activities of appellant and Amicus Curiae as illegal in nature. This inaccurate information concerning appellant's conduct and the purposes and nature of Amicus Curiae was used as a basis for sentencing. Accordingly, Amicus Curiae wishes to be heard in this matter.

STATEMENT OF THE CASE

Amicus curiae adopts the statement of the case made by appellant.

ARGUMENT

I. THE IMPOSITION OF A LENGTHY PRISON TERM BASED IN LARGE PART UPON THE JUDGE'S FALSE ASSUMPTIONS OR MISAPPREHENSION OF APPELLANT'S CONSTITUTIONALLY PROTECTED ACTIVITIES RESULTED IN A DENIAL OF DUE PROCESS OF LAW.

During the sentencing hearing, the trial judge specifically referred to applicant's employment and to his supposed political activities as a part of that employment. The judge stated:

"...the higher period of sentence is appropriate because the Court believes that there is the encouragement of the defendant to others to violate, as perhaps is indicative of his position as the executive director of the Resistance Movement, at, I believe, \$500 per month. " (Tr., p. 12)

The judge went on to say:

"And so, in order to deter the defendant from his continued illegal activity and his aiding and abetting those others who may follow in his footsteps, particularly those high school students in Kansas City and throughout the nation, the Court has determined that the higher sentence is the appropriate sentence...." (Tr., p. 13)

The appellant attempted to explain that this statement was inaccurate. He stated that the Committee Against Registration and the Draft, his employer, did not advocate non-registration, and would lose its non-profit corporate status if it did so. (Tr., p. 15)

The judge's statements that the appellant encouraged others to violate the law, that he aided and abetted law violations, and that he had or would engage in "continued illegal activity" are entirely false and unsupported by any evidence in the record.

The appellant has been associated with the Committee Against Registration and the Draft since 1983. He became the coordinator of its Midwest office, on a volunteer basis, in February of 1985, and became employed in June, 1986, as CARD's Executive Director. Throughout his association with CARD, he has been involved in political activities designed to carry out the goals of the organization. During his period as Midwest coordinator and as a paid employee of CARD,

he was tasked specifically with developing programs to carry out those goals. His work as Executive Director was consistent throughout with the goals of the organization. The trial judge's statement that appellant is or was "the executive director of the Resistance Movement" is also untrue and unsupported by the record. The appellant is not and has never been employed by any entity called the Resistance Movement, or by any other organization involved in encouraging others to violate the law.

CARD was incorporated as a non-profit corporation on April 29, 1980, in Washington, D.C. (Appendix A-1) and was granted tax-exempt status in February, 1982. Its articles of incorporation set out the specific purposes of the organization:

"III. PURPOSES

"A. The Corporation is organized exclusively for charitable purposes, more specifically the following:

"1. To inform the public about the military draft and draft registration, its impact on individuals and society and any efforts to revive it.

"2. To conduct and sponsor educational seminars, meetings, and lectures, to publish and distribute educational literature, and to engage in other educational activities in the public interest on the issues of the military draft and draft registration.

"3. To promote, encourage and foster any other similar charitable or educational activity.

"4. To accept, hold, invest and administer any gifts, bequests, devises, funds, and property of any sort or nature, and to use, expend, or donate the income or principal thereof for, and to devote the same to, the foregoing purposes of the Corporation.

"5. To do any and all lawful acts and things which may be necessary, useful, suitable, or proper for the furtherance or accomplishment of the purposes of the Corporation."

(Appendix A-2 to A-3)

In February, 1981, at its national conference, CARD adopted Principles of Unity (Appendix A-10). These principles called for broad political and educational work against the draft. One of the nine principles discusses the issue of "resistance":

"7. We seek to build a broad movement of active resistance to the draft, the poverty draft, and the U.S. wars they serve and support. We support many forms of draft resistance, including non-compliance and civil disobedience, as well as educating, organizing and mobilizing our families, classmates, co-workers and communities in anti-draft opposition. We can all resist the draft, whether or not we are personally subject to the draft law, by joining and building the anti-draft movement. We

support the call for unconditional amnesty for all Vietnam war resisters at home and exiled abroad."

CARD thus defined the concept of resistance in its broadest terms. It chose, after considerable debate during the conference, to avoid a stance specifically urging or advocating non-registration as a form of resistance. Instead, CARD chose to acknowledge the participation of non-registrants in the anti-draft movement and to offer such forms of support as legal assistance to those who have chosen not to register.

During the conference CARD rejected proposals that it advocate and urge non-registration as a strategy for resistance to the draft. One such proposal, submitted by the Boston Alliance Against Registration and the Draft, included two resolutions passed at a New England anti-draft conference:

"Be it resolved that this [New England] conference encourages registration-age people not to register for the draft, encourages the anti-draft movement to support all forms of resistance and resisters with all of its resources, and demands that National CARD adopt the same position.

"This [New England] conference recognizes the moral right to disrupt the draft process at all points, including registration, classification, induction, and prosecution of resisters; we endorse all forms of non-violent action, including Civil

Disobedience, aimed at disrupting the draft process, and we encourage all other groups who oppose the draft to endorse this position."

This proposal, like other proposals which would advocate or urge non-registration, was defeated by the CARD conference. CARD's specific refusal to adopt any proposal including advocacy of non-registration made clear that its own Principles of Unity, and specifically principle 7, were not meant to include such advocacy.

This was the perception of other organizations and individuals as well. As a result of CARD's rejection of advocacy of non-registration as a strategy for resistance to the draft, some proponents of such advocacy left the organization at that time. One proponent, the "National Resistance Committee," was the leading organization advocating refusal to register for the draft. In large part because of CARD's refusal to adopt a position urging non-compliance with the registration program, the National Resistance Committee severed its ties with CARD. In a formal letter of resignation, the National Resistance Committee stated:

"We openly encourage non-registration and support all non-registrants regardless of their political or non-political views. To us the more than a million non-registrants are, and by the risk they have taken, should be the leaders (if there are to be any recognized leaders) of the anti-draft movement. Yet CARD, while giving lip-service by saying "yes, we support

you," does nothing to visibly and directly encourage the growth of a resistance movement. Resisters began to be disillusioned with CARD at Detroit. Now many realize that to meet their needs, they must rely on each other and form their own mutual support networks."

The appellant has never been a member of, nor an employee of, the National Resistance Committee or any similar group advocating non-registration.

The appellant's employment by CARD, and his volunteer work for CARD prior to that employment, was thus not for the purpose of advocating any illegal activity. Appellant reported regularly to CARD's Advisory Committee throughout his period of employment concerning the nature of his work and the specific projects in which he was engaged. Advocacy of non-registration was not, and could not have been, among them, since such advocacy would have been contrary to CARD's statement of purposes. On the contrary, appellant's work involved community education and organizing about the possibility of a draft and about the organization's general opposition to the registration program. Appellant never exceeded the mandate or purposes of the organization in the course of his work.

The sentence was thus based, in material part, on the trial judge's factual misconceptions about the nature of Amicus Curiae, the appellant's employer, and about the nature of appellant's work.

Due process prohibits consideration of false information in the sentencing process. Townsend v. Burke 334 U.S. 736 (1948). This is true whether the inaccuracies are the result of the submission of false information to the judge, or of false assumptions by the judge, and whether the result is the produce of carelessness or design. Id., at 740-741. United States v. Tucker, 404 U.S. 443, 447 (1972) makes it clear that where, as herer, the sentence is founded at lease in part upon misinformation of constitutional magnitude, the sentence should be vacated. To the same effect, see United States ex rel. Welch v. Lane, 738 F.2d 863 (7th Cir., 1984); United States v. Marshall, 719 F.2d 887 (7th Cir., 1983); United States v. Harris, 558 F.2d 366, 373 (7th Cir., 1977). The defendant is entitled to be informed of the basis of unsubstantiated information contained in a presentence report and should be granted a hearing on the reliability of the information and its source. United States v. Weston, 448 F.2d 626 (9th Cir., 1971), cert denied, 404 U.S. 1061 (1972).

The trial judge explicitly based the sentence on the following misconceptions: (1) The "encouragement of the defendant to others" to refuse registration. In fact, neither appellant nor his Amicus Curiae has encouraged others to refuse registration. (2) "...[the defendant's] position as the executive director of the Resistance Movement." In fact, appellant has never occupied such a position and has never been associated with any organization called the

Resistance Movement. (3) "[the defendant's] continued illegal activity and his aiding and abetting those others who may follow in his footsteps." In fact, the appellant has not engaged in continued illegal activity nor has he ever aided and abetted others in registration refusal.

II. THE IMPOSITION OF A MAXIMUM FINE,
BASED UPON THE JUDGE'S DISAPPROVAL OF
APPELLANT'S EMPLOYMENT BY THIS AMICUS
CURIAE, INFRINGED UPON APPELLANT'S FIRST
AMENDMENT RIGHTS.

In his statement concerning sentencing, the trial judge also stated:

"The court has also determined that it is appropriate for the maximum fine to be levied in this matter. The court, from the examination of the presentence report, is of the opinion that there is in this instance the appropriate support of his family, and the court is of the opinion that the family's financial resources does (sic) indeed provide him the luxury to choose to be underemployed based on the ready ability of the family to provide the support and financial assistance."

(Tr., p. 14)

At a subsequent hearing on the question of bail pending appeal, the court attempted to clarify this point:

"The Court perhaps did not as clearly enunciate the following, which should perhaps have been brought to the defendant's attention. The defendant up to

now has had the luxury to choose to be under-employed and to restrict and withhold his income potential as the result of the support he has received and the continuing support from his family. The Court believes that his income potential is such that the \$10,000 fine is indeed minimal when examining the qualifications, the experience and the tremendous abilities of this defendant."

It is apparent from these remarks that the judge imposed the maximum fine in this case in large part because of his belief that the appellant engaged in "the luxury to choose to be under-employed" by CARD, and that the fine was designed to oblige the appellant to choose other employment.

CARD has since its inception relied on charitable donations as its major source of income; its annual income averages about \$25,000, and the major portion of that income is devoted to the expenses of maintaining an office and producing educational materials. CARD is thus obliged to employ only those persons who are motivated by moral and political commitment to work for minimal pay in the interests of political beliefs. CARD is, in this matter, no different from a great many of the charitable and political organizations which have been active in this country's history. Similarly, the appellant's employment with CARD is part of an American tradition of "volunteerism", and is reflective of his commitment to the political activity in which he has been

involved.

The imposition of the maximum fine appears to be a desire to prevent the appellant from working full time for a political cause. It flies in the face of his First Amendment right to engage in political activity--in this case, a political effort to end the draft registration program and prevent a return to actual conscription.

It is clear that the judge imposed the maximum fine in order to prevent the appellant from working for a political cause which is supported by both the appellant and this Amicus Curiae, and thus to infringe upon appellant's First Amendment rights.

Bond v. Floyd, 385 U.S. 116, 132 (1966) stated:

"Certainly there can be no question but that the First Amendment protects expressions in opposition to national foreign policy in Vietnam and to the Selective Service system."

The activities of appellant and this Amicus Curiae come directly within this language from Bond. The trial judge was apparently under the misapprehension that the appellant's conduct, as well as that of Amicus Curiae, went beyond expression in opposition to national foreign policy and the Selective Service system to advocacy of non-registration. As shown above, this was incorrect. However, even if the judge's misapprehension had been true, such advocacy still would have come under the protection of the First Amendment. In Brandenburg v. Ohio, 395 U.S. 444 (1969), the Supreme

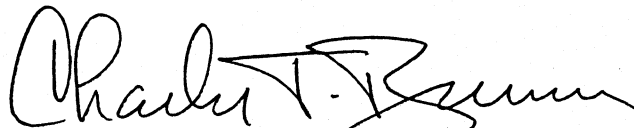
Court distinguished between advocacy and incitement, reiterating "the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to produce such action." Id, at 444.

Brandenburg flatly prohibited punishment based upon such advocacy. Id, 448. It follows that whether the judge imposed a maximum fine in order to punish or prevent advocacy of law violation, as he apparently thought, or in order to punish expression in opposition to government policy, the punishment, based squarely upon appellant's exercise, or possible future exercise, of rights protected by the First Amendment, was clearly improper and should be set aside.

CONCLUSION

For the foregoing reasons, the sentence should be reversed and set aside.

Respectfully submitted,



CHARLES T. BUMER
Attorney for Amicus Curiae

A P P E N D I X

OFFICE OF RECORDER OF DEEDS, D. C.

Corporation Division
Sixth and D Streets, N. W.
Washington, D. C. 20001

CERTIFICATE

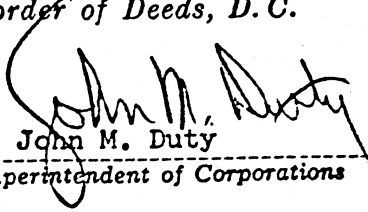
THIS IS TO CERTIFY that all provisions of the District of Columbia
Non-profit Corporation Act have been complied with and ACCORD-
INGLY this Certificate of Incorporation

is hereby issued to the COMMITTEE AGAINST REGISTRATION AND THE
DRAFT.

as of the date hereinafter mentioned.

Date April 29, 1980

PETER S. RIDLEY,
Recorder of Deeds, D. C.


John M. Duty

Assistant Superintendent of Corporations

ARTICLES OF INCORPORATION
Of
THE COMMITTEE AGAINST REGISTRATION AND THE DRAFT

To: The Recorder of Deeds, D.C.
Washington, D.C.

We, the undersigned natural persons of the age of twenty-one years or more, acting as incorporators of a corporation, adopt the following Articles of Incorporation for such corporation, pursuant to the District of Columbia Non-Profit Corporation Act:

I. NAME

The name of the Corporation is the Committee Against Registration and the Draft.

II. DURATION

The duration of the Corporation shall be perpetual.

III. PURPOSES

A. The Corporation is organized exclusively for charitable and educational purposes, more specifically the following:

1. To inform the public about the military draft and draft registration, its impact on individuals and society and any efforts to revive it. ,
2. To conduct and to sponsor educational seminars, meetings, and lectures, to publish and distribute educational literature, and to engage in other educational activities in the public interest on the issues of the military draft and draft registration.

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BY: _____

3. To promote, encourage and foster any other similar charitable or educational activity.
4. To accept, hold, invest and administer any gifts, bequest, devises, funds, and property of any sort or nature, and to use, expend, or donate the income or principal thereof for, and to devote the same to, the foregoing purposes of the Corporation.
5. To do any and all lawful acts and things which may be necessary, useful, suitable, or proper for the furtherance or accomplishment of the purposes of the Corporation.

B. No part of the net earnings of the Corporation shall inure to the benefit of any individual. The Corporation shall, however, be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its purposes. The Corporation may engage in carrying on propaganda, or otherwise attempting, to influence legislation only to the extent permitted to public charities by the Internal Revenue Code of 1954 (or the corresponding provision of any subsequent Federal tax law). The Corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.

C. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any activity not permitted to be carried on (a) by a Corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any subsequent Federal tax law), and (b) by a Corporation contributions to which are deductible under Section 170 of the Internal Revenue Code of 1954 (or the corresponding provision of any subsequent Federal tax law).

IV. MEMBERS

The Corporation shall be comprised of organizations opposed to the reinstatement of the military draft and draft registration. Admission to membership shall be as provided in the By-laws of the Corporation.

V. BOARD OF DIRECTORS

The manner of election of appointment to the Board of Directors of the Corporation shall be as provided in the By-laws of the Corporation.

VI. REGULATION OF INTERNAL AFFAIRS

A. The affairs of the Corporation shall be managed by the Board of Directors.

B. The initial By-laws of the Corporation shall be adopted by the Board of Directors, which may alter, amend or repeal the By-laws

or adopt new By-laws.

C. In the event of the dissolution or final liquidation of the Corporation:

1. None of the property of the Corporation or proceeds thereof shall be distributed to or divided among any of the directors or officers of the Corporation or inure to the benefit of any individual.
2. After all liabilities and obligations of the Corporation have been paid, satisfied and discharged, or adequate provisions made thereof, all remaining property and assets of the Corporation shall be distributed to one or more organizations which shall comply with all of the following conditions:
 - (a) Such organization shall be organized and operated exclusively for charitable, or educational purposes with its principal emphasis on the military draft;
 - (b) Transfers of property to such organization shall, to the extent then permitted under the statutes of the United States, be exempt from Federal gift, succession, inheritance, estate or death taxes (by whatever named called);
 - (c) Such organization shall be exempt from Federal income taxation by reason of

Sec. 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any subsequent Federal tax law); and

- (d) Contributions to such organization shall be deductible by reason of Sec. 170 of the Internal Revenue Code of 1954 (or the corresponding provision of any subsequent Federal tax law).

D. The Corporation shall seek sources of support as will enable it to qualify as an organization described in Section 509(a)(1) of the Internal Revenue Code of 1954 (or the corresponding provision of any subsequent Federal tax law). However, for any period for which the Corporation is a private foundation defined by Section 509 of the Internal Revenue Code of 1954 (or the corresponding provision of any subsequent Federal tax law), the Corporation shall be subject to the following restrictions and prohibitions:

1. The Corporation shall make distributions for each taxable year at such time and in such manner as not to become subject to the tax imposed on undistributed income by Section 4942 of the Internal Revenue Code of 1954 (or the corresponding provision of any subsequent Federal tax law).
2. The Corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code of 1954 (or the corresponding

provision of any subsequent Federal tax law).

3. The Corporation shall not retain any excess business holdings which will subject it to tax under Section 4943 of the Internal Revenue Code of 1954 (or the corresponding provision of any subsequent Federal tax law).
4. The Corporation shall not make any investments in a manner such as to subject it to tax under Section 4944 of the Internal Revenue Code of 1954 (or the corresponding provision of any subsequent Federal tax law).
5. The Corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code of 1954 (or the corresponding provision of any subsequent Federal tax law).

VII. REGISTERED OFFICE AND REGISTERED AGENT

A. The address of the Corporation's initial registered office is: 245 Second Street, N.E., Washington, D.C. 20002.

B. The Corporation's initial registered agent at such address is: Mr. Duane Shank.

VIII. DIRECTORS

A. The number of directors constituting the initial Board of Directors of the Corporation is six. The number of directors may be increased or decreased from time to time by amendment to the By-laws, but shall in no event be less than three.

B. The names and addresses of the persons who are to serve as the initial directors until their successors are elected and qualify are:

<u>Name</u>	<u>Address</u>
Rev. Barry W. Lynn	United Church of Christ, Office for Church in Society 100 Maryland Avenue, N.E. Washington, D.C. 20002
David E. Landau	American Civil Liberties Union, Washington Office 600 Pennsylvania Avenue, S.E. Suite 301 Washington, D.C. 20003
Jule Herbert	National Taxpayers' Union 153 E Street, S.E. Washington, D.C. 20003
Tom Palmer	Students for a Libertarian Society 1516 P Street, N.W. Washington, D.C. 20005
Frank Jackalone	United States Student Association 1028 Connecticut Avenue, N.W. Washington, D.C. 20036
Margaret Mason	Women USA 293 G Street, S.W. Washington, D.C. 20004

IX. INCORPORATORS

The names and addresses of the persons who are the incorporators of the Corporation are:

<u>Name</u>	<u>Address</u>
Rev. Barry W. Lynn	United Church of Christ, Office for Church in Society 100 Maryland Avenue, N.E. Washington, D.C. 20002

David E. Landau

American Civil Liberties Union,
Washington Office
600 Pennsylvania Avenue, S.E.
Suite 301
Washington, D.C. 20003

Edward Snyder

Friends Committee on National
Legislation (FCNL)
245 Second Street, N.E.
Washington, D.C. 20002

IN WITNESS THEREOF, we subscribe and acknowledge these
Articles of Incorporation this 16 day of April, 1980.

Subscribed and sworn to, before
me, this 16th day of April, 1980

Donna E. Wood
Notary Public, P.S.

My Commission Expires 1-1, 1982

Rev. Barry W. Lynn
Rev. Barry W. Lynn

David E. Landau
David E. Landau

Edward Snyder
Edward Snyder

National AntiDraft Conference Resolutions

Principles of Unity

1. CARD membership must be open to any individual or group that supports our program, regardless of their political persuasion or other affiliations. We will represent many diverse political points of view, but we will be open to all and will unite with all who support our program, regardless of other differences.

2. We reject re-institution of the draft and any other form of mandatory national service as a violation of the basic principles of freedom. Conscription is a form of involuntary servitude which disrupts the lives of youth and increases government control over citizens.

3. The reinstatement of draft registration in 1980 caused widespread protests among the American people, particularly draft-age youth. CARD has shown its potential for building a large, powerful anti-draft movement which can stimulate debate among people about the present dangerous U.S. military policy. Such debate can mobilize the people in public protest against that policy and the draft and further the cause of peace. It was this kind of informed, aroused and vocal mass anti-war movement in the 60's and early 70's which helped stop the war in Vietnam. We are, therefore, certain that we can organize a mass movement against the reinstatement of the draft and any new Vietnams.

CARD's task in the period ahead is now to build a broad-based movement opposed to the draft and the U.S. government's current war drive: this includes the labor movement, ethnic minorities, communities, women, veterans, religious groups and particularly the young among these groups who would be the ones sent to kill or be killed in future Vietnams.

If CARD is to succeed, the U.S. government's efforts to reinstate the draft must be seen as a central and essential part of its broader plans for future wars of intervention. History demonstrates that draft registration is followed by the actual drafting of men and that such a draft leads to war. For ten years the U.S. government carried on its unpopular war against the Viet-

namese without even bothering to declare war; and it could do so only because of the draft which provided the manpower necessary to wage that war. Today we face the increasing danger of another Vietnam-type war in El Salvador and the Persian Gulf. As the government stirs up pro-war sentiment at home and increases its war-like stance and military aid to such regions, there will be an ever increasing tendency for the government to move from draft registration to the actual drafting of our young brothers and sisters. Indeed, President Reagan has backed away from his campaign statements opposing draft registration and Congress is pushing for a stronger U.S. military presence in the world. We believe that U.S. armed forces should be reduced in size, not expanded to increase their interventionist capability. The call towards conscription is not an isolated wrong, but a reflection of America's militaristic foreign policy.

Therefore, CARD must not only oppose the draft, but we must also oppose U.S. military intervention in other countries. To this end, we must speak out now in opposition to the dangerous and unwarranted U.S. military intervention currently underway in El Salvador, where we already send millions of dollars in military aid and "advisors."

Domestically, we oppose the use of U.S. military power to enforce corporate decisions: for strikebreaking or scabbing against striking workers, the repression of Native Americans and other minorities, or against student revolts on campuses.

4. Although CARD encompasses diverse political and economic viewpoints, we are united in our belief that the current excessive and wasteful level of military spending undermines human prosperity at home and abroad. Arms spending increases taxation, destroys jobs, contributes to inflation and diverts vital productive resources from human needs to destruction. The resulting lack of jobs forces a disproportionate number of poor and minority youth into the military, where they must defend with their lives a system which offers them no opportunity at home. Thus, while we oppose military conscription, we also strongly oppose the current political and economic conditions which push minorities and others into the All-Volunteer Force. We feel that workers, business people, taxpayers, the poor and minorities all have a stake in ending the draft and war economy.

5. We recognize and condemn the racist nature of the draft. Blacks, Hispanics

and other ethnic minority males have always been drafted and killed in numbers much higher than their actual numbers in the population. (During the Vietnam War, Afro-Americans comprised 10% of the population, but 20.6% of the battle casualties.)

It is impossible to wage a principled and effective struggle against the draft and war without recognizing the relationship between militarism, racism, sexism, and other forms of oppression. Thus, CARD will, as part of its struggle against the draft and wars of intervention, fight against discrimination on the basis of ethnic origin, race, sex, age or sexual preference.

6. We must oppose the drafting of women as well as of men. We must state clearly that being drafted is not a "right" to be extended to women. Rather, the draft represents oppression, and we do not support the extension of this oppression to women. To those who say the draft is a "responsibility" to be shared by all, we say: It is irresponsible to draft men or women to militarily intervene in other countries. A free people do not need to be forced into fighting for their true vital interests. We demand that the current congressional law that keeps women from being drafted be extended to men.

7. We seek to build a broad movement of active resistance to the draft, the poverty draft, and the U.S. wars they serve and support. We support many forms of draft resistance, including non-compliance and civil disobedience, as well as educating, organizing and mobilizing our families, classmates, co-workers and communities in anti-draft opposition. We can all resist the draft, whether or not we are personally subject to the draft law, by joining and building the anti-draft movement. We support the call for unconditional amnesty for all Vietnam war resisters at home and exiled abroad.

8. The resurrection of the GI movement is an imperative political objective which recognizes that the obligation of the anti-draft coalition does not end because a person is inducted into the military. There must be an end to all oppression of GIs, particularly those who organize in opposition to U.S. intervention, those who attempt to exercise their constitutional rights, those who attempt to unionize, and those who resist racist violence in the military.

Equally, we believe that CARD must support unconditional amnesty for the three-quarter million Vietnam-era resis-

ters and victims. The rough 700,000 veterans who were given punishment bad paper discharges, many as a result of resistance on the front lines, many as a result of racism in the military, must have their discharges upgraded and their benefits restored.

We believe that the primary focus of anti-draft organizing should be those groups—working class and national minorities—who have traditionally borne the brunt of military service. In light of the experience of veterans and the fact that veterans come predominantly from those sectors of society, veterans must play an integral role in anti-draft and GI organizing.

Finally, CARD should support veterans needs. The needs of the victims of America's last intervention have not been met. Vietnam veterans demand better educational benefits, decent housing, job training, an end to the administrative discharge process, and effective health care, particularly the testing, treatment and compensation for Agent Orange poisoning.

9. We recognize that both the return of the draft and the threat of nuclear war are a part of increasing American militarism. CARD therefore opposes the development, testing and deployment of all nuclear weapons, including halting the further development of the MX and cruise missiles and the scrapping of all plans for new nuclear weapons. We oppose the spread of Eurostrategic nuclear weapons to the NATO countries and call for complete disarmament. We support the right of all GIs to refuse to use nuclear and anti-personnel weapons (such as the neutron bomb) and pledge our support to all those who refuse to participate in the use of such weapons. Workers displaced by the shutdown of nuclear installations and plants that manufacture nuclear weapons should be given new jobs, the plants should be converted to production for peaceful use.

(Adopted by the First National Antidraft Conference, February 15, 1981; Detroit, Michigan.)

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the within action; I am employed in the County of San Diego, California, in which the within mailing occurred; my business address is 1168 Union Street, Suite 201, San Diego, California 92101. I served the following documents:

BRIEF OF AMICUS CURIAE COMMITTEE AGAINST
REGISTRATION AND THE DRAFT

of which the original document, or a true and correct copy, is attached, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

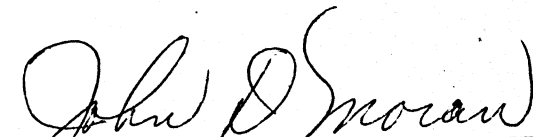
Peter Goldberger, Esquire
The Ben Franklin, Suite 400
Chestnut and Ninth
Philadelphia, Pennsylvania 19107

John R. Byrnes, Esquire
United States Attorney
120 North Henry Street
Madison, Wisconsin 53703

I then sealed each envelope and, with the proper postage thereon fully prepaid, deposited each envelope in the United States mail at San Diego, California on August 04, 1987.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this August 04, 1987 at San Diego, California.



JOHN D. MORAN, Declarant