

the ANTI DRAFT

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Wayte Wins -- Draft Law Ruled Invalid

THE TIDE TURNS!

The government's planned prosecution of nonregistrants was dealt a stunning setback November 15th when U.S. District Judge Terry Hatter, Jr. ruled that the draft registration law was invalid and dismissed the charges against David Wayte, a prominent Los Angeles draft resister. If Hatter's decision is upheld on appeal, the entire draft registration program could be jeopardized, nullifying current prosecutions of nonregistrants and leading to the overturning of those already convicted.

In dismissing the charges against David Wayte, Hatter found that the government violated a 30-day public notice regulation when President Carter enacted the draft registration law in July 1980. Wayte's legal defense team of National Lawyer's Guild and American Civil Liberties Union attorneys claimed the government had illegally promulgated the law by allowing only 21 days for public comment.

CARD Co-Chair Bill Smith, of the NLG and the Selective Service Law Panel of Los Angeles, headed Wayte's legal team.

Judge Hatter also ruled that Wayte was a victim of "selective prosecution" by the Reagan Administration. The judge said federal prosecutors failed to convince him that Wayte had not been picked for prosecution because he was a publicly vocal nonregistrant. Wayte's lawyers charged that the government sought to punish Wayte because he exercised his First Amendment right to free speech by publicizing his resistance.

In addition, Hatter cited the Reagan Administration's lack of good faith in prosecuting Wayte. Hatter noted that the Administration failed to turn over relevant government documents regarding the evolution of prosecution policy. The judge criticized the White House's refusal, on the grounds of "executive privilege," to make top Reagan aid Edwin Meese III available as a witness in the trial. Wayte's attorneys claimed Meese was deeply involved in making prosecution policy.

Justice: "We Do Have a Legal Problem."

The Justice Department conceded that "We do have a legal problem," but refused further comment other than to say that the Hatter decision would be appealed to the 9th Circuit Court of Appeals in San Francisco.

David Wayte hailed the ruling as a "big victory for us and a setback for the Selective Service System." Wayte declared, "The victory we've had shows that I can fight the government, act in accordance with my conscience, and beat the draft."

The ruling is potentially very damaging to the failing registration program. The failure to convict Wayte may boost resistance, as the government's threat of jailing public, let alone silent, nonregistrants is shown to be less intimidating. Fear of prosecution will be reduced. The ruling also set an important legal precedent for those cases yet to come to trial.

The Reagan Administration counted on easy convictions of the first resisters put on trial to scare nonregistrants to sign up, according to documents turned over to Wayte's attorneys. An October 1981 memo written by Lawrence Lippe of the Justice Department's Criminal

Continued on Page 4

The Committee Against Registration and the Draft

ANOTHER VICTORY IN IOWA!

The trial of Rusty Martin in Cedar Rapids, Iowa is another potential setback for the government. U.S. District Judge Edward McManus amended the indictment for Martin, a step that could have an important legal impact.

The government charged that Martin had a continuing duty to register. Judge McManus amended the indictment to read that Martin was obligated to register only during the week of July 21-26, 1980, the mass signup week for 20-year olds. McManus' amendment forces the government to prove Martin's whereabouts and that he was aware of his obligation to register that week. In short, the amendment makes it more difficult for the government to convict Martin.

If upheld, the amended indictment could set an important technical precedent for future cases. The U.S. Attorney's office in Cedar Rapids is appealing to the 8th Circuit Court of Appeals in St. Louis.

Martin told CARD, "My case is one more problem the government is having with prosecuting just 13 men out of a million. It shows that draft registration is a failure and should be dropped."

Martin is student body president of Northern Iowa University. A well known resister, he was re-elected as president by a wider margin than he was for his first term. In a 1980 national TV debate with former SSS boss Bernard Rostker about registration, the draft, and U.S. military intervention, Martin emerged the clear victor. At the last minute, current SSS director, General Thomas Turnage, backed out of a 1982 national TV joint interview with Martin.



NATIONAL CARD SPEAKING TOUR

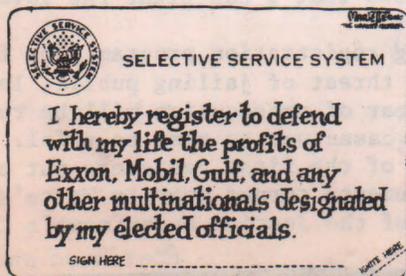
Black Veterans for Social Justice hosted a very successful CARD Steering Committee meeting in Brooklyn, N.Y. on November 13-14. The meeting was attended by about 60 people representing 28 organizations. Among the many program decisions which came out of that meeting is a national speaking tour of current and former war resisters and veterans, including Third World people and women.

The tour is to be coordinated with the United States Students Association (USSA) and the Progressive Student Network, and many of the speaking engagements will take place on college campuses during a two-week period from February 21st through March 6th. The tour will culminate with National Student Lobby Day on March 7, 1983. On that day students from all over the country will converge on Washing-

ton, D.C. to intensively lobby their representatives in Congress. They will push for overturning legislation which ties federal student aid to draft registration (see article this issue). CARD will participate in a national press conference at this time, in which thousands of petitions collected during the tour will be presented.

In order for this tour to be successful, it will require the active participation of local CARD groups. We are encouraging community-based antidraft groups to contact local student groups and explore cooperation in setting up joint campus-community events (or possibly doing one on the campus and another in the community). Local antidraft groups can also help in providing one or more of the speakers--say a local nonregistrant, or Vietnam-era war resister and/or veteran. National CARD will also be locating speakers who can travel as part of this multi-generational war resistance tour.

This plan is still being developed. We need your ideas and your participation. Now is an ideal time to be hooking up with campus activists! If you are interested, please contact our national office. Also, now is the time to begin circulating petitions. If you need some, contact CARD.



MINNESOTA PIRG FIGHTS BACK!

The Minnesota Public Interest Research Group (MPIRG) has struck an important blow for the antidraft movement. On November 24th they filed a lawsuit against the new federal law requiring students to comply with draft registration rules before they can get federal loans and grants. MPIRG questions the constitutionality of the law, saying it is "pure discrimination on the basis of wealth."

A non-profit advocacy organization with 42,000 members on Minnesota campuses, MPIRG is asking Judge Paul Magnuson to enjoin enforcement of the law on the grounds that it is an unconstitutional denial of equal protection for poor and middle-class male students who need federal financial aid. Students who do not need such aid are not burdened by the connection between draft registration and aid eligibility, MPIRG argued.

The advocacy group also challenged the law on grounds that it violates a student's right against self-incrimination, that it determines guilt without a trial, and that it violates the 1974 Federal Privacy Act.

James M. Rosenbaum, U.S. attorney for Minnesota, indicated that because of its national significance the suit might be handled by attorneys from the Justice Department in Washington. A hearing is scheduled for Dec. 10 in U.S. District Court in Minneapolis.

The lawsuit doesn't contest draft registration itself, but as Gail Suchman, an MPIRG attorney stated, "rather, we challenge a law by which the federal government attempts an end run around the Constitution, overriding individual rights for the sake of mere administrative convenience."

The defendants are the Selective Service System and the Department of Education, which is required to draft the new application rules. They will take effect January 1, and although no students are yet affected, MPIRG lawyers said that was all the more reason to seek a preventive legal block against the law.

It was passed as a rider to the 1983 Defense Authorization Act and requires all draft-age male students applying for federal grants or guaranteed loans to sign a statement asserting they have complied with the Selective Service Act.

CARD is distributing a national petition calling for the overturning of this unjust law. We want to collect as many signatures as possible in the next few months so that they can be presented to Congress as part of National Lobby Day which is being organized for March 7th by the United States Student Association, a CARD affiliate.

THIS CALLS FOR A CELEBRATION!

There is a time to protest, and there is a time to celebrate our victories.

The recent victories in the David Wayte case and the Rusty Martin case (see articles this issue) mark a real turning point in the government's prosecution efforts. After four convictions, the government has lost (or is losing) two important cases. If these legal victories stand up against government appeal efforts, they could seriously jeopardize the entire registration program. The government is now on the defensive, the indictments have stopped, and even the cases they have won may be overturned!

The hard work of many antidraft activists and lawyers is paying off! And yet the media, and for that matter the antidraft movement itself, has not really taken full stock of these significant victories. CARD recommends that local antidraft groups consider organizing some kind of celebration, perhaps over the holidays. Good food, drink and music could be combined with discussion of the significance of our recent victories, and congratulations for all our good work over the last few years. You might consider inviting members of the media, so that the good word will get out more widely.

However small or large an event you might organize, this is definitely a time for celebration, and CARD salutes you and all your efforts. We look forward to working with you toward further victories!

Division explained: "The manner in which the department handles these cases is likely to have a great impact on the continued viability of the registration scheme. If we handle them well, then registration is likely to increase. If we handle them poorly, then registration is likely to decrease."

"The chance that a quiet nonregistrant will be prosecuted is probably the same as the chance he will be struck by lightning."

But the government botched the Wayte case and faces the prospect of more courtroom failures. Because the huge number of nonregistrants who would be tried under an "active" enforcement plan could overwhelm the federal court system, the Administration chose at first to try only a handful of public resisters. A July 1981 memo by Justice Department counsel David Kline identified the types of men to be prosecuted as "those who wrote to Selective Service and said that they refused to register and those whose neighbors and others reported them as persons who refused to register." Kline noted that no steps would be taken to prosecute silent nonregistrants. The Kline memo concluded graphically, "The chance that a quiet nonregistrant will be prosecuted is probably the same as the chance that he will be struck by lightning."

A March 1982 memo drafted by Kline indicated that the Justice Department was aware of the illegality of the Administration's prosecution policy. Kline wrote "There is a high probability" that persons selected by the passive enforcement plan "are vocal proponents of nonregistration." Kline predicted: "A prosecution of a vocal nonregistrant will undoubtedly lead to claims that the prosecution is brought in retribution for the nonregistrant's exercise of his First Amendment rights."

Kline warned, "We believe that if the government initiates prosecutions with only the present passive identification scheme in place, there exists a real risk that the U.S. will lose at least a few of the initial cases."



The White House Link

The Wayte case revealed a White House role in the making of prosecution policy. Wayte's attorneys believe cross-examination of Meese would have shown the Meese was a main architect of the selective prosecution policy.

One memo from Selective Service Director, General Thomas Turnage to Meese in response to "your instructions," outlined steps to be taken regarding "the identification and location of nonregistrants." Meese's refusal to testify came after Judge Hatter warned that refusal would lead to dismissal of charges against Wayte.

The evidence supplied by the government in the Wayte case gives additional weight to the antidraft movement's charges of selective prosecution, making it likely that more cases will be thrown out of court in the coming months. The potential exists for seriously blunting the first wave of prosecutions, further demonstrating the combined impact of massive nonregistration, political support for resistance, and the expertise of the legal arm of the antidraft movement. Bill Smith notes that no new indictments of nonregistrants have been issued since Wayte's pretrial hearing began.

Strong Political Support Important

The ACLU's Mark Rosenbaum, a member of Wayte's defense team, pointed out, "The strong political support for Wayte was an important factor in winning the case." Hundreds of anti-draft activists held daily demonstrations outside the courthouse and jammed the courtroom to show support for Wayte and other resisters.

As of early November the Selective Service System estimated there were 585,000 nonregistrants. Antidraft activists know that the government is covering up the true number of nonregistrants which is much higher. We know that the registration program has lived on borrowed time as SSS officials made the false claim that the first prosecutions would start a stampede of nonregistrants to the post offices, rescuing registration from complete failure. Many activists believe the government's inability to convict Wayte could spur a new wave of resistance which could lead to the program's undoing.

The work of the antidraft movement now is to get the word of the Wayte case victory out - that the Reagan Administration's threats of prosecution are turning into the growls of a paper tiger.

(For a copy of the 36-page Hatter decision, send \$4.00 to National CARD.)

SUPPORT SOUTH AFRICAN DRAFT RESISTERS

The South African Military Refugee Aid Fund (SAMRAF), a U.S. based organization which assists draft and military resisters from South Africa, has called for a New York City demonstration on January 22. January is the month when the big annual call-up of white South African youth into the military takes place. The role of the South African military is to enforce the racist, apartheid system in South Africa, and to occupy neighboring Namibia to prevent the Black majority from coming to power. SAMRAF, a member of CARD, wants endorsements and participation from as many groups as possible. The CARD Steering Committee has endorsed this demonstration, and encourages our local groups and affiliates to contact SAMRAF and find out how even far-flung activists can plug into this demo. Their address is 29 Seventh Ave., Brooklyn, N.Y. 11217. Telephone: (212) 638-0417.



Paul Conrad/Los Angeles Times

"The pro-freeze movement is being manipulated!"

PROSECUTION UPDATE

ENTEN ELLER, the first man convicted of non-registration in the 1980s, has been sentenced to two years of alternative service, to begin after he graduates from college. Eller had refused to register as a condition of probation, even though threatened with jail....MARK SCHMUCKER, a Mennonite from Alliance, Ohio, was sentenced in October to three years probation, including two years alternative service, and a \$4,000 fine. He is appealing his conviction....GARY EKLUND of Des Moines, Iowa has been convicted and sentenced to two years confinement. He and Ben Sasway are the only men to receive jail sentences thus far. Both had judges determined to make examples of them. Gary is free pending appeal. His address is 1555 W. 29th St., Davenport, IA 52804.

BEN SASWAY has been ungagged by the 9th Circuit Court of Appeals, who said that Judge Thompson's order that he refrain from speaking publicly against registration is a violation of his First Amendment rights. Ben remains free pending appeal and has expressed an interest in joining CARD's multi-generational speaking tour (see page 2)...KENDAL WARKENTINE, a Mennonite in Wichita, Kansas pled guilty when the judge would not accept a "no contest" plea. His sentencing is January 24....CHUCK EPP, also a Kansas Mennonite, doesn't yet have a trial date....GILLAM KERLEY and MICHAEL McMILLAN are expecting trial dates in Madison, Wisconsin in January and February. Kerley may also join CARD's speaking tour. Financial support can be sent to Legal Defense and Bail Fund, P.O. Box 606, Madison, WI 53701.

ED HASBROUCK's trial has been set for December 15th in Boston. He can be reached c/o Mass Open Resistance, 1020C Commonwealth Ave., Boston, MA 02215....RUSS FORD's judge is seriously ill, and no trial date has been set. He can be written c/o Ecology House, 69 Hight St., Middletown, CT 06457....PAUL JACOBS, a Libertarian from Arkansas, remains underground.

We Need Your Help

In the more than three years of its existence, CARD has responded to thousands of requests from local and national groups, individuals and the media. We are constantly answering questions about current developments in the struggle against registration and the draft. And all this while we are coordinating national antidraft activities! Our printing, mailing and telephone costs are extraordinary. In order to persevere in this important work, we need your continued financial support. Please send whatever you can today, or consider making a monthly pledge. Every dollar helps!

Here's \$10 \$25 \$100 other _____

I will pledge \$ _____ per month.

Name _____

Address _____

City, State, Zip _____

COMMITTEE AGAINST REGISTRATION AND THE DRAFT

201 Massachusetts Ave. N.E. #111
Washington, DC 20002
(202) 547-4340

**HELL NO!
WE STILL WON'T GO!**



**SUPPORT
DRAFT RESISTANCE.**

Before you register, call:

Committee Against Registration and the Draft

201 Massachusetts Ave. NE, Washington, DC 20010 (202) 547-4340

STICK 'EM UP! Everywhere. They come in red, white and blue and are a good way to counter the intimidation tactics of the SSS. 100 for \$15.00, 50 for \$8.50, 25 for \$5.00, 4 for \$1.00. Order now!

INTIMIDATION TACTICS

Selective Service recently turned over to the Justice Department five names they received from the mailing they did to 33,000 suspected nonregistrants whose names came from Social Security files and addresses from the Internal Revenue Service. Selective Service touted this as the start of the government's "active" enforcement efforts, but later admitted these men responded to the warning letters by writing the draft agency that they would not register. According to CARD co-chair and antidraft attorney Bill Smith, it will take several months before indictments can be brought against these men, and that they could make a strong case they were being selectively prosecuted.

IF YOU'RE OLD ENOUGH TO DRIVE . . .

Selective Service disinformation officer Joan Lamb announced that Selective Service recently mailed 154,000 warning letters to men whose names were obtained by cross-checking their files with drivers license lists from 44 states. Receipt of such warning letters is no indication of imminent prosecution. Bill Smith advises that people who receive these letters should not feel compelled to register, especially now that the legality of the entire program is in question. Rather, they should seek draft counseling.

/ THANKS TO OUR SUPPORTERS!!

Our recent appeal for financial support was met with a very encouraging and generous response. This has allowed us to pay our rent and phone, keep our office staffed, and to produce this issue of Anti-Draft. We want to thank all our wonderful supporters. The important victories reported in this issue are in no small way yours. Believe us, you are very much appreciated! We salute you, and wish you all a joyous holiday season. Peace.

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