



In some circles, the best way to silence opposition to war is to turn the dissenters into soldiers, especially if it has been decided beforehand that soldiers have no right to dissent.

This worked very handily for the Selective Service System until the American Civil Liberties Union Foundation argued that first amendment rights do extend to draftees and to military personnel.

The Supreme Court agreed, in three of the most significant such cases since the Selective Service Act was passed in 1940. The Oestereich, Gutknecht, and Breen cases will affect millions of potential draftees. Not only were protesters threatened with immediate 1A reclassification until now, but anyone who was late in giving a draft board a change of address or notification of his marriage, anyone who mistakenly reported for his physical on the wrong day, anyone considered guilty of the least bureaucratic lapse could be inducted as punishment.

7500 soldiers have been inducted in this manner.

In the past two years the ACLU and its tax-exempt Foundation have filed hundreds of cases in defense of the First Amendment against the Selective Service System's conscientious objection practices and General Hershey's directive ordering draft boards to reclassify and induct "misguided registrants" involved in "illegal" anti-draft protests.

*The Supreme Court ruled on three of these cases:*

- *Oestereich v. Selective Service*, on December 16, 1968, the Supreme Court ruled that an exempt theological student was unconstitutionally punished with a 1A classification after he turned in his draft card to the Justice Department. *This was the first such case in the nation.* The decision termed punitive reclassification basically "lawless" and held that the induction order could be enjoined.
- *Gutknecht v. United States*. In 1967 a draft information worker threw his registration card at the feet of a U.S. Marshal in Minneapolis during a protest demonstration. He had already been classified 1A and was appealing his draft board's refusal to classify him as a conscientious objector. He was declared delinquent and ordered to report for induction in five days. Refusing, he was convicted as a Selective Service Law violator and sentenced to four years in prison. In a central test of the constitutionality of General Hershey's directive the Supreme Court ruled on January 19 of this year that the Selective Service System had no "free-wheeling authority to ride herd on the registrants" and agreed with the Foundation that this type of "administrative absolutism" is not "congenial to our lawmaking traditions."
- *Breen v. Selective Service*. An undergraduate at the Berkeley School of Music in Boston registered his protest against the war by handing over

his draft card to a clergyman, and was immediately reclassified 1A by his local draft board. On January 26, one week after the Gutknecht decision, the Court held that a 1967 law, prohibiting court review of classifications before induction, could not prevent a draftee with a student deferment from securing pre-induction judicial review of his "lawless" reclassification to 1A for turning in his draft card.

*A Federal Court ruling:*

- *Murray v. Selective Service*. In a widely-publicized case the Federal District Court in Rhode Island held that a Peace Corps volunteer who wrote a critical letter on Vietnam in a Chilean newspaper was illegally fired from the Peace Corps, illegally classified 1A and ordered to report for induction into the Army.

Other items from the dozens of cases on the Foundation's Selective Service docket either recently settled or pending reflect the many-sided protection given to the Constitution by the Foundation in its legal counter-offensive:

- *Bigman*. Tests the right of a CO to refuse to register for the draft.
- *Daniels and Harvey, 1969*. Two black marines sentenced to the Portsmouth Naval Prison on the basis of their criticism of the war in Vietnam and their observations about the domestic racial situation were subject to harsh and inflammatory treatment. This case was argued in the Court of Military Appeals on February 18, 1970, by ACLU Foundation lawyers.
- *Zimmerman, 1969*. This is a central case testing the constitutionality of the draft. It is pending in the United States District Court in New York.
- *Morico v. U.S.* Tests the nature of religious training and belief required to secure CO exemption.

The Foundation is prepared to take cases seeking to restore all registrants to the status to which they were entitled before being illegally reclassified, and cases seeking to release the 7500 soldiers illegally inducted.

The American Civil Liberties Foundation has seen to it that the use of the draft for punishment was effectively challenged. The Foundation is also testing the constitutionality of the draft itself.

Given its resources and an expanded docket, the ACLU Foundation can do a great deal toward seeing that the First Amendment is kept alive. One of the Foundation's resources is you.



*Your donation is tax-deductible and very welcome. It couldn't be put to better use.*