

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

-----X  
: UNITED STATES OF AMERICA :  
: :  
: Vs. : CR. 82-269-01-N :  
: :  
: EDWARD JOHN HASBROUCK :  
: :  
: Defendant :  
: :  
-----X

BEFORE: HON. DAVID S. NELSON,

District Judge

Federal Courthouse  
Boston, Massachusetts  
January 14, 1983

APPEARANCES:

FOR THE GOVERNMENT: ROBERT S. MUELLER, III, ESQ.

FOR THE DEFENDANT: EDWARD JOHN HASBROUCK, Pro Se,  
and BENJAMIN HILLER, ESQ.

COURT REPORTER: MURIEL F. JAMES  
204 USPO & Courthouse  
Boston, MA. 02109  
(617) 542-6847

1                                    January 14, 1983.

2  
3                    THE CLERK: CR 82- 00269-N, United States of America  
4                    versus Edward Hasbrouck.

5                    Would counsel identify themselves for the record,  
6                    please?

7                    MR. MUELLER: Robert Mueller for the United  
8                    States. Good morning, your Honor.

9                    THE COURT: Good morning.

10                   MR. HASBROUCK: Edward Hasbrouck, good morning.

11                   MR. HILLER: Good morning.

12                   THE COURT: There is a matter that is not in front  
13                   of me. But I would like to make a determination about that  
14                   now.

15                   I don't know if the Government was served or  
16                   proffered a motion, and it's a motion entitled, "For An Act  
17                   of Judgment and Dismissal." And an application for leave to  
18                   appear as amicus.

19                   MR. MUELLER: Yes, your Honor, we were. And I  
20                   believe I filed a brief response.

21                   THE COURT: To be honest with you, I didn't see the  
22                   response. But who represents -- who, Virginia Lee?

23                   MS. LEE: Yes, your Honor.

24                   THE COURT: I'll hear you briefly on one issue, and  
25                   the only issue is your standing as it were, the eligibility

1 of and any authority to support your ability to file this  
2 motion.

3 MS. LEE: Your Honor, I don't think that we have an  
4 argument on the standing issue. I presented you with a  
5 brief, if you care to read it and take notice of it. It's  
6 really up to you.

7 THE COURT: Well, I have looked at it, and I'm  
8 guided only by the Federal Rules in terms of who may make  
9 such a motion, and I don't conclude that you are included in  
10 that group. Therefore, the motion for arrest of judgment and  
11 dismissal are denied, as improperly offered.

12 MS. LEE: Thank you, your Honor.

13 With regard to the substantive issues in our  
14 memorandum then, you are not going to reconsider them at  
15 all? Is that your ruling?

16 THE COURT: I don't know how I can. As I look at  
17 it, there is nothing in front of me; and I would certainly  
18 require and have to give right to the Government to oppose  
19 it.

20 If it comes to me in the form of a sentencing  
21 memorandum, I would be glad to give it regard.

22 MS. LEE: Okay. Thank you, your Honor.

23 THE COURT: One other matter, which is more in the  
24 nature of housekeeping, and that is the somewhat unusual  
25 nature of this case has me in possession of a lot of

1 letters. And what is usual is that they will go to the  
2 Probation Department to be filed with the Probation  
3 Department and made available as part of the probation record  
4 for counsel and the defendant.

5 Most of them, at least the ones that came early, I  
6 did send to the Probation Department, and some I took back  
7 because I still hadn't read them. And since then maybe a  
8 hundred more came in, and I just haven't had an opportunity  
9 to refer them to the Probation Department. And today, the  
10 rest of the mail that's come in today, I haven't had a chance  
11 to open them up, so if you don't have access to these, you  
12 can have access to them. And if you need to have access to  
13 them, you can have access to them. They are all here.

14 And to the extent that -- with the understanding  
15 that I have limited resources, brain power, eye power, I  
16 can't read them all. So some I haven't read. But I take it  
17 that there is a general theme through most of them, most of  
18 them being in support of the defendant's sentencing.

19 Any problems about that?

20 MR. MUELLER: Your Honor, I have no problems about  
21 that.

22 There is one other housekeeping matter, if the Court  
23 is finished with that particular matter.

24 THE COURT: Yes.

25 MR. MUELLER: And that is a motion we filed to

1 correct the record of the number of grand jurors concurring.  
2 And that was filed some time ago. And that is a matter of  
3 housekeeping, because the foreman of the grand jury  
4 erroneously put down on the form the incorrect number  
5 concurring.

6 THE COURT: If I haven't acted on it, and I take  
7 it there is no opposition to it, I will endorse it allowed.

8 MR. MUELLER: Thank you, your Honor.

9 MR. HASBROUCK: There is no objection.

10 THE COURT: Now, Mr. Hasbrouck, what might be a  
11 question of housekeeping is, are you representing yourself or  
12 are you being represented?

13 MR. HASBROUCK: I'm speaking for myself.

14 THE COURT: And I suppose, nevertheless, you are  
15 looking for an opportunity to say something?

16 MR. HILLER: I think Mr. Hasbrouck is well able to  
17 express himself, Judge, and I appreciate the offer, but --

18 THE COURT: It's not an offer.

19 Now, first of all, Mr. Hasbrouck, have you received a  
20 copy of the probation report?

21 MR. HASBROUCK: I was allowed to look at one, I  
22 wasn't allowed to make a copy, to get a copy. I have one  
23 here. I was told I have to return it at the end.

24 THE COURT: Having looked at it, are you satisfied  
25 that you have had enough opportunity now to have been able to

1 absorb and to understand what's within it?

2 MR. HASBROUCK: Well, I think it would have helped  
3 if I had been able to copy it so that I could make it  
4 available to other people so that they could have pointed out  
5 to you and the Probation Office some of the errors in it.

6 THE COURT: Well, my understanding is that the law  
7 on the presentence report mostly made, at least it's believed  
8 to have been made for the basis of protecting the  
9 confidentiality of the defendant, but also the  
10 confidentiality of the probation system, so this material  
11 isn't available to the public in general.

12 Now, whatever is in the report, of course, you have a  
13 right to express to others and what have you.

14 Now my interest only is whether or not you see any  
15 omissions, errors, or anything else that needs corrected or  
16 amended or added to this report.

17 MR. HASBROUCK: There are a great number of  
18 omissions. Most of what I have said to the probation officer  
19 was not included in the report. At the same time that she  
20 complained that I have not been cooperative and not told her  
21 very much, it seems contrary to me.

22 There are a number of errors, mostly small. It  
23 states that I am --

24 THE COURT: Refer to the page and that will help  
25 me.

1           MR. HASBROUCK: Okay. The cover sheet of the  
2 presentence report, the custodial status on bail, \$1,000  
3 unsecured bond. I'm out on personal recognizance, as the  
4 Court knows.

5           THE COURT: Unsecured bond with personal  
6 recognizance.

7           MR. HASBROUCK: But there's no \$1000, as far as I  
8 know.

9           THE COURT: Well, the form is usually \$1,000  
10 unsecured bond, and that means that you have to put up no  
11 money; but if you violate the conditions of your bond, you  
12 will be in debt to the Government for \$1000.

13           MR. HASBROUCK: That was not on the forms that I  
14 signed, as I recall. I don't have them with me. And that's  
15 just a small matter. I point these out --

16           THE COURT: I'll note that.

17           MR. HASBROUCK: There are a number of small  
18 errors. It makes me wonder --

19           THE COURT: Well, don't wonder. Just look it at  
20 and tell me what is incorrect.

21           MR. HASBROUCK: The prior record. The first thing  
22 listed has a conviction, was not; it was continued without a  
23 finding for six months and then dismissed.

24           THE COURT: What page is that, please?

25           MR. HASBROUCK: Page 1.

1 THE COURT: All right.

2 And you say -- now we are talking about the last  
3 entry on that page?

4 MR. HASBROUCK: Yes.

5 THE COURT: And what's the difficulty with it?

6 MR. HASBROUCK: It says probation one year, which  
7 implies both a conviction and probation. Neither of them are  
8 true. It was continued without a finding and dismissed. It  
9 was never prosecuted and there's no conviction there.

10 THE COURT: As I read it, there's nothing about  
11 conviction.

12 MR. HASBROUCK: There was no probation either.

13 THE COURT: And there was no -- it was just simply  
14 dismissed?

15 MR. HASBROUCK: That's right.

16 THE COURT: Immediately?

17 MR. HASBROUCK: Yes.

18 THE COURT: Okay.

19 Is that what your records reflect as being true?

20 PROBATION, MS. SALOMON: My records reflect we have  
21 the investigation was done by the District Court in the  
22 Northern District of Illinois. The Probation Officer from  
23 that office, Stephen Carpenter, reported that Mr. Hasbrouck  
24 had the opportunity to go back into Court and have the record  
25 expunged, which he did not do. So therefore in his opinion



1 this would be something that we would include in the prior  
2 criminal record.

3 THE COURT: Now, if there is further difficulty  
4 about it I'll order a certified copy of the proceedings in  
5 Chicago and have it attached to the probation record.

6 MR. HASBROUCK: You are welcome to do that. I  
7 don't think it really matters that much.

8 THE COURT: And you are the guide to that. I'll  
9 tell you why it is important. But I won't do anything on my  
10 own as to this report. I will make sure that this report is  
11 as accurate as it can be, and you can help me to do that.

12 So, going from there, what else?

13 MR. HASBROUCK: Also on Page 1, the official  
14 version of the offense states in the second paragraph on that  
15 page, in the middle, the last sentence in the paragraph, in  
16 the letter, which it incorrectly said was dated October 31st,  
17 it was actually October 3rd --

18 THE COURT: Slow down. On October what?

19 MR. HASBROUCK: Third.

20 THE COURT: What letter are you referring to?

21 MR. HASBROUCK: The letter which was attached --

22 THE COURT: The same paragraph; is that correct?

23 MR. HASBROUCK: Yes.

24 THE COURT: And you say that the letter was  
25 dated --

1 MR. HASBROUCK: October 3rd.

2 THE COURT: Can you help me with that?

3 MR. MUELLER: Agreed. Stipulated.

4 THE COURT: Well, then the record can be amended to  
5 read October the 3rd. Okay.

6 MR. HASBROUCK: Then it says in this letter  
7 "Mr. Hasbrouck stated that he was born on January 11th, 1960,  
8 and therefore was required by law to register with the  
9 Selective Service."

10 I did not then in that letter nor have I ever said  
11 that I was required by law to register with Selective  
12 Service. I have said consistently that the law --

13 THE COURT: Excuse me, a second.

14 Mr. Mueller, you agree? Do you know that he --

15 MR. MUELLER: I have no reason to disagree with  
16 Mr. Hasbrouck --

17 THE COURT: Well, will this report be corrected if  
18 it reads in this letter Mr. Hasbrouck stated he was born on  
19 January 11th, 1960, period. Striking "and..." --

20 MR. HASBROUCK: Yes, that would be correct. What I  
21 specifically said in that letter was, quote, I was supposed  
22 to register -- a vast difference.

23 THE COURT: Let me just see that the record is  
24 corrected so that there is a period after 1960. And then  
25 simply that he was required by law. That would be the

1 accusation or declaration of the Government as opposed to  
2 your own.

3 MR. HASBROUCK: Yes.

4 THE COURT: So that's how it shall read. He was  
5 required by law to register for the Selective Service.

6 Anything else?

7 MR. HASBROUCK: Then on Page 2 under the entry for  
8 trespassing. It says Mr. Hasbrouck was represented by  
9 Attorney Moore. I acted pro se in that trial.

10 THE COURT: Again, I can't find that. What  
11 paragraph?

12 MR. HASBROUCK: Under the entry for 5/5/82.

13 THE COURT: I see now. You are now on Page 2?

14 MR. HASBROUCK: Yes.

15 THE COURT: All right. I have that.

16 And you say that you were not represented by  
17 Mr. Moore?

18 MR. HASBROUCK: That's right.

19 THE COURT: Do the records indicate that Mr. Moore  
20 filed an appearance?

21 PROBATION OFFICER: No, your Honor, but the records  
22 in the Probation Department indicated that Attorney Moore did  
23 represent him at some course in the proceedings, perhaps it  
24 was not at the disposition itself.

25 THE COURT: That's important. Because the question

1 is for impeachment purposes it has to be known whether or not  
2 in fact he was represented at trial or at disposition by an  
3 attorney, so it would be not be a valid basis for  
4 impeachment.

5 Since we don't know, we'll take your version of it  
6 and strike that sentence.

7 Is that all right with you, Mr. Hasbrouck?

8 MR. HASBROUCK: Yes.

9 THE COURT: The next item?

10 MR. HASBROUCK: On Page 4, education. The report  
11 states: "Mr. Hasbrouck refused to provide information  
12 concerning his educational background because he felt it was  
13 irrelevant." That is not a true statement.

14 I had declined to provide information about my formal  
15 schooling, since I felt that was irrelevant. I offered to  
16 provide the Probation Officer with whatever information I  
17 could about how I had been educated and how I learned the  
18 kinds of opinions that caused me to act as I did in this  
19 case, the kinds of political experiences that had led to  
20 them. She was not interested in that.

21 It was not that I refused to provide them.

22 THE COURT: So it is true that you have refused to  
23 provide information about your formal education?

24 MR. HASBROUCK: Formal schooling.

25 THE COURT: So we can change the words "educational

1 background" to read, "concerning his formal schooling". And  
2 will be willing to provide as part of his own statement for  
3 the record. Whatever you want to do in writing, apply. You  
4 may write it, and it can be attached to this record as far as  
5 your educational background is concerned.

6 Is that satisfactory?

7 MR. HASBROUCK: Yes.

8 In the next paragraph under employment, the report  
9 states: "Mr. Hasbrouck advised he does political work as a  
10 defendant on a full-time basis. He would provide no further  
11 details concerning his employment history."

12 Again, I didn't feel how I earned my money was  
13 relevant to my employment, since most of my occupation, how I  
14 occupy myself, how I spend my time is not making money.

15 I offered to provide information about my occupation  
16 and how I employ myself, doing political work, to which I  
17 referred, but again the Probation Officer was not interested  
18 in that, and it wasn't that I refused to provide it.

19 THE COURT: You have a right to provide for the  
20 record that information that you wish. So I'll provide you  
21 with that opportunity. You can offer it in writing, and it  
22 will be attached to your presentence report.

23 But as to this statement, I can detect nothing  
24 incorrect about it.

25 MR. HASBROUCK: The statement "he would provide no

1 more details concerning his employment history", is false.

2 THE COURT: Right, I wrote that, indicating that  
3 you would provide no details about your earnings.

4 MR. HASBROUCK: That is correct.

5 THE COURT: Plus you may add to it whatever other  
6 descriptions you want to make about your employment history  
7 that may be attached as your version to the report.

8 Is that satisfactory?

9 MR. HASBROUCK: Yes.

10 Then on Page 5, the last paragraph. "Little is known  
11 about the defendant's background history as he refused to  
12 cooperate with the presentence investigation."

13 I did not refuse to cooperate. I provided answers to  
14 all the relevant questions which were asked, some of which  
15 were incorporated in the presentence report. Most of the  
16 information I provided was not. I declined only to answer  
17 those questions that had no relevance to sentencing. And I  
18 don't think that constitutes a refusal to cooperate.

19 THE COURT: Well, I'll tell you how that gets  
20 resolved. We can change the language to say, and in my  
21 opinion refused to cooperate with the presentence  
22 investigation.

23 And then you can add your opinion that would  
24 characterize your willingness to provide the kind of  
25 information asked of you.

1           Is that fair?

2           MR. HASBROUCK: Hu-hu.

3           THE COURT: Okay. Now, anything else in this  
4 report?

5           MR. HASBROUCK: No.

6           THE COURT: Now, the reason that I spend this time  
7 with you and try to be quite specific is because this has a  
8 very, very salient, plays a very, very important part of  
9 sentencing; that I rely upon this report in great measure in  
10 order to assist me in coming to my determination as to what  
11 sentence to give you. I rely upon it in order to make sure  
12 that in future circumstances, I or any other member of this  
13 Court or any other Court that has access to it, can rely upon  
14 it as being factual and complete.

15           Not only does the Court rely upon it, but others who  
16 have access, legal access to this report, may rely upon it  
17 now and in the future, such as parole authorities, correction  
18 authorities, such as probation departments, such as  
19 investigatory agencies with the power to reach this  
20 presentence report.

21           And therefore it is absolutely essential that there  
22 be nothing in the report that does not reflect at least in  
23 substantial parts that which is true.

24           You understand that?

25           MR. HASBROUCK: Yes.

1 THE COURT: So, in any event, with those amendments  
2 you are satisfied that the report can be used with integrity?

3 MR. HASBROUCK: I don't think there's very much  
4 integrity to using a report based on information about these  
5 sorts of things as a basis for sentencing or for those other  
6 purposes.

7 THE COURT: Well, let me tell you that I'm using it  
8 and I'm going to use it for the purposes I expressed to you.  
9 And if there is anything wrong in that, then, of course, I  
10 want to know it. If not, I tell you now that I depend upon  
11 presentence reports and this one specifically in order to  
12 come to some judgment about what sentence.

13 MR. HASBROUCK: My question of is not about whether  
14 the information is true with those corrections, but simply  
15 whether it has that much value on sentencing. It doesn't  
16 tell you very much about me or about the nature --

17 THE COURT: You'll have another opportunity to tell  
18 me more about that, because you'll have an opportunity to  
19 speak to me about that. My mind is now focusing on this  
20 report and the use that I make of it, as well as others.

21 So knowing that, then, I will put that matter aside.

22 Now, what is the Government's recommendation, please,  
23 in this case?

24 MR. MUELLER: Your Honor, the Government's  
25 recommendation is that Mr. Hasbrouck be sentenced to



1 imprisonment of two years to be served, pursuant to 18 United  
2 States Code, Section 4205(b)(2). That's the Government's  
3 recommendation.

4 THE COURT: How do you interpret (b)(2)?

5 MR. MUELLER: That if Mr. Hasbrouck is sentenced  
6 under that particular provision, he can be paroled at any  
7 time, he does not have to serve the minimum one third; that  
8 the Parole Commission can determine at any time during his  
9 incarceration that he should be released.

10 THE COURT: Now that doesn't mean that he's  
11 automatically paroled --

12 MR. MUELLER: That's my understanding.

13 THE COURT: -- earlier than the one third. Nor  
14 does that apply to the one-third rule itself. It doesn't  
15 require that he be paroled within the one-third time.

16 MR. MUELLER: I think that's accurate, yes, your  
17 Honor. That's my understanding of how that section operates.

18 THE COURT: All right.

19 I'm going to give you a chance to offer the reasons  
20 for your recommendation.

21 But I would ask, would you like to be heard on the  
22 question of sentencing?

23 MR. HASBROUCK: I would prefer to be heard after  
24 Mr. Mueller. I think I could best say what I have to say in  
25 response to him then.

1           THE COURT: All right. And you understand that I  
2 will give him a chance at rebuttal, the chance that I would  
3 give you. Okay?

4           I'll hear from you.

5           MR. MUELLER: Your Honor, we have filed a  
6 sentencing memorandum which I believe the Court has had an  
7 opportunity to review.

8           THE COURT: I have it and I have read it.

9           MR. MUELLER: Mr. Hasbrouck has received a copy and  
10 so Mr. Hasbrouck knows both the recommendation and the  
11 reasons for the recommendation.

12           I would add and supplement at this time, your Honor,  
13 our memorandum with just one point. And that is the  
14 Government makes the recommendation after spending a great  
15 deal of time and taking into consideration the goals of  
16 sentencing, this particular individual, and the circumstances  
17 of this case. We did not make the recommendation lightly.  
18 We take it very seriously. We know the Court undoubtedly has  
19 gone through and spent a great deal of time also thinking  
20 about this sentence.

21           For the reasons set forth in the memorandum; that is,  
22 for deterrence reasons well as looking at the activity of  
23 this particular individual, Mr. Hasbrouck, and his utter  
24 disregard for the law, his placement of himself above the  
25 law, it is our belief that the interests of society and the

1 interests of the judicial system would be best served by  
2 sentencing Mr. Hasbrouck to two years incarceration with the  
3 opportunity for release upon determination by the Parole  
4 Commission that Mr. Hasbrouck should be released in society.

5 THE COURT: I'll hear from you, please.

6 MR. HASBROUCK: I think that the Government's  
7 recommendation, the reasons given for it, are largely  
8 specious. I'm not going to deal with them in detail.

9 I think it's fairly clear to Mr. Mueller, I think  
10 it's fairly clear to you, Judge Nelson, I think it's clear to  
11 most of the people in the courtroom, people who have written  
12 you letters, people who are aware of this case, that locking  
13 me up is not going to serve any purpose. It is certainly not  
14 going to deter me. In fact Mr. Mueller points in his  
15 memorandum to the fact that the time I have spent in jails  
16 and in federal prison in the past has not enhanced my respect  
17 for the law or for the people who are locking me up, and has  
18 not deterred me from doing what I believe to be right, even  
19 knowing, as I did when I refused to register, that that would  
20 likely put me in prison.

21 I think it's fairly clear, equally clear, that a  
22 prison sentence is not going to rehabilitate me. I think  
23 it's fairly clear in the nature of the crime itself that  
24 there is no need for retribution, for vengeance, for  
25 retaliation against peaceful refusal to take part in coercive

1 violence.

2       The only conceivable purpose to be served by a prison  
3 sentence in this case is not for its effect on me, unless you  
4 truly believe that I am a bad person who has done bad things  
5 and who would be better off locked up, which I don't think  
6 you believe. The only purpose to be served by a prison  
7 sentence in this case would be to attempt to scare other  
8 people who haven't registered into registering. And it won't  
9 do that. And I say that not to thumb my nose at you, I say  
10 that not as a threat, but as a statement of fact of which I  
11 think you can take judicial notice, that it is not going to  
12 work.

13       I think you know, Judge Nelson, as well as anyone,  
14 having seen my file and having seen the evidence that was  
15 introduced, that the only reason I was prosecuted was because  
16 I had written to the Selective Service saying that I hadn't  
17 registered. And if I hadn't done that, I wouldn't have been  
18 prosecuted.

19       I think you know as well as anyone that the only  
20 reason I was convicted was that I chose, for the same reasons  
21 that led me not to cooperate with the Selective Service  
22 System, not to cooperate with the judicial system and not to  
23 present a defense. And that I probably would not have been  
24 convicted had I presented a defense.

25       And I think you are probably aware that to the extent

1 that other people outside this courtroom and behind the bar  
2 have been able to see and to become aware of what really  
3 happened in my case, they will realize those facts; that I  
4 was only prosecuted because I wrote to the Selective Service;  
5 that I was only convicted because I chose not to present a  
6 defense. And they will realize from that that my prosecution  
7 is no threat and no deterrent to their refusing to register.

8 It can serve only as a deterrent to other people  
9 doing as I have done, speaking out publicly, directly to the  
10 Government, about what they have done.

11 I think a prison sentence from you could only be  
12 predicated on the belief that a valid purpose of the Court in  
13 sentencing is to suppress that kind of expression of dissent,  
14 to keep people from talking about what they are going to be  
15 doing anyway.

16 I offered the example of Santiago, where, as you  
17 probably know, the first indictment was brought, where the  
18 harshest sentence to date has been given, the thirty months,  
19 to Ben...; where since Ben's indictment, trial, conviction  
20 and sentencing, the rate of registration in Santiago County  
21 has fallen substantially as people have realized through his  
22 prosecution the limitation of any real threat of prosecution  
23 to any but those who speak out publicly about their non-  
24 registration.

25 All of this being so, I think it completely

1 impossible that a prison sentence from you to me is going to  
2 induce lots of people in the Boston area to go and sign up. I  
3 think it impossible that anything you could do by way of a  
4 sentence could salvage draft registration, which has already  
5 failed, and which is going in time to have to be abandoned as  
6 a failure.

7 At this point a bare majority of those that were  
8 supposed to be registered with the Selective Service are  
9 fully and properly registered. The rest either haven't  
10 registered at all, have moved leaving no record of their  
11 current address with the Selective Service, or refused to  
12 give their social security numbers, making it impossible to  
13 track them down.

14 The overall fact is that a draft is impossible. No  
15 one prison sentence, no five prison sentences, no whatever  
16 number of cases, the Government has the very limited  
17 resources in the face of millions of non registrants to  
18 bring, can possibly have any substantial effect on the level  
19 of resistance to registration.

20 They can only have any effect, those sentences, the  
21 possible prison sentence from you, they can only have any  
22 effect if you can succeed through them or if someone else can  
23 succeed in misrepresenting them as sentences not for public  
24 refusal to register but as sentences simply for  
25 non-registration. And I don't think it is a desirable

1 purpose of the courts to deliberately mislead people who are  
2 not in fact threatened by the Courts.

3 A sentence, I think, a prison sentence from you could  
4 only be based on a desire to generate misleading and  
5 intimidating propaganda, to induce people to do something  
6 that they believe to be wrong.

7 I have, as I have told you, been doing as best I  
8 could in satisfaction of the obligation that I feel to other  
9 people, to human society, the obligation that I feel arises  
10 from my position of privilege in the world, an obligation to  
11 work in the human interests, in the interests of my  
12 community, the human community, a community threatened above  
13 all else by nuclear annihilation from the weapons, first of  
14 the United States, and second of the Soviet Union, and all  
15 others with nuclear weapons.

16 If you do not sentence me to prison, I give you my  
17 word that I will continue as best I can to do that work in  
18 the community interest for peace and survival, and against  
19 oppression and repression. If you do sentence me to prison,  
20 I hope that I will be able to continue to do it anyway,  
21 although I know that I will be less effective, I will be less  
22 able to deal with people, and I hope I won't lose my ability  
23 to relate to them and to love them. But I will not lose my  
24 ability to speak out. And the function of courts and prisons  
25 is not to suppress free speech.

1 I know that the presentence investigation and the  
2 prosecutor's sentencing memorandum tell you very little about  
3 myself. I think in large part that your sentence in this, a  
4 case brought as a test case by the Government, a case  
5 prosecuted as a show trial by the Government, a case which  
6 even the prosecutor in his press release announcing my  
7 indictment, Mr. Weld said it was intended to deter other  
8 people, that that was the purpose of the prosecution.

9 Your sentence will be primarily a sentence on an  
10 idea and on a movement, and on all of the other people who  
11 you have heard from who have written, who have showed  
12 themselves outside the courtroom and who are in the courtroom  
13 today.

14 You have gotten a lot of letters already. I would  
15 like to give you now a few other letters that came in  
16 directly to me. One with two very large pages of signatures  
17 sent from Western Massachusetts, one with about three hundred  
18 signatures of people in Vermont, published in the newspapers  
19 the other day before my trial, and another, originally a  
20 letter to Magistrate Alexander, to whom this was originally  
21 assigned and before whom I was arraigned, which I think  
22 should properly go to you now, signed by people who were in  
23 the courtroom.

24 It says: "Those of us who have signed below believe  
25 that the case of the United States against Edward J.



1 Hasbrouck is also the case of the United States against each  
2 of us and against many others who are not here today. We are  
3 Edward's friends, family and neighbors. His indictment is  
4 also an indictment of our work, of our beliefs, and of our  
5 feelings against registration, the draft, militarism and  
6 war.

7 "We are here with Edward to answer your charges  
8 against us. For us to be here and to make this statement is  
9 for us to support, aid and abet and declare our complicity  
10 with Edward's.

11 "Accordingly, as unindicted co-defendants, we request  
12 if you convict Edward J. Hasbrouck that you convict us all,  
13 that you imprison all of us or none of us."

14 And on behalf of the people who signed that, I want  
15 to give that to you now.

16 THE COURT: Give it to Mr. Mueller first.

17 (Shown to Government attorney.)

18 (Document handed up.)

19 MR. HASBROUCK: There are things that you think are  
20 important that you would like to know fortunately, because I  
21 think, I think relatively little has been able to come  
22 through. I'm welcome to answer whatever questions you might  
23 have that might be important to you for sentencing.

24 THE COURT: If I see the need, and might well be, I  
25 will proffer questions to you or seek your responses.

1           MR. HASBROUCK: I would like to close with a poem  
2 that a friend of mine and a fellow nonregistrant wrote in  
3 Boston a year ago.

4           "America is preparing for war. I said America is  
5 preparing for war. Do you understand? Stop for a moment,  
6 listen, care. Will you care?

7           "I said America is preparing for war, right now, as  
8 you live your life, right now, America is preparing for war.  
9 In fact America is at war. America is killing right now.  
10 Look out the window. Your money is being turned to blood on  
11 the concrete of San Salvador. America is at war. In fact  
12 America is war. America is the bomb, America is the blood,  
13 America is the death.

14           "If we oppose war, if we oppose death, if we oppose  
15 the bomb, if we live this opposition, we oppose the corps of  
16 corporate America. We are a threat, we are a problem, we are  
17 a blemish on the cloned face of America. We are powerful, we  
18 are strong, we are a threat because our lives defy America.  
19 America is afraid, America is trembling, America is dying.  
20 Beneath the cloned face of military strength lies the falling  
21 decay, the end of America.

22           When we live our lives in opposition we have nothing  
23 to fear, because we are the future we have nothing to lose.  
24 Let us rejoice in the death of America."

25           I think there is a distinction between the America

1 which is waging war in El Salvador and Nicaragua, is  
2 preparing to wage war upon the world and upon itself through  
3 nuclear weaponry, between the America of Ronald Reagan and  
4 David Rockefeller, and between the American land, between the  
5 American people, between the ideals and what have often been  
6 only the myths of American democracy, of freedom, of free  
7 speech, of self-determination, of people deciding for  
8 themselves how to live their lives, and of Government  
9 responsible to the people. As the Declaration says, and  
10 whenever any form of government becomes obstructive of those  
11 freedoms, the right of the people to alter or abolish it to.

12 And I think your sentence is both a decision, whether  
13 you think I am a bad person who has done bad things, who will  
14 be better off punished, because I don't think that whatever  
15 you might desire, whatever Mr. Mueller might desire, your  
16 sentence is going to succeed in having much effect on anyone  
17 but me. It is both that and a choice between those  
18 Americas.

19 I have made that choice. I have acted openly and  
20 honestly on it, as best I could. I have acted as I felt  
21 right according to my conscience, and I hope that you will do  
22 likewise.

23 [Applause.]

24 THE COURT: If it comes to it, you know I will  
25 have to sentence you without support. So, in other words, if

1 it comes to it, I will just simply call you up here and  
2 sentence you and everybody that has come in your support or  
3 against you will not have the benefit of hearing it.

4 So it would be helpful, of course, if we can resolve  
5 this ultimately, what people think is their right, they can  
6 do. But in the meantime, I am suggesting that I'll still  
7 have so communicate my sentence to you; and I will do it the  
8 best way I possibly can.

9 Do you have something?

10 MR. MUELLER: I do have a few short points, your  
11 Honor, in response to Mr. Hasbrouck. And taking them as I  
12 pick them up in his statement to the Court.

13 In making our recommendation, the Government's  
14 recommendation, we don't recommend to the Court a period of  
15 incarceration for Mr. Hasbrouck because he's a bad person.  
16 Bad people don't get sentenced, people get sentenced. Even  
17 the person who is convicted of a most heinous of crimes is a  
18 person. And the recommendation is based, as the Court's  
19 ultimate judgment is, on the fact that the person standing  
20 before the bench to be sentenced is a person. Mr. Hasbrouck  
21 is a person. Our recommendation takes into account those  
22 factors.

23 Mr. Hasbrouck indicated that the sentence would in  
24 some way, if it is incarceration, have the effect and the  
25 Court would bear the responsibility of curbing dissent.

1 Clearly the prosecution, the sentence is not for the effect  
2 of curbing dissent.

3 Mr. Hasbrouck, perhaps more than any others in his  
4 particular situation, has had a very open forum to express  
5 his views. He has had greater access to the press than I  
6 venture to say most of the politicians in this very political  
7 of districts have had in recent months.

8 Far from curbing dissent, the sentence in this case  
9 should be structured and taking principally into account  
10 Mr. Hasbrouck as a person.

11 And I would like to address that very briefly, your  
12 Honor, in understanding or a rationale for our recommendation  
13 in this particular case. And when I say "this particular  
14 case", I mean this case, not all draft resistor cases, not  
15 all registration cases, but this case with  
16 Mr. Hasbrouck.

17 Mr. Hasbrouck perceives himself as a self-appointed,  
18 self-anointed guardian of a particular movement. He has  
19 treated this particular proceeding as something that he  
20 welcomed, that he ran towards, that he embraced as fast as he  
21 possibly could for the principal reason that it would give  
22 him above his peers greater access to publicity, and indeed  
23 it has.

24 The one thing one can say about Mr. Hasbrouck is he  
25 is principally concerned about his role in this particular

1 movement.

2 Now one indication of this person, Mr. Hasbrouck,  
3 becomes particular apparent when one looks at Mr. Hasbrouck's  
4 response to the presentence report that was done by the  
5 probation officer in this case. And I speak particularly to  
6 the fact that Mr. Hasbrouck, with regard to what the job of  
7 probation officer was trying to do, responded on a number of  
8 cases, what you think is relevant is not what I think is  
9 relevant. And consequently I am not going to give you that  
10 information because under my law, under my guidelines, what  
11 you think is relevant is not what I think is relevant.

12 And when the Court is looking at a sentence in a case  
13 like this, one that cries out perhaps for some degree of  
14 alternative or some alternative sentence that Mr. Hasbrouck  
15 could be sentenced to. And, of course a case like this, I'm  
16 sure this is a consideration in the Court mind.

17 One should look at the individual. In this  
18 particular case, looking at Mr. Hasbrouck, one must see a  
19 person who holds himself above the law, any law.  
20 Mr. Hasbrouck believes himself to be a law unto himself. He  
21 thinks what is relevant should be in those probation reports,  
22 not what the probation officer, not what the court system,  
23 not what the judicial system thinks. He thinks the courts  
24 should be run the way he wishes it to be run. He thinks the  
25 Government of the country should be run the way he wants it

1 run. Mr. Hasbrouck believes himself to be his own law.

2 Under those circumstances, an alternative sentence in  
3 this particular case would be unavailing, it would be of no  
4 use. I tend to believe that Mr. Hasbrouck would in no way  
5 cooperate with any restrictions whatsoever. Mr. Hasbrouck  
6 sets himself above the law; and as such, we feel that he  
7 should suffer the consequences of the law.

8 It is for those reasons, your Honor, taking into  
9 account principally Mr. Hasbrouck is Mr. Hasbrouck, that we  
10 recommend to the Court the two years' incarceration with the  
11 understanding that the Parole Commission would act at such  
12 time as it believes to be advisable to release Mr. Hasbrouck.

13 THE COURT: I hope that I can suggest to you that I  
14 thought of course a lot about this particular case. And in  
15 some ways I was forced to, as well as led to, pay some  
16 considerable attention to this particular aspect of the case.

17 This particular proceeding is a discipline of mine  
18 that I hold in very high regard, because I think it is the  
19 most important function of the Court. I don't know of any  
20 particular task that I have, or indeed that any judge has,  
21 that's more difficult than sentencing.

22 So I'm going to address you by suggesting several  
23 things that I thought about, scribbled down, and rethought  
24 about it. And now that I have listened as carefully as I  
25 could to the presentations, I'm satisfied that my thoughts

1 about, and having read the reports, read almost every one of  
2 the letters up to recently, and other things that have been  
3 offered to me, I think that these remarks are pertinent.

4 In effect, Mr. Hasbrouck, I really ought to be  
5 addressing you directly. But the Court is not unmindful of  
6 the fact that there are some larger issues which have  
7 surrounded this case.

8 I am certainly aware of the fact that this has been  
9 given national attention, and I cannot be unmindful of the  
10 scores and scores of letters and phone calls left unresponded  
11 to, left unreplied to, that are espousing very sensitive and  
12 strongly held beliefs regarding the larger issues, and you as  
13 a person.

14 These beliefs, as one could expect, ranged from anger  
15 with you, from anger to adulation, bordering on adoration of  
16 you and your avowed cause.

17 So when I suggest that sentencing is usually and  
18 immediately directed to you as the defendant, I feel  
19 compelled to state my position to yet even a larger audience,  
20 not to proselytize, not to gain favor, but to fulfill what I  
21 believe is a very important essential aspect of my judicial  
22 responsibility; namely, to inform without attempting to  
23 persuade a larger concerned public as to the inner thoughts  
24 of that which lay in my mind as a judge, in the exercise of  
25 my considerable discretion in passing sentence.



1           What the writers of those letters perhaps did not  
2 appreciate is that those issues which they offered in those  
3 letters were not placed before me, and the test of the  
4 constitutionality and the legality of the Selective Service  
5 Act or the policy enforcing it were not issues before me at  
6 all. Those issues were never put to me. No evidence was  
7 proffered in any form.

8           You, intentionally, eschewed that approach. You  
9 decided on another tactic which was entirely your right to  
10 do, of course. So it must be understood that I was never  
11 called upon to strike down the law, nor find from the  
12 evidence that the facts support a claim of illegal  
13 prosecution.

14           So with that in mind, I'm prepared to spell out the  
15 basis for my sentencing judgment in this case, as I have  
16 indeed in every case.

17           Almost every letter sent to me on your behalf,  
18 Mr. Hasbrouck, speaks to issues that were, as I said, not  
19 before me and consequently implored me to do everything  
20 from dismissing the case against you, to striking down the  
21 law requiring registration, to announcing to the world the  
22 evils of war and people being forced to kill other people.

23           You have explicitly declared that you are not going  
24 to respond to the presentation of the alleged prosecution  
25 because of your lack of belief in the judicial system. And I

1 would further infer, because you did wish to symbolize and  
2 propogandize your cause by proceeding as you did, then that  
3 was intended.

4 Now left to me was a similar responsibility, similar  
5 to yours, a responsibility to be true to the law, to be true  
6 to my sworn duty, and my conscience and my moral beliefs. I  
7 remain guided by that.

8 So I must declare that it is not for the Court to act  
9 outside of the law, and a dismissal or a judicial declaration  
10 that the law is unconstitutional or unconstitutionally  
11 applied or that it was even unfairly imposed would be in my  
12 judgment to act without authority, to simply act on personal  
13 fantasies.

14 Whatever comparisons that may be made with the  
15 so-called California case, and other cases across the  
16 country, those comparisons attempted to be made by your  
17 supporters, those people who came behind you, are  
18 inapplicable, inasmuch as no facts are presented to prove  
19 that the law is an abuse.

20 Those courts that had these issues put before it were  
21 given and made to determine legally, the legality, I should  
22 say, of the statute, were done so in the usual fashion; the  
23 presentation of evidence and arguments on the law.

24 I note that defense counsel who stood beside you made  
25 an attempt at least to file a memorandum in support of those

1 possibilities, but that's not putting it squarely in front of  
2 the Court.

3 I would suggest that not even the nine Supreme Court  
4 Justices of the United States, even if they were composed of  
5 nine Hasbroucks, could rule on that issue if presented with  
6 what I was presented with by your approach.

7 Now, that is not to criticize your decision to go  
8 about it as you did; it is to critique and to explain the  
9 dilemma your supporters and advocates of the repeal of the  
10 law are in. I must go one step further and even declare to  
11 you that I do not believe as a personal matter that the  
12 selective service requirement is immoral or violates my  
13 conscience. If so, if I thought I could not fairly sit on  
14 this case giving rise to that issue, I would step aside and  
15 protest the law as a citizen.

16 I have to take it that most people abhor war. I  
17 suppose, therefore, that among those people, those who truly  
18 hate war there are a variety of beliefs, wide-ranging beliefs  
19 as to what method would best avoid war. By and large those  
20 beliefs will be political ideas. And to the extent that they  
21 are, no such debate should take place in this courtroom.

22 Violations of the law and the Constitution are  
23 appropriate here, and it would destroy the opportunity to  
24 effect a just system if we were to undertake any more than  
25 that. I have, as a private citizen, the right and

1 opportunities to express my political and moral beliefs  
2 elsewhere. And because of my public position I always  
3 attempt to do so.

4 So it has been decreed by a jury, chosen as is done  
5 in every case, that you are declared guilty. As Judge, I  
6 must affirm that verdict and proceed to sentence someone who  
7 has violated the law, and presume that that conviction was  
8 duly made.

9 But the application of the principles of sentencing  
10 applies to all sides. And the application of these, of that  
11 which I have spoken to in terms of looking at what is before  
12 me is applicable to both the prosecution and the defense and  
13 to the public. I shall not attempt, I shall not attempt to  
14 make a political statement by my sentence. I shall give  
15 accord to the usual principles of sentencing, this being no  
16 more or no less than the consideration of all the usual  
17 factors that enter into sentencing procedures.

18 The Government sets out several of those factors  
19 quite persuasively, and I must say that I have considered  
20 them very seriously, because they were given seriously, and  
21 certainly without hysteria.

22 But I cannot agree that the sentence suggested in the  
23 sentencing brief and now before me is at all appropriate. I  
24 cannot agree that this offense and the circumstances that  
25 surround this offense merits incarceration, unless I wish to

1 make a political statement. Violent crimes have produced a  
2 lesser sanction. Violations of public trust by way of bribes  
3 and extortions have been dealt with by shorter periods of  
4 incarceration given by me. Defendants motivated solely by  
5 greed and without regard to harm to others, persons with self  
6 aggrandizement with purposes of their criminal activities and  
7 strategy.

8 I have carefully read the presentence report, and  
9 despite your difficulties with it, I have gained some  
10 insight, I believe, into you. I have watched you, as you  
11 suggest, during the course of the trial and in these  
12 proceedings here, and I have gained a certain amount of  
13 understanding about you. I have read letters and testaments  
14 to you and to your personal beliefs and the beliefs of  
15 others, and I think I have at least come to know that  
16 although you are clearly and absolutely in defiance of the  
17 law, you have acted out of a sense of conscience and  
18 concern. So your legally misguided and misdirected ways led  
19 you to this situation, and you do not ask to be excused by  
20 that. But the motivation of what other criminals have had  
21 cannot be ascribed to you. So I see a difference.

22 I have difficulty in understanding the deterency  
23 effect in this instance. Clearly there are some. I believe  
24 your arrest and prosecution are a substantial part of a  
25 deterrent potential.

1 I believe that the sentence I shall impose will offer  
2 some deterrence. I will not impose a sentence, however, to  
3 deter you or any other person from speaking out or  
4 proselytizing or in any way violating what I conclude is  
5 encompassed by the First Amendment in addressing those  
6 issues.

7 To be certain of that, I believe that that issue  
8 should be drawn and tried out by way of a specific indictment  
9 in the nature of whether it's conspiracy or substantive  
10 violation of inducing others to violate the law, I will not  
11 attempt to deter that by sentencing on this offense which  
12 involves simply your failure to register.

13 I do believe, however, that sanctions have to be  
14 imposed, and that you have must bear the consequences of your  
15 act. Indeed, I almost believe that you seek that. I also  
16 believe that you must fulfill the mandate of the law or be  
17 progressively punished.

18 I can cite to you other legal avenues that may  
19 relieve you of the duty to yield to the specific  
20 responsibilities of leading to entry into service. But you  
21 know them and you can choose, if you wish, to pursue those  
22 lawful ways. If you don't, and the law is correct, you will  
23 have imposed upon you further sanctions.

24 So I intend this morning to impose upon you the  
25 following sentence and to tell you that each aspect of it is

1 essential.

2 I will sentence you to six months and suspend that  
3 sentence and place you on two years probation, upon certain  
4 special conditions. One condition is that you offer one  
5 thousand hours of public service. Something in the nature of  
6 work at a hospital, poverty center, senior citizen center, or  
7 what. However, the nature of that service, the place of that  
8 service, and the hours and other circumstances of serving out  
9 that alternative service has to be done in collusion with the  
10 Probation Department and with me specifically.

11 And unless I agree to the particular modes of  
12 alternative sentence service, you will not have fulfilled  
13 that responsibility. However, of course, I will be looking  
14 for that kind of activity that is in the context positive and  
15 fulfilling. And that thousand hours will be accomplished  
16 over the period of the two years probation.

17 I'm going to require that the Probation Department  
18 supply me with probation updates on you, each and every six  
19 months of your probation, and I'll require you to appear  
20 before me for probation review if I think that the  
21 circumstances warrant that.

22 And then, finally, I can tell you that the sentence  
23 is subject to, of course -- that you are, of course, subject  
24 to the law. And so any continued or other violations of the  
25 law will not only put you in jeopardy as far as this sentence

1 is concerned but for future prosecution for those alleged  
2 offenses.

3 That's the sentence.

4 THE CLERK: Mr. Hasbrouck, the Court orders that  
5 you be imprisoned for a period of six months. That sentence  
6 is suspended and you are placed on probation for a period of  
7 two years. You are also held to any special conditions as  
8 ordered as part of your probation.

9 The Court also notifies you of your right to appeal,  
10 and if you are unable to pay the cost of an appeal you may  
11 apply to the Court to allow you to appeal without paying  
12 costs, and you may further request the Clerk to immediately  
13 file a notice of appeal for you if you so request.

14 MR. HASBROUCK: I do so request.

15 THE CLERK: If you are unable to afford an  
16 attorney, the Court will appoint one for you. Any appeal  
17 must be filed within ten days of this date.

18 THE COURT: I want to advise you that the  
19 sanctions apply as of now. But it is only by motion allowed  
20 by this Court or by the Court of Appeals that will excuse you  
21 from those sanctions.

22 MR. HASBROUCK: I would ask that that sentence be  
23 stayed pending the appeal, which I intend to bring, and will  
24 be bringing as soon as I can.

25 THE COURT: I'll make a preliminary ruling and



1 allow you to file a motion. But more explicitly, I'm denying  
2 that on the basis that it is, to my knowledge, and of my  
3 review of the law and what it require to offer a stay, there  
4 is no, no hope in my mind, no hope whatsoever of any modicum  
5 of appeal under the law, and therefore appeal is not well  
6 taken. And I would, if otherwise briefed and made more  
7 learned on the subject matter, would be happy to review. But  
8 on that basis you are not entitled to relief of the  
9 sanctions.

10 You have a right to appeal to the Court of Appeals,  
11 and they have an opportunity to afford you a stay of the  
12 execution pending that appeal.

13 Thank you.

14 [Adjourned.]  
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1 UNITED STATES OF AMERICA )  
2 DISTRICT OF MASSACHUSETTS ) ss.  
3 CITY OF BOSTON )  
4  
5

6 I, Muriel F. James, Official Reporter,  
7 do hereby certify that at the time and place, aforesaid, I  
8 reported stenographically the proceedings had in Criminal  
9 Action No. CR. 82-00269-N, United States of America versus  
10 Edward J. Hasbrouck, and that the foregoing transcript is a  
11 correct transcript of the proceedings taken therein, to the  
12 best of my skill and ability.

13 IN WITNESS WHEREOF I have hereunto set my hand this  
14 30th day of November, 1984.  
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20 Official Reporter  
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