

ACLU Joins Fight for GIs to Dissent

Fifth Estate Collective

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The American Civil Liberties Union will challenge the court-martial conviction of an Army lieutenant for participating in a demonstration against US policy in Vietnam, arguing that the articles of the Uniform Code of Military Justice under which he was convicted violate freedom and are unconstitutionally vague.

Asserting the duty of military courts to protect the guaranteed constitutional rights of military personnel, the civil liberties organization will present oral argument before the Army Board of Review in Washington, D.C. on behalf of Lt. Henry H. Howe, Jr., of Denver, Colorado.

Lt. Howe was convicted of using contemptuous words against the President and of conduct unbecoming an officer and a gentleman and sentenced to one year imprisonment at hard labor, dismissal from the Army, and forfeiture of all pay and allowances, following his participation last November 6 in an El Paso demonstration protesting United States conduct in the Vietnam war. The protest was held during Lt. Howe's off-duty hours and while he was in civilian dress.

A five-man court-martial sentenced Lt. Howe under Articles 88 and 133 of the Uniform Code of Military Justice. The former provides for court-martial punishment of (any) officer who uses contempt [contemptuous language with respect to the—archive editors] President, Vice President, Congress, the Secretary of Defense... in which he is on duty or present...," and the latter calls for similar punishment for conduct unbecoming an officer. The placard Lt. Howe was carrying, on which the charges were based, said on one side, "LET'S HAVE MORE THAN A CHOICE BETWEEN PETTY IGNORANT FASCISTS IN 1968," and on the other side, "END JOHNSON'S FASCIST AGGRESSION IN VIETNAM."

Lt. Howe's use of allegedly contemptuous words against the President "could constitute a danger justifying the balancing away of First Amendment rights only if they posed a substantial threat to some military purpose," the Union brief maintains, arguing that Lt. Howe's "use of the President's name to amplify the policy at issue can be found personally contemptuous only under the most strained interpretation." The brief asserts that "the military interest in protecting the Commander-in-Chief from the insubordination of officers is not infringed when a soldier in civilian clothes criticizes a presidential policy and incidentally identifies that policy with its principal agent."

Applying the clear and present danger test, which requires proof of an immediate threat to law and order for speech to be curbed, the ACLU brief charges that the lack of such proof was fatal to the government's case. The Union brief states that Lt. Howe "was not identifiable as an army officer, he was not on base, and he was not wrongfully away from his post. Rather, he was peacefully demonstrating in strict conformity with Army Regulations... Under these conditions there was no clear and present danger of a substantial evil that Congress has a 'right to prevent,' for Lt. Howe marched as a civilian in a clearly lawful demonstration."

In further argument the Union brief notes that Lt. Howe was being punished for "the forbidden crime of seditious libel," a crime which "the verdict of history has rendered unconstitutional. No citizen of the United States, whether in or out of military service," says the ACLU brief "is either bound to agree with official policy or foreclosed from criticizing the highest officer of the land or the policies for which he is primarily responsible. That proposition

is the foundation of our free institutions, and if they are not to be mocked, this court must reverse the conviction” of Lt. Howe.

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