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UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA :

versus : CR82-269

EDWARD HASBROUCK :

PROBATION VIOLATION HEARING

BEFORE: Judge Nelson

APPEARANCES:

Robert Mueller, Esq., for the Plaintiff
Assistant United States Attorney
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U.S. Court House
Boston, Ma. 02108

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Federal Building
Boston, Massachusetts
November 22, 1983

I N D E X

<u>WITNESS</u>	<u>DIRECT EXAMINATION</u>	<u>CROSS-EXAMINATION</u>
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Esther Salmon

(by Mr. Mueller)

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(by Mr. Hasbrouck)

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E X H I B I T S

<u>Government Exhibits</u>	<u>Identified</u>	<u>In Evidence</u>
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Exhibit No. 1	Judgment and Commitment Order	4	5
Exhibit No. 2	Document, Special Con- ditions of Probation	6	7
Exhibit No. 3	Document, Proposal of Community Service	9	10
Exhibit No. 4	Probation Review	11	
Exhibit No. 5	Petition and a Notice of Hearing	13	14

1 THE CLERK? United States versus Hasbrouck,
2 Probation Violation, Criminal 26-1981.

3 THE COURT: Thank you. Would counsel please
4 identify themselves?

5 MR. MUELLER: Robert Mueller of the United
6 States Attorneys' Office, your Honor.

7 MR. HASBROUCK: Edward Hasbrouck, Defendant.

8 MR. HILLER: Benjamin Hiller, counsel for the
9 Defendant.

10 THE COURT: All right. This is a hearing on
11 alleged violations of the terms and conditions of probation.

12 And the Probation Department is here.

13 MS. SALMON: Yes, your Honor.

14 THE COURT: Now, are you going to represent
15 the Probation Department, or do you want me --

16 MR. MUELLER: No, your Honor. I am going to
17 represent the Probation Department in the course of the
18 hearing. I will call them.

19 We call to the stand Ms. Esther Salmon.

20
21 ESTHER SALMON, having been duly sworn, on
22 oath testifies as follows:

23
24 DIRECT EXAMINATION

25 BY MR. MUELLER:

Q Ms. Salmon, you are a Probation Officer with the

1 Probation Office for the District Court of Massachusetts;
2 is that not correct?

3 A That's correct.

4 Q How long have you been employed in that capacity, Ma'am?

5 A Seven and a half years.

6 Q And are you the Probation Officer that has been assigned
7 to the supervision of one Edward Hasbrouck?

8 A Yes.

9 Q And were you assigned to the supervision of
10 Mr. Hasbrouck, and the conditions of his probation, subsequent
11 to his -- the judgment and sentence being entered against
12 him by Judge Nelson?

13 A Yes.

14 Q And are you familiar with the judgment and sentence
15 that was filed in this court, and reflects the sentence that
16 was imposed on Mr. Hasbrouck by Judge Nelson?

17 A Yes, I am.

18 MR. MUELLER: Your Honor, if I may approach
19 the witness.

20 THE COURT: Yes, you may.

21 MR. MUELLER: Your Honor, may I, initially,
22 have marked the Judgment and Commitment Order as Government's
23 Exhibit No. 1 for the hearing.

24 THE COURT: Yes.

25 (The Judgment and Commitment Order
marked Government's Exhibit No. 1
for identification.)

1 MR. MUELLER: Your Honor, I have already
2 informally numbered each of these documents seriatim in the
3 lower right. If I could refer to them by the various numbers
4 I have assigned to them, it may go faster.

5 THE COURT: You may.

6
7 BY MR. MUELLER:

8 Q I show you Government's Exhibit No. 1, which is the
9 Judgment and Commitment Order entered against Mr. Hasbrouck.
10 Are you familiar with that?

11 (Document is handed to the witness.)

12 A Yes, I am.

13 Q Is one of the special conditions of Mr. Hasbrouck's
14 probation that he perform 1,000 hours of public service?

15 A Yes, it is.

16 MR. MUELLER: Your Honor, we move this in
17 evidence.

18 THE COURT: No objection? It may be marked
19 Exhibit 1.

20 (Exhibit No. 1 for identification
21 received into evidence.)

22 Q And as a portion of that special condition of probation,
23 was it a requirement that the program of community service
24 be approved by the Probation Office and the Court?

25 A Yes, it is.

1 Q And in fact, the full sentence on Mr. Hasbrouck was
2 that he was sentenced to six months in prison, sentence
3 suspended, with two months' probation, with several conditions
4 of special probation, one of which was the special condition
5 that he perform 1,000 hours?

6 A That's correct.

7 Q Did you have occasion to have -- explain to
8 Mr. Hasbrouck the conditions of his probation?

9 A Yes, I did.

10 Q And were those special conditions of probation set
11 forth in a document which was signed by him?

12 A Yes, they were.

13 (Document, Special Conditions of
14 Probation, marked Exhibit No. 2
for identification.)

15 Q Let me show you what I have marked as Government's
16 Exhibit No. 2, and ask you if you are familiar with that
17 document, Ma'am?

18 (Document is handed to Mr. Hiller, Mr. Hasbrouck,
19 and Ms. Salmon.)

20 A Yes, sir.

21 Q What is that document?

22 A The conditions of probation for Mr. Hasbrouck, signed
23 on January 14, 1983, and witnessed by myself.

24 MR. MUELLER: I move Government's Exhibit No. 2
25 into evidence.

1 THE COURT: No objection? It may be so done,
2 Exhibit 2.

3 (Special Conditions of Probation,
4 the document previously marked as
5 Exhibit No. 2 for identification
6 received into evidence.)

7 Q And is there a special condition to which Mr. Hasbrouck
8 assented, referring -- reflecting an agreement to do
9 1,000 hours of community service?

10 A Yes, there is.

11 Q And would you please read that specific special
12 condition to us, if you would?

13 A "1,000 hours voluntary public service with approval of
14 Probation Department and Court."

15 Q And is the signature of Mr. Hasbrouck on the bottom of
16 that document?

17 A Yes, there is.

18 Q And did you witness Mr. Hasbrouck signing that document?

19 A Yes, I did.

20 Q Was that signed in your presence?

21 A Yes, it was.

22 Q And through this document, Mr. Hasbrouck agrees to those
23 conditions of probation; does he not?

24 A That's correct.

25 Q Now, did you have occasion, sometime subsequent to that,
to discuss with Mr. Hasbrouck how he would attempt to conform

1 to that special condition of probation?

2 A Yes, I did. It was not until July 21st, because
3 Mr. Hasbrouck had been arrested --

4 Q Excuse me just a second. Let me ask another question.

5 When was the first time you discussed with
6 him his complying with that particular condition of
7 probation, the first date?

8 A On the date he signed the conditions, on January 14th.

9 Q When was the next date that you discussed it with
10 him?

11 A Can I --

12 Q Sure.

13 A I will have to refer to my record --

14 MR. HASBROUCK: Can I ask if the notes are
15 in evidence? I have not seen them.

16 THE COURT: Are you finished?

17 MR. MUELLER: Not yet.

18 THE COURT: You have to wait for the end.

19 MR. HASBROUCK: I would object to an explana-
20 tion based on notes which I have not seen and which are not
21 in evidence.

22 THE COURT: Okay. Objection is overruled.

23 Go ahead.

24 BY MR. MUELLER:

25 Q Ms. Salmon, let me see if we can proceed in this way.

1 Did there come a time when Mr. Hasbrouck made
2 a proposal to you as to how he would like or wish to complete
3 his public service?

4 A Yes, he did.

5 Q And was that after you had another discussion with him,
6 pertaining to the performance of this special condition of
7 probation?

8 A Yes, it was.

9 (Document, Proposal submitted by
10 Mr. Hasbrouck regarding the commu-
11 nity service, marked Exhibit No. 3
12 for identification.)

12 Q Let me show you what has been marked as Government's
13 Exhibit No. 3, and ask you if you recognize this document?

14 (Document is handed to the witness.)

15 A Yes, that is the Proposal Mr. Hasbrouck submitted
16 regarding the community service.

17 Q And how was that submitted to you, if you recall?

18 A I believe it was -- I believe it was hand-delivered.
19 It could've been received by mail. I can't recall whether
20 it was hand-delivered or received by mail.

21 Q And this document reflects the signature of Mr. Hasbrouck?

22 A Yes, it does.

23 MR. MUELLER: I move into evidence Government's
24 Exhibit 3, your Honor.

25 THE COURT: Yes, it may be marked.

1 (Proposal submitted by Mr. Hasbrouck
2 previously marked as Exhibit No. 3
3 for identification was received
4 into evidence.)

4 THE COURT: You may proceed.

5 Q Did you have occasion to discuss with Mr. Hasbrouck, the
6 Proposal that is reflected in Government's Exhibit No. 3?

7 A Yes, I did. I informed Mr. Hasbrouck that it was my
8 understanding that this would not be an acceptable Proposal
9 because it involved his continuing to do political work, and
10 that was not a program that we would approve.

11 Q And what did Mr. Hasbrouck respond?

12 A He responded that that was -- that his Proposal would
13 stand as such.

14 Q Did you suggest to Mr. Hasbrouck any types of community
15 service that you believed that both the Probation Department
16 and the Court would find acceptable?

17 A Not specific, but I did tell him that I would be willing
18 to develop a program that we felt would be acceptable, and
19 it never got to that stage.

20 Q What kinds of programs had been acceptable in the past
21 by the Probation Office and the Judges of this court?

22 A Usually working in a hospital type setting, non-profit
23 hospital working with the patients, doing all kinds of
24 different work.

25 Q What specific hospitals are you familiar with, to which

1 probationers have been assigned to perform their community
2 service?

3 A The Faulkner Hospital in Jamaica Plains, the Norwood
4 Hospital, the Walter Fernald School, which is used extensively,
5 Children's Hospital in Boston.

6 Q Did you thereafter schedule or request that there be a
7 Probation Review held on Mr. Hasbrouck's probation?

8 A Yes.

9 (Probation Review marked Government's
10 Exhibit No. 4 for identification.)

11 Q Let me show you what has been marked as Government's
12 Exhibit No. 4, and ask you if you recognize that letter?

13 (Document is handed to the witness.)

14 A Yes, this letter was sent to Mr. Hasbrouck, notifying
15 him of a Probation Review Hearing on October 11th.

16 (Document is handed to Mr. Hasbrouck.)

17 MR. MUELLER: I move into evidence Government's
18 Exhibit 4, your Honor.

19 THE COURT: No objection?

20 MR. HASBROUCK: I continue to object to a
21 cross-examination based on Esther's notes, which are not in
22 evidence, and which I have not seen, and which it would be
23 impossible for me to cross-examine on.

24 THE COURT: The objection is overruled.

25 Q Now, Ms. Salmon, are you familiar with the fact that

1 there was a Probation Review held in this courtroom on
2 October 11, 1983?

3 A Yes, I am.

4 Q What is your understanding of the result of that
5 Probation Review Hearing?

6 A I understand that Judge Nelson informed Mr. Hasbrouck
7 that he had received the Proposal that you have referred to,
8 Mr. Hasbrouck's Proposal for Community Service, and
9 Mr. Hasbrouck was told that that was not acceptable, that
10 he was given -- Mr. Hasbrouck was given one week by
11 Judge Nelson to submit an alternative proposal for
12 consideration.

13 Q Did he do so?

14 A No, he did not.

15 Q Government's Exhibit No. 3, which is the Proposal with
16 the date August 5, 1983, is the only Proposal you have
17 received from Mr. Hasbrouck?

18 A That's correct.

19 Q And following that Probation Review Hearing on
20 November 11th -- excuse me -- October 11, 1983, you received
21 no further Proposal?

22 A That's correct.

23 Q Did you have any conversations with Mr. Hasbrouck as
24 to whether he intended to submit any further Proposal?

25 A I had two telephone conversations with him subsequent

1 to that date, in which I asked him if he intended to submit
2 a Proposal, and in both conversations, he told me that he
3 was not going to submit an additional Proposal, that he felt
4 he had submitted the Proposal already.

5 Q Given the fact that Mr. Hasbrouck would not submit an
6 additional or another Proposal, did you then issue a Petition
7 and a Notice to Mr. Hasbrouck as to the hearing that was
8 scheduled for this date?

9 A Yes, I did.

10 (Petition and a Notice of Hearing
11 marked Government's Exhibit No. 5
for identification.)

12 Q I'm going to show you Government's Exhibit 5, which is
13 a copy of the letter, and the underlying enclosed documents.
14 Do you recognize those, Ma'am?

15 (Documents are shown to the witness.)

16 A Yes.

17 Q Is that the letter notifying Mr. Hasbrouck of the
18 hearing today?

19 A Yes, it is.

20 Q And attached to that is the Notice of the Hearing and
21 the Petition?

22 A Yes, it is.

23 MR. MUELLER: I move into evidence Group Exhibit
24 No. 5, your Honor.

25 THE COURT: No objection?

1 It may be so admitted.

2 (Petition and a Notice of Hearing
3 previously marked Government's
4 Exhibit No. 5 received into evidence.)

5 Q Now, Ms. Salmon, are you familiar with when this copy,
6 or a copy of this particular letter, Government's Exhibit No. 5,
7 with the attachments, was delivered personally to Mr. Hasbrouck?

8 A It was delivered personally by me today, because I had
9 sent Mr. Hasbrouck a letter, return receipt requested, which
10 he did not pick-up, and I received the letter back from the
11 Post Office, in my office November 21st, indicating that it
12 had been unclaimed.

13 Q Did you receive any notification or any indication in
14 any conversation with Mr. Hasbrouck himself that he had prior
15 notice of this hearing?

16 A I had told him during our last telephone conversation
17 on November 3rd that I had -- that the Petition had been
18 prepared and signed by Judge Nelson, and would be sent to
19 him, so I gave him verbal notice on that day, that there
20 would be a hearing on this day.

21 Q Thereafter, did he at any time indicate to you that
22 he had seen the petition?

23 A In a telephone conversation we had earlier this
24 morning, he indicated that he had seen his attorney's copy,
25 that his attorney had shown him the copy of the Petition,
and the Notice of Hearing.

1 Q All right. Now, to today's date, Ms. Salmon, has
2 Mr. Hasbrouck provided to you any alternative Proposal,
3 other than that which was included in Government's Exhibit
4 No. 3, his Proposal of August 5, 1983?

5 A No, he has not.

6 Q In the course of your discussions with Mr. Hasbrouck,
7 has he at any time indicated a willingness to perform any
8 type of community service, other than what he suggests to
9 be community service in his submission of August 5, 1983,
10 which is Government's Exhibit 3?

11 A No, he has not.

12 MR. MUELLER: No further questions, your
13 Honor.

14 THE COURT: Now, you may question her, if
15 you wish.

16
17 CROSS-EXAMINATION

18 BY MR. HASBROUCK:

19 Q You have been, here, referring to various notes and
20 records; yes?

21 A Yes.

22 Q And those are what you are relying on in what you have
23 been saying?

24 A In part.

25 Q May I see those notes?

1 A You will have to refer that to the Court.

2 THE COURT: Is there any objection to him
3 seeing them?

4 THE WITNESS: I will have to --

5 MR. MUELLER: Let me consult with Mr. Weedock,
6 if I may, your Honor.

7 (Mr. Mueller confers with Mr. Weedock.)

8 MR. MUELLER: Your Honor, we have no objection
9 to the chronological summary that Ms. Salmon has been
10 referring to, being shown to Mr. Hasbrouck.

11 Quite obviously, elsewhere in the file, there
12 are other documents that should not be disclosed.

13 THE COURT: Whatever reference you made to
14 your notes, then you must allow him to look at that --

15 THE WITNESS: Okay.

16 THE COURT: -- whatever maybe the rules of
17 privacy. Anything that you used to refresh your recollection
18 in order to testify here before me today --

19 THE WITNESS: Okay.

20 THE COURT: You must make available to him.

21 It is to be understood that those notes are
22 not in evidence, and therefore, to the extent that they are
23 not, the foundation has been laid in order to get them into
24 evidence.

25 THE WITNESS: I hope these are the only ones

1 that I have had to refer to.

2 (Documents are handed to Mr. Hasbrouck.)

3 MR. MUELLER: May the record reflect, your
4 Honor, that Ms. Salmon has turned over certain chronological
5 notes, indicating that those are the notes that she referred
6 to today, and I, in turn, have given three pages to
7 Mr. Hasbrouck.

8 THE COURT: Thank you.

9 MR. HASBROUCK: I move these into evidence.

10 THE COURT: They are not admissible unless
11 you have set a basis for their admission.

12 MR. HASBROUCK: To the extent the testimony
13 based on them is relevant, and to the extent the testimony
14 was, in fact, based on them, these are clearly as to what
15 happened.

16 THE COURT: It violates the Hearsay Rule.
17 You may question her from the notes. You may ask her anything
18 that is relevant material, and I will hear it.

19
20 BY MR. HASBROUCK:

21 Q Have you submitted reports to Judge Nelson about my
22 community service and about my probation?

23 A Not about your community service, because you haven't
24 done any.

25 Q Have you said anything to him, submitted anything to him

1 pertaining to that at all?

2 A I believe I submitted a Probation Review Memorandum
3 to him.

4 Q Do you have that with you?

5 A Yes.

6 MR. HASBROUCK: I would ask, again, that I be
7 allowed to look at that.

8 THE COURT: Turn over any communications you
9 have given to me.

10 THE WITNESS: Throughout the period of
11 probation?

12 THE COURT: The whole thing. And in fact,
13 you can even add my communications back to you regarding
14 his probation.

15 Did you want to say something?

16 MR. MUELLER: Your Honor, is the Court going
17 to review those communications before --

18 THE COURT: I don't know. I will see what he
19 wants. I'm going to let him -- whatever ones you have, why
20 don't you give them to him so that we can get going on this.

21 MR. MUELLER: Your Honor, before Mr. Hiller
22 looks at them, my only concern is, for instance, the
23 recommendation of the Probation Department to the Judge.
24 The recommendation from the Probation Office should not be
25 a matter of record, generally.

1 THE COURT: I'm talking about the time --
2 we're talking about the term of his probation, when he was
3 placed on probation, not what the sentencing recommendations
4 were.

5 MR. MUELLER: All right.

6 (Documents are handed to Mr. Hasbrouck.)

7 THE COURT: Okay. Next question.

8
9 BY MR. HASBROUCK:

10 Q Did you say in your letter to Judge Nelson of July 21st,
11 "I feel Mr. Hasbrouck has abided by the conditions of
12 probation and has attempted to cooperate fully with the
13 Probation Department"?

14 A What is the date of that memorandum?

15 Q July 21st.

16 A Yes, if that is what it says there, I am sure I did.

17 Q Do you still feel that I have attempted to cooperate
18 as fully as I could with the Probation Office?

19 A Well, with -- with everything except the community
20 service, there is no doubt that you have not violated any
21 other conditions of your probation. You have attempted,
22 and very much cooperated with every other condition and every
23 other request except for the community service.

24 There has never been any allegation that any-
25 thing other than that is so.

1 Q Have we talked, you and I, Esther, about the peace
2 work that I am doing, about the disarmament work, about the
3 education in non-violence?

4 A Yes, we have.

5 Q Have we talked about whether that is of service to the
6 community, whether it is in the public interest, what
7 importance it has, why I am doing it?

8 A Yes, we have.

9 Q Do you think I am doing that work out of a desire to
10 do work that is in the public interest and to serve community?

11 A Yes, I do.

12 Q Do you think that that work is of service to the
13 community?

14 A Yes. I don't think it -- I don't think it qualifies
15 for community service as we -- as I explained to you from
16 the outset, that it has to be a program that we can verify.

17 It has never met any of our guidelines, which --
18 what you may be doing maybe community service. That is true.
19 However, it does not fit in with our guidelines.

20 You have known that from the beginning. I
21 also made that clear.

22 Q Do you have any doubt, regardless of whether there is
23 a time clock or a letter from a supervisor, do you have any
24 doubt that I am doing that work at a rate that I do more than
25 1,000 hours of it in two years?

1 A I don't have any way of computing that, but I think
2 the point is that you were directed by the Court to partici-
3 pate in a program approved by the Court and the Probation
4 Department, and you have not done that. So, although the
5 other work that you do in the community is useful -- there
6 is no question about that -- that is not really the issue
7 that we have before us today.

8 Q We have talked about that?

9 A True.

10 Q Haven't we?

11 A We have.

12 Q Is that in your notes?

13 A That we have discussed --

14 Q Yes, do you have notes about those conversations? Did
15 you take notes about what I told you about the kind of work
16 I was doing, and about my belief that it was in the interest
17 of the community?

18 A I know it is in some of those notes that you have right
19 there. (Indicating.)

20 Q We talked about it before, many of the things we
21 referred to in these; haven't we?

22 A Yes.

23 MR. HASBROUCK: I would move that any evidence
24 in Esther's notes reflecting the fact that I was doing work
25 in the community interest, and describing that, be introduced.

1 THE COURT: It is denied.

2 Next question.

3 MR. HASBROUCK: I don't think there is any-
4 thing more I can ask.

5 THE COURT: Okay.

6 MR. MUELLER: No further questions.

7 THE COURT: You may step down. Thank you.

8 (Witness excused.)

9 THE COURT: Is there any other witness?

10 MR. MUELLER: No other witness, your Honor.

11 THE COURT: All right. I will hear from
12 any witness that you wish to put on, Mr. Hasbrouck.

13 MR. HASBROUCK: I have no witnesses.

14 THE COURT: All right. So, the evidence is
15 closed. Suppose that I hear from you first.

16 MR. MUELLER: Your Honor, the Government asks
17 that Mr. Hasbrouck's probation be revoked, and that he be
18 sentenced to the 6 months incarceration that the Court
19 ordered to be his sentence, should he not perform all the
20 conditions of the probation.

21 The special condition of probation here was
22 that Mr. Hasbrouck perform some form of community service.

23 The Government, at the time of Mr. Hasbrouck's
24 judgment and sentencing, indicated to the Court that we felt
25 that perhaps Mr. Hasbrouck was not an appropriate person to

1 be sentenced to a term of community service because
2 Mr. Hasbrouck believed that he was the only person, not the
3 Court, not the Probation Department, but Mr. Hasbrouck
4 himself was the only person who could decide what was in
5 the community service and what was not in the community
6 service.

7 Mr. Hasbrouck, at the outset, has put himself
8 above the laws of the United States, has put himself above
9 the guidance and guidelines of the Probation Department,
10 and has put himself above this Court, in a real sense.

11 Mr. Hasbrouck has refused to do social
12 service, to work at the Fernald Hospital, and the
13 Faulkner Hospital, at those institutions which could well
14 use the help of somebody like Mr. Hasbrouck.

15 Mr. Hasbrouck is intent on determining his
16 own definition of community service in doing very much what
17 he wishes to do, not what others perceive to be in the
18 community service.

19 Under the circumstances, your Honor, we have
20 no alternative but to request the Court to revoke
21 Mr. Hasbrouck's probation, and sentence him to 6 months in
22 incarceration.

23 I might add, your Honor, that we believe
24 that not only in court, but the system as a whole, the
25 Probation Department, the Criminal Justice System, has bent

1 over backwards for Mr. Hasbrouck, to give him every benefit
2 of the doubt.

3 Yet, Mr. Hasbrouck scorns the Criminal Justice
4 System in this country, and put himself above it.

5 Thank you, your Honor.

6 THE COURT: I will hear from you, Mr. Hasbrouck.

7 MR. HASBROUCK: At the last hearing that we
8 had in October, you defined for me, for the first time, what
9 you intended by "community service," and you said, as I
10 recall, two things; one, that it could not be political,
11 and two, that it must be something which I would not other-
12 wise be doing but was doing only because you had ordered it.

13 Let me say first that, had you made clear
14 that that was what you meant by community service at the
15 time you sentenced me, I surely would not have signed an
16 agreement to do it.

17 I signed the agreement under duress, and I
18 signed it in good faith belief that you would interpret
19 community service both reasonably and legally.

20 I have serious questions in my own mind about
21 the legality of choosing to approve or disapprove programs
22 of community service not on the basis of whether they serve
23 the community, but on the basis of the political statement
24 which would also be made by doing that.

25 I think that very clearly is political

1 censorship and intrusion in what I can do, and what I can
2 express politically.

3 I think that the fact that you would even
4 consider placing overtly political complaints on what you
5 will approve as community service makes clear what has been
6 clear to me all along. That is, this is a political case,
7 that my crime is not any action, even refusing to register,
8 but that my crime is a political attitude and a political
9 statement, most specifically a political statement of
10 support for the United States Military System, and for a
11 system of conscription to fuel it, which I refuse to make
12 when I chose not to register.

13 The only way I can understand your interpreting
14 community service as being acceptable only if it is some-
15 thing I would not otherwise be doing, that I am doing only
16 because you have ordered me to do it, as an attempt by you
17 to induce me by doing community service, not to do any parti-
18 cular kind of work, but to make a political statement.

19 It seems to me that regardless of what it is --
20 whatever undeniable use of benefit there might be to doing
21 the sort of work that you might well approve, you have made
22 it -- you did make it explicit to me at our last hearing
23 that you would only approve that work if I were willing not
24 only to do that work, but to do it in such a way that my
25 doing it was a statement of my support of the system that

1 ordered it to me, or ordered it upon me, and a symbolic
2 political gesture of acquiescence in that authority, and an
3 acceptance of the right of the Government to define for me
4 the values that I should pursue in my life, and how I should
5 pursue them.

6 Now, that political statement that you're
7 asking of me in the form of community service is almost
8 exactly the political statement that was asked of me by
9 Selective Service in the form of registration, and I hope it
10 will be obvious to you, put in those terms, that for exactly
11 the same reasons that I could not register, I cannot comply
12 with that, on those terms.

13 And it is not a question of community work.
14 It is not a question of trying to help other people. It is
15 not a question of working without pay. It is a question of
16 whether I am or am not willing to make a political statement,
17 a symbolic act, and I must say that community service is
18 demanding a much more active statement of allegiance than
19 registration.

20 But it is an issue of my willingness to make
21 that same political statement, and while I was pleased that
22 you chose to suspend your sentence initially, and place me
23 on probation rather than committing me immediately, I feel
24 that in offering me community service only on condition, in
25 essence, that renounced my crime, you have left, very, very,

1 very little room for any compromise on my part, and I hope
2 it will be clear to you that to do community service of the
3 sort that you might approve, on the terms that you choose
4 to set for it at the last hearing, would be, for me, an
5 explicit renunciation of my crime, my crime of believing
6 that government only has any legitimacy at all is to the
7 extent that the people create it to serve their interests,
8 and that it is not democratic, American, legitimate, or
9 anything else, desirable; that it is, indeed, the antithesis,
10 for the Government to define for the people the values that
11 should be important to them, and how to serve them around
12 for people, the validity of the work people and the lives
13 people lead to be determined by the extent to which they
14 serve an interest defined for them by the Government.

15 But my main point is that you're asking me to
16 do community service in such a way as to renounce my crime.
17 If I was willing to change my mind about whether I was
18 willing to register, I would not have been indicted, and I
19 wouldn't have been convicted, and I wouldn't have been before
20 you in the first place.

21 It would seem as apparent to you, then, as I
22 hope it will be apparent to you now, that I am not willing
23 to register, and I am not willing to make the statement that
24 registration makes, in whatever form.

25 I think that I have made a very strong effort

1 to comply with all of the terms of probation.

2 I have found them an extreme annoyance and
3 irritation, and it has become progressively more apparent to
4 me the extent to which they function primarily as a political
5 sort of harassment and restrict what I can do, politically.

6 I have put up with that. I have done,
7 voluntarily, work which I and my Probation Officer believe
8 to be in the community interest, and done, I think,
9 substantially more than the amount of it that you have
10 requested.

11 There are a lot of things that can be done
12 in the community. I have tried to work for peace and
13 disarmament, to try to do education about those issues,
14 about non-violence, about alternative forms of conflict
15 resolution.

16 I think those are important. They are things
17 which you -- you know, which could be done, which I think
18 would be worth doing, even at the expense of the statement
19 they would require.

20 If it were possible for me to do what I think
21 is the most important work to be done in this world today,
22 to do the work of dismantling the nuclear weapons, I would
23 do that gladly under almost any terms and conditions, even
24 knowing that it is difficult and dangerous work. But it is
25 essential, if we are going to survive, and it is not being

1 done.

2 Some of my friends in Plow Shares
3 have been to the Avco Plant in Wilmington, and various other
4 nuclear weapons' production plants, and have gone and
5 attempted to fulfill the obligation they felt to other
6 people, to humanity, to live, as well as an obligation
7 under international law not to be complicit in preparation
8 for aggressive war, which nuclear war would be, and which
9 first-strike weapons can only serve, and not to be complicit
10 in the production of weapons of mass destruction.

11 They have gone there, and with their own
12 hands and with their own tools have done whatever they could
13 do to begin the process of dismantling and disarming the
14 weapons.

15 If it were possible for me to do work like
16 that as community service, under almost any terms or conditions
17 you could imagine, I would jump at the chance.

18 I think there are people alive -- a thousand generations
19 from now, this will be what will then be regarded as the
20 highest form of community service, that work which everyone
21 regards as undeniably essential to be done, and unpleasant
22 and dangerous and undesirable to do.

23 It will be the continuing work which will still
24 have to be done a thousand generations from now, of making
25 sure that the nuclear poisons created by this generation

1 do not come into contact with the people, and do not poison
2 people a thousand generations from now.

3 If it were possible for me to do, under almost
4 any terms or conditions work to safeguard nuclear waste, or
5 to try to find ways of safeguarding it, I would gladly do
6 that.

7 I have tried to propose to you, as best I
8 could, what I think most important to do in the way that I
9 see I could best serve the community.

10 You have not only rejected that, but rejected
11 that in a way that makes clear that almost any other proposal
12 that I could make consistent with my political beliefs,
13 and with what I feel bound in conscience to do, would be
14 rejected. And it is those conditions which you have set
15 which are the reasons that I haven't submitted any other
16 explicit proposals.

17 Those -- I spent a great deal of time talking
18 to Esther about the work that I am doing, and the value that
19 I see in it, and that she sees in it, as she says.

20 To the extent that my only violation of
21 probation, if such there has been, has been not to make the
22 political statement which I would have made by registering,
23 to the extent that the only violation of probation that I
24 have committed, if there has been any at all, has been to
25 continue to hold the same political belief which constituted

1 my crime.

2 It seems to me that you're in no different a
3 situation now. You knew my politics then. I think you know
4 them now. I hold the same beliefs.

5 If you thought it was appropriate to suspend
6 sentence at that time, it seems to me just as appropriate to
7 suspend it now.

8 THE COURT: Are you finished?

9 MS. HASBROUCK: Yes.

10 THE COURT: Do you have anything to say?

11 MR. HILLER: No, Judge.

12 THE COURT: All right. I thought it was
13 clear to you when I sentenced you that you knew exactly what
14 alternative service was, that part or component of the
15 sentence that I gave, and alternative service is not doing
16 what you ordinarily do.

17 I don't put alternative service on a painter,
18 and expect that he would go out and paint houses and earn
19 a living.

20 I don't tell a bus driver to work a thousand
21 hours and get paid and go home and consider that alternative
22 service.

23 Alternative service was clearly defined to
24 you at the time that I sentenced you, and all the offerings
25 that you made throughout was something -- simply an extension

1 of that, of exactly what you were doing before.

2 And I think I also made it very clear that I
3 had no problem, whatsoever, with you involved in the --
4 whatever movement, the Peace Movement, the Anti-War Movement,
5 the Anti-Registration Movement, any movement you wanted to
6 be in, so long as it was consistent with the requirements
7 of the law.

8 But as far as being -- doing alternative
9 service, that you were not going to pick up your paint brush
10 and paint a house, if you were already doing that for a
11 living. You were not going to go out and work on the
12 Peace Movement when that is, effectively, what you're living
13 seems to be, but you were going to do an alternative service.

14 So, I thought I made it very clear. To put
15 it straight, to make it as simple as I possibly can, when
16 I sentenced you, and thought that I made it as clear as I
17 possibly could on the bench, that is to say, I'm not going
18 to tell you what it is that you must do, specifically, but
19 you will work it out with the Probation Department and
20 ultimately, with this Court, and the idea is that it had
21 to fill the ordinary perimeters of definition of alternative
22 service.

23 If you would do that, that would satisfy
24 whatever sanctions, punishments, that you were to receive
25 as a result of the finding by the jury that you had been in

1 violation of the law.

2 And at that time, I really believed in you.
3 But I don't believe you at all now; at all. I do not
4 believe you, no.

5 I believe, in fact, that you have lied to
6 me, and that you are lying now. And I clearly find that you
7 have violated the conditions that I have placed upon you,
8 and I intend to now revoke your sentence, and sentence
9 you now to 6 months to be served, and, in effect, terminate
10 your probation.

11 All right.

12 THE CLERK: Mr. Hasbrouck, the Court hereby
13 revokes your probation and orders you to be imprisoned for
14 a period of 6 months.

15 Mr. Marshall, the prisoner is now in your
16 custody, under sentence of this Court.

17 MR. HASBROUCK: I renew my Motion for a Stay
18 of Execution of This Sentence. I would like to renew my
19 Motion for a Stay of Your Commitment Order, pending the
20 appeal which is still pending in this case before the
21 First Circuit Court of Appeals, because I believe that,
22 given the transcript has not even been prepared, and the
23 most intense period of legal research and preparation for
24 that appeal will be required, it will be extremely difficult
25 for me to do that incarcerated.

1 It would be severely prejudicial for me, to
2 commit me at this time.

3 THE COURT: Motion is denied. You will be
4 incarcerated immediately; now, not tomorrow, but right now.
5 You can continue your appeal while in jail.

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C E R T I F I C A T E

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3 I, Margaret Carney, Contract Official Reporter,

4 of the United States District Court, do hereby

5 certify that the foregoing transcript, consisting

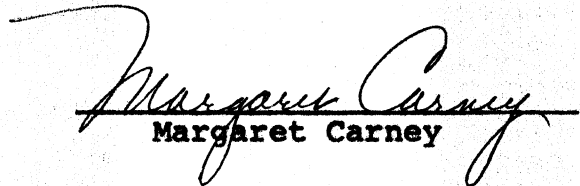
6 of Pages 1 - 34, inclusive, constitutes to the best

7 of my skill and ability a true and accurate

8 transcription of my stenotype notes taken in the

9 above-entitled action.

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11 

12 Margaret Carney

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