

資料

## Recollections of a Grunt in America's Draft Resistance Movement

(Part Two: The legal defense)

R. Jeffrey Blair

My brothers and I were part of a generation that grew up in the shadow of military conscription (see table on page 28). Our grandfather and his two sons—Dad and Uncle Russ—were career Army officers (Blair, 2024, 79–80). Our cousin Robert H. Blair joined the Army during the Korean War and made it his career. We grew up in the 1960s when the times they were a-changin'. With it came unrest, the Civil Rights Movement, a vibrant counterculture, and an anti-war movement that included draft resistance.

More and more young men refused induction or simply failed to report. They faced prison sentences of up to five years under the Selective Service Act or six years under the Federal Youth Corrections Act. Rather than simply waiting to be inducted into the draft resistance movement, resisters began violating draft card regulations. The penalties for violations of Selective Service regulations (32 CFR 1621) were just as severe. Registrants were required at all times to carry two cards: (a) a Registration Certificate and (b) a Notice of Classification.

When a photo appeared in Life magazine of Chris Kearns burning his draft card at Whitehall Induction Center on July 29, 1965, enraged congressmen and senators quickly inserted a *new clause* into the penalty section of the Selective Service Act (50 USC 462 (b) (3)). House Resolution 10306 was introduced on August 5 and passed the House five days later by a vote of 393 to 1. It passed the Senate on August 13 and was enacted August 30. This 1965 Amendment made it a separate offense to *destroy or mutilate* the cards. Despite this, resisters continued setting them on fire, tearing them up, and turning them in.

Enacted	Expired	Events
<b>Selective Service Act of 1940</b>		
Sep. 16, 1940	March 31, 1947	World War II
<b>Selective Service Act of 1948</b>		
June 24, 1948	June 24, 1950	Brothers Bob and Russ born
June 23, 1950	July 9, 1950	Korean War begins
June 30, 1950	July 9, 1951	China enters the Korean War my birth May 30, 1951
<b>Universal Military Training and Service Act (1951)</b>		
June 19, 1951	July 1, 1953	
June 29, 1953	July 1, 1955	Korean War ends Brother Greg born
June 30, 1955	July 1, 1959	kindergarten to 2 <sup>nd</sup> grade
March 23, 1959	July 1, 1963	3 <sup>rd</sup> to 6 <sup>th</sup> grade
March 28, 1963	July 1, 1967	Gulf of Tonkin incident 7 <sup>th</sup> to 10 <sup>th</sup> grade
<b>Military Selective Service Act of 1967</b>		
June 30, 1967	July 1, 1971	11 <sup>th</sup> and 12 <sup>th</sup> grade two years of college
<b>Induction authority lapses</b>		
about 3 months		AWOL sanctuary
<b>Military Selective Service Act (1971)</b>		
Sep. 28, 1971	July 1, 1973	draft card burning arrest and trial

Yet indictments for draft card violations remained quite rare. Only fifty men during the Vietnam era were ever charged (Baskir and Strauss, 1978). Forty of them were convicted. Let's look at a few of those cases. Most of this information comes from official court records: the Federal Supplement, the Federal Reporter (2<sup>nd</sup> series), and Supreme Court Reports.

### A Short History of Draft Card Violations

On 15 October 1965, at a rally near Whitehall Induction Center, **David Miller** burned his Notice of Classification Certificate to protest the draft, the war in Vietnam, and "the draft card burning law itself" (367 F. 2d 72). A grand jury in the Southern District of New York indicted him for destroying it. He waived his right to a jury trial and was convicted. Judge Tyler sentenced him to three years' imprisonment but

suspended the sentence and placed him on two years of probation. The Second Circuit Court of Appeals in New York City applied a balancing test: Freedom of Speech vs. efficient functioning of the Selective Service System. The three judges decided in favor of Selective Service and affirmed the conviction.

Five days after Miller, **Stephen Smith** burned a substantial portion of his Registration Certificate at an anti-war rally in Iowa City (249 F. Supp. 515). He was charged in a two-count indictment (I) for mutilation and destruction and (II) for failing to have it in his personal possession. Like Miller, he waived his right to a jury trial. Federal Judge Stephenson (Southern District Court of Iowa) dismissed Count II because it failed to state that he had *willfully and knowingly* failed to possess the card. As for Count I, the judge found him guilty as charged and placed him on three years' probation. The Eighth Circuit Court in St. Louis (368 F. 2d 529) agreed with the ruling of the Second Circuit in the *Miller* case and affirmed the conviction.

On 6 November 1965, **Tom Cornell**, Marc Edelman, Roy Lisker, David McReynolds, and Jim Wilson burned their cards at a public rally at Union Square Park Pavilion in New York City. Upon conviction, Cornell was imprisoned for five months in Danbury Correctional Institution in Connecticut.

On March 31 of the next year **David O'Brien**, John Phillips, David Reed, and David Benson burned draft cards on the steps of the Federal Courthouse in South Boston. A grand jury in the District of Massachusetts charged O'Brien with mutilating, destroying, and changing his Registration Certificate. A jury found him guilty. He was sentenced to six years in prison under the provisions of the Youth Correction Act, *one year more* than the maximum sentence provided by the Military Selective Service Act.

The First Circuit Court of Appeals in Boston, however, held the 1965 Amendment to the Military Selective Service Act to be an unconstitutional abridgment of his Freedom of Speech (376 F. 2d 538). The amendment was aimed at *public* destruction, witnessed events, the speech element of the offense. Intentional non-possession was also a violation of regulations. The three judges thought that O'Brien should have been charged with non-possession, and that the facts that were presented at his trial sustained this alternative charge. They affirmed his conviction for the *lesser included offense* of non-possession and remanded the case back to the district court for resentencing.

*Both* the United States government and O'Brien appealed the First Circuit's decision to the Supreme Court. O'Brien wished to challenge his conviction for a crime that he had not been charged with. The government, on the other hand, objected to the ruling that the 1965 Amendment, which had earlier been ruled *constitutional* in the Second Circuit and the Eighth Circuit<sup>1</sup>, violated the defendant's right to free speech. The Supreme Court accepted the case so that it could eliminate this contradiction.

The majority opinion, written by Justice Earl Warren, vacated the judgement of the First Circuit, reinstating both the conviction and the sentence (391 U.S. 367). They noted that the destruction amendment could be applied to anyone who destroys *someone else's* draft card. The incidental restriction of Free Speech was *outweighed* by substantial government interest in preserving the *information* printed on Selective Service certificates, which promoted the smooth functioning of the Selective Service System. Justice John Harlan II wrote a separate concurring opinion, while Justice William Douglas wrote a dissenting opinion, in which he pleaded for a hearing on the constitutionality of a peacetime draft.

This landmark decision had wide repercussions for Freedom of Speech. Draft cards deserved protection, only because of the *important information* that they contained. Twenty years later in a split decision (5–4) the Supreme Court decided that a protester could legally burn the American flag (491 U.S. 397). Freedom of Speech *outweighed* any government interest.

On 14 December 1966, **Bruce Dancis** ripped one of his draft cards into four pieces and returned the pieces to his local board (406 F. 2d 729). He was indicted in the Northern District of New York for mutilating it and was sentenced to six years under the Youth Corrections Act. The Second Circuit Court of Appeals affirmed the conviction and the sentence.

Dancis' supporters at Cornell University called for a mass card-burning at an anti-war march on 15 April 1967 (Ferber and Lynd, 1971, 72). Their goal was to get 500 people to pledge to participate. On April 14<sup>th</sup> they decided to go ahead with only 57. The next day in Central Park at Sheep's Meadow about a hundred more men joined them. **Gary Rader**, a reserve member of the Special Forces, wore his uniform for the occasion. His green beret stood out. He seems to have been the only one arrested—for mutilating his draft card and, incidentally, the unauthorized wearing of his army uniform (Rader, 1967).

The goal of the Selective Service System was to provide manpower for the Armed Forces, not prisoners for the U.S. Bureau of Prisons. With that in mind the Director of the Selective Service System on 24 October 1967, responded to such widespread acts of defiance with Local Board Memorandum #85. General Lewis B. Hershey suggested a new strategy—induction, *rather than* prosecution. Local boards were directed to *reclassify and induct* Selective Service violators, reporting only the most flagrant cases to the U.S. Attorney for prosecution. Thus **David Gutknecht**—who had dropped his draft cards at the feet of a U.S. Marshal eight days earlier during a protest in Minneapolis (406 F. 2d 494)—was NOT indicted for failure to be in possession of his draft cards. Instead, his local board classified him I-A *delinquent* on December 20 and six days later ordered him to report for induction on 24 January 1968, even ahead of other men that had volunteered to be inducted.

He reported as ordered, but when he announced his intention to refuse, he was separated from the other inductees. Although he was thus *deprived of the opportunity to refuse* to take the required step forward into military life, he was indicted in the District of Minnesota for failing and neglecting to comply with an order to report for and submit to induction. He waived a jury trial and was convicted. The Eighth Circuit Court of Appeals affirmed the conviction. The U.S. Supreme Court, however, ruled that the Selective Service System lacked Congressional authority to punish “delinquents” by *accelerating* their inductions and reversed the conviction (396 U.S. 295).

On December 4 **David Rehfield** and **Bradley Littlefield** burned their Notices of Classification on the steps of Tucson City Hall (416 F. 2d 273). A number of people, including two FBI agents, were standing near them, close enough to record their names and selective service numbers. Both Rehfield and Littlefield were indicted in the District of Arizona on two counts: (I) destruction and (II) non-possession. Juries found them guilty on both counts. The judge sentenced them to prison under the Federal Youth Corrections Act and the Ninth Circuit Court of Appeals affirmed their convictions and sentences.

On the exact same day, a draft counselor in Chicago returned his Registration certificate to the Department of Justice. Nothing happened to **Jeffrey Falk** (479 F. 2d 616).

On 30 August 1968, **Michael Weissman** tore both his Registration Certificate and Notice of Classification Certificates in half at a demonstration in front of St. Louis City Hall (434 F. 2d 175). Declaring his independence from the Selective Service, he handed the pieces to a plain clothes detective, who he thought was an FBI agent. He was indicted for mutilating, destroying, and changing his Registration Certificate by tearing it asunder. His conviction in the Eastern District Court of Missouri and sentence were affirmed by the Eighth Circuit Court of Appeals in St. Louis. The three-judge panel noted that tearing up legal documents was the traditional way to nullify them and concluded that tearing up a draft card constituted *both* mutilation *and* destruction.

In October, Jeffrey Falk mailed his I-A Notice of Classification to Federal Judge Hubert Will. Nothing happened (479 F. 2d 616).

In May 1969 he sent another Notice of Classification certificate to his Local Board. Nothing happened ... until he refused to submit to induction in May 1970. Then five months later he was charged in the Northern District of Illinois with four counts: refusal to submit and three counts of non-possession. The indictment was approved by the Chief of the Criminal Division, the First Assistant, the District Attorney in the Chicago office, and then the Department of Justice in Washington, D.C. Falk made motions to dismiss

the three draft card violations before and during his trial. He contended that he had been deliberately and illegally selected for prosecution because of his draft counseling work for Chicago Area Draft Resisters (CADRE). These motions were dismissed without a full hearing. Although the jury found him guilty on all four counts, the judge granted a post-trial motion for acquittal on the first count. He sentenced Falk to one year in prison for each of the three cards and made the sentences consecutive, a total of three years' imprisonment.

Draft card violations were difficult to prosecute. Courts required evidence: witnesses and physical evidence, or perhaps, self-incriminating testimony. For over a year General Hershey's memorandum diverted the flow of violations away from mutilation, destruction, and non-possession (50 USC 462 (b)) to failure to report for and submit to induction (50 USC 462 (a)). After the *Gutknecht* decision, these indictments had to be dismissed, convictions reversed, prisoners released, and inductees discharged from military service. From then on violators had to be indicted or ignored. They were often ignored.

When charges were filed, they could take a "shotgun approach"—mutilation *and* destruction in a single count—or specify just one: destruction *or* mutilation. None of the defendants seems to have burned or torn up more than one card. Smith, Rehfield, and Littlefield were charged with destruction *and* a separate count of non-possession. That extra charge was dismissed on a technicality in the *Smith* case. Falk alone was charged with three separate draft card violations. The violations had occurred over several years. The Justice Department saved them up and tacked them on to a charge of refusal to submit to induction.

### **1970–1971: Retirement and Protest**

By the end of 1970 two generations of Blairs had retired. Uncle Russ had retired from the Army in 1958 and from Culver Military Academy, where he taught Spanish and Russian, in June 1970. He was living in a retirement community in Alajic, Mexico. Dad had retired from the Army and moved to Foster Village on the outskirts of Pearl Harbor. My grandfather was living half of each year with Uncle Russ and the other half with us.

The two cadets in the third generation had left their military schools: Virginia Military Institute (VMI) and Culver Military Academy (CMA). Brother Bob spent his fourth year at University of Hawai'i, graduating in June 1970. He attended law school at the University of North Carolina, Chapel Hill as part of the U.S. Army's Judge Advocate General's Corps program. I attended California Institute of Technology.

In the spring of 1971, we both left school. We began protesting in tandem (Blair, 2024, 90–91). Bob was arrested at a sit-in at the Pentagon in May. I was arrested at sit-in during an AWOL sanctuary in July. In November I burned my draft cards at a demonstration inside the offices of my Local Board and abandoned them. A photograph of the scorched cards appeared in the Honolulu Advertiser (see Appendix 1). The FBI began their investigation. To paraphrase the words of Paul Simon's song *Keep the Customer Satisfied*, we had been in trouble with the law and now we were headed in for more.

### **1972: Call-ups by Lottery for Men Born in 1952**

My cards had been turned over to the FBI. Selective Service staff quickly identified me when agents presented photos of several possible suspects. The case seemed airtight. On January 27, Local Board #2 forwarded my Selective Service file to Hawaii State Headquarters. Perhaps this represented a significant step towards prosecution. I don't know, but on that same day something else that would prove of *great significance* happened. In Washington, G. Gordon Liddy met with Attorney-General John Mitchell, Jeb Magruder, and John Dean. He presented a wild plan to disrupt the Democratic National Convention and protect the security of the Republican National Convention. Mitchell's later approval of a scaled down version of Operation Gemstone led to the Watergate scandal. In the interim, the Attorney-General left the Justice Department to head up President Nixon's re-election campaign.

Meanwhile back in Honolulu, Assistant U.S. District Attorney William J. Eggers, III was trying to decide what to do. He had all the evidence that he needed to go to the grand jury. Busy with other cases, however, he was seriously considering ignoring the violation. He decided to consult with his headquarters. The Justice Department in Washington, D.C. insisted that he go forward with the prosecution. In fact, they offered to dispatch one of their own attorneys to the Islands, if need be. Eggers assured them that the Honolulu office would handle it.

My one-year leave-of-absence from college was coming to an end. Aware that I *might be* indicted, I requested an extension until the fall. I didn't want to be dragged away from my studies in handcuffs in the middle of a term. There was no such thing as online classes in 1972. Caltech granted the extension for a *full year*. I was very reluctant to put my education on hold for so long but decided to wait until mid-summer. If I wasn't charged by then, I would renew my request to come back in the fall. Little did I imagine that a full year later I would still be awaiting trial.

During this period, I was looking for a job to replace the one I had lost in the wake of the trial for the

sanctuary at Our Lady of Peace Cathedral. Employers often used to ask applicants about their draft status. I had returned a letter from my Local Board unopened, but assumed that I had been reclassified to I-A. With a lottery number of 209, however, I was unlikely to be called up. I told prospective employers that I was I-A. The two young male interviewers at one job interview informed me that they would be happy to consider me for a position but only *after* I completed my military service. Two years after the first draft lottery, General Hershey's channeling scheme (Hasbrouck, 2022) was still interfering with young men's lives. Pushing them in the direction of the Army or jobs contributing to the national interest.

Lack of a job allowed me to devote full-time to my work at American Friends Service Committee (AFSC) as a volunteer draft counselor. As luck would have it, Program Secretary Murph Henkle, was offered a position with AFSC staff in Vietnam. It would be six weeks until his replacement, Bill Sullivan, could arrive, so I was offered the position of Interim Program Secretary starting at the end of March.

American troops were being withdrawn from Vietnam, and Special Forces were among the first to leave. My cousin Robert H. Blair, however, managed to get back into the action as a major in the regular forces. His fourth tour of duty in Vietnam was with the Military Assistance Command, Team 47 in Loc Ninh. These teams trained, advised, and mentored the ground troops of South Vietnam (ARVN).

As America's participation in the ground war cooled down, the campaign in the air heated up. Electronic warfare was in its infancy. Detection was primitive by today's standards. Without cameras it was blind. Any movement that set off detectors could trigger massive retaliation, including cluster bombs. Jim Albertini and Jim Douglass were convinced this was a violation of the Nuremberg principles. They were looking for a way to go beyond protest, to resist and expose these war crimes.

They found it one morning in February, when they got stuck in a line of rush-hour traffic headed into Hickam Air Base (Breems, 2022 and Messman, 2015). The cars were waved onto the base *without inspection*. This gave their small group, called catholic Action of Hawaii, direct access to the base and the Directorate of Electronic Warfare. First, Dr. Fred Dodge collected some human blood from Albertini, Douglass, and volunteer donors within the anti-war community. Then on March 2, Chuck Giuli drove a van full of protesters to the adjacent parking lot. TV news reporter Linda Coble went along for the ride and to report on the action. Albertini and Jim Douglass walked inside the building. Douglass delivered an envelope addressed to the "commanding officer". Major LaFrance accepted it. As the major stepped into an inner office to deliver it, Douglass poured the blood on some files in an open drawer marked "top secret". LaFrance came back, saw what had happened, started choking him and then used him as a human mop in a vain attempt to wipe blood off the floor. Out in the parking lot, the protesters handed out leaflets



to people arriving for work. The eight protesters were expelled from the base with letters barring them from coming back. Albertini and Douglass were released. No one was arrested that day.

Six days later, however, FBI agents suddenly arrested Albertini and Douglass at their homes. The following day, after hearing the news on my car radio, I drove over to the Federal Courthouse. Pending criminal docket sheets kept in the Court Clerk's Office are public information. I asked to see them. After handing me the small pile of docket sheets, one of the assistant clerks wondered to another in a low, but audible, voice, if it was okay to put a docket sheet out before *all* the defendants had been arrested. Too late. I had already seen the sheet with the names of all *three* defendants: United States vs. Albertini, Douglass, and *Giuli*. They were charged with destruction of government property and conspiracy to destroy property. Chuck Giuli was still at large, and I knew exactly where to find him.

I drove from the Federal Courthouse to Roosevelt High School in Makiki, where Chuck was giving a slide presentation about electronic warfare to Setsuko Okubo's class. He saw me in the hallway from behind the overhead projector. In the hallway, he asked if *everyone* had been charged. No, just three—the two who had poured the blood and their driver. When his presentation finished, he went to the FBI and turned himself in. "Where was the defiant spirit of Berrigan's resistance?" I asked myself. If they were looking for me, I would go underground and make them find me. That chance came very soon.

I formally requested the National Director to cancel my registration in a letter dated March 20 to the Headquarters of the Selective Service System in Washington. Eight days later General Counsel Walter H. Morse declined on his behalf.

### **Playing Cat and Mouse with the FBI**

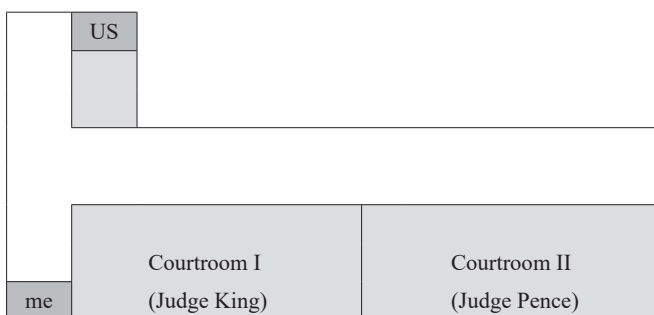
On Friday 7 April 1972, the Oahu Federal Grand Jury indicted *me*<sup>2</sup>. Although I had burned two draft cards (see Appendix 1), I was only indicted for the destruction of my Certificate of Registration. Federal Judge Beeks, visiting from the Western District of Washington State, set bail at \$1,000 and issued an arrest warrant. The docket sheet for criminal case #13,021 for the year<sup>3</sup> was placed in the file of pending cases.

Six days later, on April 13, I walked into the Clerk's Office to check the pending criminal docket before heading to the court martial of George Lee. It was at his sanctuary at Our Lady of Peace Cathedral that I had first been arrested (Blair, 2024, 91). He had recently gone AWOL from the Coast Guard again.

As I flipped through the docket sheets, I came across it—United States vs. Richard Jeffrey Blair<sup>4</sup> (similar to Appendix 5).

Indictment filed – Bench Warrant ordered –  
Bail \$1,000.00 – Bench Warrant issued.

A bench warrant (Appendix 4), also known as an arrest warrant, commands U.S. Marshals or other authorized officers<sup>5</sup> to arrest defendants and bring them to federal court. I was, of course, standing in the Court Clerk’s Office, located on the second floor of the Federal Courthouse. The U.S. Marshal’s Office was a short distance down a narrow hallway. Around a corner, between the two offices, was the main corridor in front of the two courtrooms. Destiny was calling. I had been promoted from protester to resister. Nonchalantly I handed all the sheets back to the staff and said thank you.



Federal Courthouse 2F

I was checking the pending criminal docket sheets in the Court Clerk’s Office.  
The U.S. Marshal’s Office (US) was a short distance down a narrow hallway.  
The main corridor in front of the two courtrooms was just around the corner.

Then I proceeded on to Lee’s trial in the Gold Bond Building on Nimitz Highway and broke the news of my indictment to anti-war friends, who had gathered to support him and witness the trial. As expected, he was convicted and sent to the brig at Pearl Harbor.

Afterwards I phoned Mom to let her know why I was leaving home. I was going to go “underground”, possibly one of the FBI’s ten *least* wanted fugitives. They hadn’t even shown up at my parents’ house in Foster Village yet. The U.S. District Attorney’s Office probably hadn’t given them the go-ahead, because prosecutors were still trying to decide whether to charge me with destruction of my Notice of Classification—a II-S student deferment *until 30 September 1971*, one month *before* being burned. Had it expired? A new Notice of Classification certificate had not yet been issued. Was the card legally protected from destruction until a new one arrived?

My friends Ian and Meda Chesney-Lind offered to let me housesit their apartment, while they were

on vacation. I immediately moved to the fourth floor of the Circle Jade apartments in Kaimuki. Before dawn the next morning I drove past my family's home in Foster Village. The coast seemed to be clear, so I dropped in to pick up a few things. I explained to my parents that my moving away from home wasn't personal. The FBI would be coming for me. I was trying to avoid arrest.

Mom offered to send me to Canada. Later Grandpa Ed (Connelly) offered to let me hide out at his beach house on Cape Cod. I declined both offers. I had no intention of running away. It was more like a game of hide-and-go-seek. It was *the FBI's job* to find me, and I had no doubt that they would eventually succeed.

A day or two later, I paid a brief visit to the Friends Meeting House in Manoa Valley to inform AFSC that I wouldn't be able to fulfill my duties as Interim Program Secretary. I assumed the FBI knew where I worked. Indeed, after my arrest and arraignment Assistant District Attorney Eggers called me at the AFSC Office.

Prosecutors finally decided to charge me with two counts, one for each of the two cards. Eggers withdrew the original indictment and went back to the grand jury. On April 25, I was re-indicted (see Appendix 2–3). Judge Martin Pence doubled the bail and issued a new arrest warrant. The case got a new number—Criminal No. 13,032 and a new docket sheet that would grow to three pages in length (Appendix 5–7).

Two of President Nixon's appointments were above politics and thus carried over from the Johnson administration: legendary FBI director J. Edgar Hoover and CIA director Richard Helms. On May 2, Hoover passed away. The next day, Patrick Gray replaced him. He would soon become entangled in the biggest political scandal of the century.

On the afternoon of May 4, two FBI agents finally arrived at our home in Foster Village. I, however, was long gone. While Mom was talking with them, Greg came home from school. Afraid that they might haul my younger brother off to jail, she hurriedly blurted out, "That's not the one." They questioned him, but he didn't know my whereabouts or how to contact me. As they left, they asked Mom to tell me that "they wanted to talk". She interpreted that to mean "*just talk*". On a subsequent, surreptitious visit home, I told her that I knew exactly what they wanted to say. "You're under arrest." Upon realizing that she had been played, she let out a groan.

I didn't expect to be arrested anytime soon. I had moved to Kay and Jim Linn's house at the top of Saint Louis Drive and was enjoying the fruit of their lychee tree and the company of their 3-year-old

daughter. My life as a fugitive, however, wouldn't last forever. Although I intended to represent myself in court, I wanted to request a court-appointed lawyer to act as my legal advisor. I had someone specific in mind, Jim Blanchfield. He had defended me and twelve others in state court on a misdemeanor charge stemming from an AWOL sanctuary at Our Lady of Peace Cathedral (Blair, 2024, 91). Now he was in private practice. He had left the Legal Aid Society with Brook Hart and several other lawyers. Their office was located on the fourth floor of the Dillingham Transportation Building. As I entered the building at 735 Bishop Street, I looked at the directory.

Hart, Sherwood, Leavitt, Blanchfield,  
and Hall ..... Suite 433

Federal Bureau of Investigation,  
Honolulu Field Office ... Second floor

I took the elevator, wondering if the door would open along the way. It didn't. Blanchfield was delighted to take my case.

Murph Henkel's replacement landed at Honolulu Airport, and I went out to welcome him. Bill Sullivan arrived with his wife and two young children. He expressed surprise that I was not in some kind of disguise, not even a pair of sunglasses. In the words of Buffalo Springfield "paranoia strikes deep, into your heart it will creep, it starts when you're always afraid". I guess that I wasn't afraid that the man would come and take me away. It would eventually come to pass, but not yet. By chance, I found a recent Yale graduate that had just moved to Honolulu and was looking for a roommate. We began sharing his apartment in Waikiki.

A month after his court martial, George Lee was still in the brig. Prisoners with good behavior, however, were allowed to go to church under supervision. Tom Morrison, a fellow resister discharged from the Coast Guard, thought it would cheer him up to see a couple of familiar faces at the 9:30 am Catholic mass. On Sunday, May 14 we managed to get through the gate *into* Pearl Harbor Naval Base. Everything went smoothly, until we tried to leave. We hadn't expected to be stopped going *off* base, but we were, apprehended and detained as trespassers. At the office of Base Security, guards asked to see our identification, including my draft card. What, no draft card? "Are you registered with the Selective Service?" No online data bases in 1972, and almost all government offices were closed on Sundays. They

demanded my home phone number, so they could inquire with one of my parents. Dad answered. He confirmed my registration and neglected to mention my fugitive status. Tom and I were released.

June was coming. Dad had plans to attend the 30<sup>th</sup> Reunion of West Point's Class of 1942. When I dropped by, he asked me if, under the circumstances, it was all right to go. I assured him that it would take the FBI several weeks, maybe even months, to find me. As it turned out, I was overconfident.

On May 28, White House "plumbers" successfully broke into the Watergate apartments in Washington, D.C. and planted listening devices. Overconfidence would be their downfall, as well. Two days later I turned twenty-one. Then my father flew to West Point to get together with old friends and share their stories of military service and family life.

In early June, John Witeck announced the news of my indictment at a small rally on the lawn in front of the Federal Courthouse. I was in the audience. Witeck had scooped me. I had planned to announce it myself in *Hawaii Draft News*, an occasional publication of AFSC-Hawaii. I happened to have purchased from the Honolulu *Advertiser* an unpublished photo of Melvin Sanehira and I burning our cards. I put that photo on the front page with a caption quoting the Thirteenth Amendment to the Constitution (see below). I was going to pass it out to registrants at the Bethel Street office Local Boards, the scene of our crime, and then disappear like a Daniel Berrigan.

## H a w a i i D r a f t N e w s



Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or anyplace subject to their jurisdiction.

—13<sup>th</sup> Amendment to the Constitution—

In the evening of Monday June 5, I attended a catholic Action meeting at an old church in Waikiki. Of the 16 or so active members, four of us had now been charged with felonies. My Selective Service violation was on the agenda. What did we discuss? I don't remember the details. Perhaps it was my plan to distribute the story of my offense and indictment and then disappear. A member of Local Draft Board #6 had dropped in. It seems there was sympathy, or at least interest, in strange places. That is how divisive the Vietnam War was.

The next day I was about to have lunch at a Chinese restaurant in Manoa with Jim Albertini and a couple other friends. Just as we were getting ready to order, he blurted out that two FBI agents were in the parking lot and headed our way. Was he sure? "Yes," he said, "Agent Henry Burns<sup>6</sup> is one of the two that arrested *me*." Luckily this restaurant had *two* perpendicular entrances. As they approached one, I swiftly left through the other. Albertini had a little chat with his FBI friend about what brought them so far from their downtown office. Supposedly they were just dropping in for lunch. Yet the FBI was getting closer.

### **A Weekend Behind Bars in Halawa Valley**

At about 2 pm on Friday June 9 Chuck Bollingmo<sup>7</sup> and I went to the third floor of the Bethel-Pauahi Building with some copies of *Hawaii Draft News*. Before doing that and making my escape, however, I wanted to check the public records in the adjoining room. As usual, the reception staff in Room 307 gave me permission. I assumed that the staff was still in the dark about my indictment and the arrest warrant. Unfortunately, they weren't. One of them must have called the FBI.

As I was looking through the large book of records, someone close behind me called my name. Two men were standing on either side. Agents Malone and Bender<sup>8</sup> led me a few feet further away from the door to a table against the back wall. They informed me that I was under arrest and gave me the required Miranda Warning<sup>9</sup> in writing. They asked me to sign their copy, acknowledging the fact. They failed, however, to mention that it *included*, underneath the warning, a ***waiver of rights***<sup>10</sup>. I declined to sign. No reaction and no interrogation. Continuing to the next step, they put me in handcuffs and led me out the door into the hallway. I was still holding some papers, including copies of *Hawaii Draft News*. As we passed Chuck, I handed him the papers and said good-bye.

The two agents and I walked down a couple of side streets to a brand-new building. Apparently, their old office at the Dillingham Transportation Building had been vacant for a while. I wonder how long. Their new office occupied an entire floor of the building. The agents took my photo and fingerprints, then asked me to sign. I asked them if it was required. Rather than a simple yes or no, they informed me that I

wouldn't be allowed to pay bail unless I signed. Since I hadn't planned on posting bail, I declined to sign as I had before. Again, no reaction. Continuing to the next step, they let me make a phone call, in fact, they let me make two. They dialed the numbers for me and wrote them down in a little notebook.

First, I called home. My brother Greg answered. Mom was taking her afternoon nap. "I'll tell her when she wakes up. This may be the last good sleep she'll have for a long time." We hung up. She wasn't sound asleep, however. She had woken up, heard Greg's half of the conversation, and then spent a few hours trying to call me back. The second call was to Mary Neilson so that she could let people at A.F.S.C. and catholic Action know that I was in custody. My arrest was announced in the Honolulu *Advertiser* (10 June 1972) the next day.

Having been booked by the FBI, it was time for them to take me to the Federal Courthouse on Merchant Street<sup>11</sup> and transfer me to the custody of U.S. Marshals (see Appendix 4). They are responsible for moving federal prisoners—taking them to jail, bringing them to court, and taking them to prison after conviction. This time the FBI *drove* me to the courtyard in the middle of the courthouse. It was a short ride. The FBI agents deposited me in the U.S. Marshals' small office on the second floor of the courthouse and removed their handcuffs.

The marshals put me in a chain-link holding cell for a few minutes. When it was time to go, they dressed me up in a long waist chain—long enough to accommodate two prisoners. The chain had long slim links at each end. These Martin links could slide through any of the other links. A marshal wound the chain two or three times around my waist and inserted one of the Martin links through a link at the front to fit my waist size. He cuffed one hand and slid the empty cuff through the Martin link before cuffing my other hand. My upper body was thus fully restrained. Two marshals escorted me down the hall, into the elevator, and to a car in the courtyard. Just before I got into the back seat, they added leg shackles. Then we were ready for the drive along the old H-1 Freeway<sup>12</sup> to Halawa Valley. Turning off the freeway, down to the end of a narrow dirt road brought us to a chain link fence and a small guard shack.

Inside the fence was a medium-sized building<sup>13</sup> with just one floor. The solid vault-like door at the entrance made a big clanging sound when it was unlocked and locked back up. Once inside the building a guard asked me my waist size. Not being much of a shopper, I hesitated. He shoved me against a wall. I made a guess. Afterwards things went more smoothly. I was allowed to shower, then given a brown uniform and supper before being escorted to my cell.

Solid concrete walls divided the cells. The back wall of each was concrete, but the front was open and barred, with a hinged cell gate. Guards called "turnkeys" used massive keys to open and close them

as well as the gate at the end of the cellblock hall. The solid concrete wall standing opposite the cells was lined at intervals with TV sets on portable stands.

A turnkey dropped me off at the first cell. It was divided into two halves which were separated by bars and an open doorway. The half that you entered had one toilet and a couple of concrete picnic tables. The inner half had some bunkbeds against the side wall. Although my uniform was *brown*, my cellmates were all wearing *blue* uniforms<sup>14</sup>. At about 8 pm I was called out of the cell for a phone call. Mom had finally found me. I assured her that I was fine. The lights went out at about 9 pm.

They came back on at 5:30 am, time for breakfast. My cellmates and I filed out of our cell gate and the gate at the end of the cellblock hall, turned left, went a short distance, and turned left again into the mess hall. Only 15 or 20 prisoners in all. Two long concrete tables. I sat down next to one of my cellmates. He told me that I would have to sit at the other table, where the inmates in *brown* uniforms were sitting. I moved to the other table. No knives, of course, or forks, just a soup spoon. Sometimes there was a thin piece of meat, easy to cut. Lunch at 10:30am and dinner at 3:30 pm. That's why I ate alone the first night. The other inmates had already finished eating.

I'm not a picky eater. The food was sufficient. Meals were short affairs, not much conversation. One thing that the inmates showed an interest in was the charges against each new prisoner. I was just a couple of weeks past my twenty-first birthday and was sporting a light beard. They thought that I must be facing drug charges.

After breakfast, it was time to shave. A turnkey passed a single razor from cell to cell, so that he could easily keep track of it. The TVs in the hall were constantly on. If inmates wanted to watch a different channel, they called out, "Turnkey" and made their request. They liked to watch the 6 o'clock news, with particular attention to crime reports and who had just been arrested, the new prisoner on the cellblock.

I was lucky to have been arrested on a Friday afternoon. Saturday and Sunday were visiting days. You could have visitors for up to 30 minutes in the morning and again in the afternoon. I had plenty of visitors—family and friends. My father, of course, was still at his reunion. Mom visited me each time and brought my brother Greg along. Mary Neilson had spread the word to catholic Action and AFSC. It was a short trip from her house in Aiea to Halawa Jail. Our house in Foster Village was even closer, but there was no direct route. Mom had to go to Aiea to get on the H-1 Freeway. I remember seeing Jim Albertini's face talking on the phone on the other side of the wire mesh glass. I repaid the favor later. One of Mom's visits was cut short, because my friends had arrived earlier. The 30-minute countdown starts whenever a visitor arrives.



Arraignments and sentence hearings in federal court were scheduled for Monday afternoons. This year, Monday June 12 was a state holiday. King Kamehameha I Day was moved from Sunday to Monday. A parade was scheduled to commence at Iolani Palace—just across the street from the Federal Courthouse—and end at Kapiolani Park, on the other side of Waikiki. It was not, however, a federal holiday, so after lunch another federal prisoner and I changed into our civilian clothes before being escorted by U.S. Marshals to the Courthouse. Reverse direction, but same procedure as on the day of my arrest, except for one thing—no leg shackles. Instead, we were connected by a shared waist chain. At the Marshal's Office all restraints were removed. We were put in the chain-link holding cell, where we could look down into the courtyard at the center of building.

### **Here Comes the Judge**

When it was time, we were taken to Courtroom II to face Judge Martin Pence. Judge Cyrus Tavares was Hawaii's first federal judge after becoming a state, appointed temporarily prior to nomination, just three weeks before Vice President Richard Nixon lost the 1960 Election to Senator John F. Kennedy. Eisenhower officially nominated him ten days before Kennedy's inauguration. Kennedy nominated Pence on September 14, 1961. The U.S. Senate confirmed them both a week later. Pence took over as Chief Judge. Tavares had gone into semi-retirement as a Senior Judge two months before my arraignment. Although Nixon had nominated Samuel King as his replacement, Senate confirmation was still two weeks away. His first case would be the trial of the Hickam Three (see page 46).

The trial of the Cathedral 13 (Blair, 2024, 94) had prepared me for this moment. When it was my turn, I knew exactly what to do. Although an article in the next afternoon's Honolulu *Star-Bulletin* (Unknown, 13 June 1972) stated that I "plead innocent", defendants only have three choices: (a) guilty, (b) not guilty, (c) or, occasionally, no contest—*nolo contendere*. I plead not guilty to both counts and asked to be released on my own recognizance, effectively reducing the bail to zero. Assistant U.S. District Attorney Eggers objected. He complained that I had been avoiding arrest. Nevertheless, Pence granted my request and pointed out that if I failed to show up in court, I would be committing a new, separate felony.

I told him that I would be representing myself in court but would like to have a court-appointed legal advisor, specifically James Blanchfield. I assured him that Blanchfield had agreed, and he granted the request. Then he gave me two weeks to file any pre-trial motions. When he set the trial date for August 8, I pointed out that he would be presiding over the trial of the Hickam Three on that date<sup>15</sup>. He was well aware of that. He allowed the double booking to stand. Apparently, courts overbook to accommodate

the possibility of a quick settlement through plea bargaining. I was free to go after signing the necessary documents in the Court Clerk's Office. I went home, back to Foster Village.

The FBI had nabbed me on a Friday afternoon when I returned to the scene of my crime. The next Friday night, James McCord, Jr. and his "plumbers" returned to the Watergate offices of the Democratic National Headquarters. They wanted to fix one of their bugs and take photographs of hundreds of pages of documents. They were caught in the early hours of Saturday, June 17, arrested and arraigned the same day on charges of burglary.

The investigation and the cover-up soon followed. Nixon's campaign manager John Mitchell had Stephen King confine his outspoken wife to a hotel room in California and hold her incommunicado. On June 22, she managed to make one late-night phone call to reporter Helen Thomas before the phone cord was ripped out of the wall. When she tried to escape five men subdued her, and she was drugged.

Mitchell's deputy Jeb Stuart Magruder immediately contacted John Dean. They had been in on the original planning (see page 33). Now Dean and John Ehrlichman took custody of papers and money from E. Howard Hunt's safe. They met with FBI Director Patrick Gray. He agreed to provide daily updates of the investigation and accepted Hunt's papers, at least those that Dean had not destroyed.

Meanwhile Nixon met with White House Chief of Staff H. R. "Bob" Haldeman to discuss plans to involve the CIA in the cover-up. They wanted the CIA to pretend that Watergate was a covert CIA operation and tell the FBI to back off. Deputy CIA Director Vernan Walters got the FBI to delay its investigation for a couple of weeks, but together with Director Richard Helms refused to put a stop to it. FBI investigators followed the money trail to G. Gordon Liddy and Hunt. Both were indicted on September 15 along with the five Watergate burglars.

Back in Federal Court for the District of Hawaii, Herbert Tom was chosen on a rotation basis from a list of private attorneys as my court-appointed attorney. On our first meeting, I informed him that I had specifically requested Blanchfield. He was willing to agree to a substitution if the court would allow it. We discussed the case. He was concerned that even if the court ruled that the cards have not been destroyed, that I would be convicted of non-possession. He must have read the Appeal Court's decision in the O'Brien case (376 F. 2d 538). He left me with a question that resembled a Zen Buddhist Koan: "How can you destroy a card and still possess it?"

Brother Bob was working at Honolulu Book Store and had been enjoying Island life since returning

in June 1971. One day at the Ft. DeRussy section of Waikiki Beach, he just happened to run into the head of the UH Army ROTC Program. Colonel David L. Silver was shocked, when he realized that Bob was not yet in the army. Some paperwork also surfaced in which Bob had written that he would be unwilling to serve in Vietnam. First the Army told Bob that he was not qualified to be an *officer*, he would have to join the Army as an *enlisted man*. He pointed out that there were no extra qualifications for officers. He was either qualified to serve or not. Rank was irrelevant.

Then the Army started to play the Blame Game. They charged him with willfully failing to report for Basic Training. They convened a disciplinary hearing or court martial. If found guilty, the Army could call him up as a private. The proceedings caught the attention of the media—newspapers and radio—at the same time that my court case was starting to appear in the news. State Senator Joe Kuroda asked his legislative assistant, Brother Russ, “How many brothers do you have?” To add to the media confusion, Russ was Vice President of Hawaii Young Democrats and running for the State House of Representatives in the 19<sup>th</sup> District (Aiea-Moanalua).

There was also a series of Letters to the Editor from my supporters: Dolly Foster, Mary Neilson, and Jim Albertini in June (21, 27, and 29). Bonnie Fackre and Jean Howard in July (3 and 12), even one from draft resisters Ko Hayashi and Stan Masui (July 18) stating that they, too, had destroyed their own draft cards and wondering why they had never been charged.

Two days later, Sidney Leong, State Chairman of the Young Republicans publicly confused Russ and me in his own Letter to the Editor (July 20). “Several letters have appeared in support of Jeff Blair, Democratic candidate for the House, because of his declaration to oppose [sic] the draft system and symbolically burning [sic] his draft card. ... Then again, perhaps, this is the only reason why Mr. Blair is a candidate.” The Honolulu *Advertiser* printed a correction the next day. That was followed with letters (July 26) from Allison Lynde, President of the Hawaii Young Democrats, and Russ, setting the record and issues straight. Both the Democratic Party and the Republican Party were in favor of an all-volunteer armed force. On July 31 the *Advertiser* ran a feature article entitled “The Brothers Blair decides each has a way to help” (Hoyt, 1972).

Any jackass can kick down a barn, but  
it takes a good carpenter to build one.

—Sam Rayburn—

Draft resisters had been kicking down the Selective Service System's barn for several years. I had

joined them. Brother Russ wanted to be a carpenter. Even President Nixon, who hated the “jackasses” had decided to try to build a new “barn” in order to defuse the Vietnam anti-war movement. Shortly after taking office, he appointed the Gates Commission. Five of the members wanted to build a new “barn”, five wanted to fortify the old one, and five were undecided. Their final report (Gates, 1970) recommended establishing an all-volunteer armed force. Secretary of Defense Melvin Laird had, in fact, been hard at work getting the Joint Chiefs of Staff on board and was carrying out those plans.

Meanwhile on June 26 Herbert Tom had filed motions (see Appendix 5) for a bill of particulars, dismissal of the indictment, and a substitution of attorneys. Assistant U.S. Attorney Eggers asked for more time. In a different court, Bob Blair successfully absolved himself of any wrongdoing. In the end the Army had to accept him as an officer or not at all. They decided to release him from any obligation to serve in the Armed Forces. He joined the Peace Corps as an English teacher and shipped out to Thailand.

### **A War Crimes Trial**

The trial of the Hickam Three (see pages 34–35) proceeded according to schedule on August 8 in Judge Samuel King’s courtroom. It was King’s first case as a federal judge. Judge Pence (Messman, 2015) had withdrawn from the case after a shouting match with the defendants during pretrial motions. Jim Albertini, Jim Douglass, and Chuck Giuli were defended by a team of lawyers that included two lawyers from out of state. Mary Kaufman and Benjamin Ferencz had been prosecuting attorneys at the Nuremberg War Crimes Tribunal. The trial of the Hickam Three took about one week. One of the Berrigan brothers, either Phil or Dan, flew into town to give their support. The courtroom was packed every day. There was a big public forum every night (Breems, 2022).

During the trial charges were reduced from felonies to misdemeanors<sup>16</sup>, the maximum sentence from fifteen years to six months, because the government refused to enter the top-secret files into evidence. Charges against the driver were dismissed for lack of evidence connecting him to the crime. Like the leafleteers and news reporter Linda Cobal, none of whom were indicted, Chuck Giuli hadn’t entered the building and didn’t necessarily know what Albertini and Douglass intended to do. Albertini and Douglass, on the other hand, were convicted. King sentenced the two of them to one year of probation and a fine of \$500. Neither one paid.

Jim Douglass, having resigned his teaching job at the University of Hawai’i in anticipation of several years of incarceration, returned to his previous teaching position in Hedley, Canada. This unauthorized

move, of course, was a violation of his probation (Messman, 2015). He was eventually arrested in 1975 at a Catholic Worker conference in Los Angeles. U.S. Marshals brought him back to Honolulu for resentencing. Judge King sentenced him to *unconditional* probation and stalked out of court.

On September 15, E. Howard Hunt, G. Gordon Liddy, James McCord, Jr. and the other four Watergate burglars were indicted by a federal grand jury. Six days later, my attorney and I had our day in court, one of many to come. Evan Shirley, on behalf of the American Civil Liberties Union, filed an *Amicus* brief and joined Herbert Tom and I in court to argue in favor of the substitution of Jim Blanchfield as my legal advisor. At the hearing that motion was granted, but the other motions to dismiss one or both counts of the indictment were denied. Blanchfield was officially appointed eight days later.

Mary Neilson helped me publicize such court appearances with press releases. A mother of nine children, prematurely gray at the age of 45, she was a human dynamo and a master of multi-tasking. She chauffeured me around to the offices of the Honolulu *Advertiser* and the *Star-Bulletin* and to various TV and radio stations in her Volkswagen Beetle with her youngest child, Sean, strapped in his baby seat in the back, chatting away about her older children—Nora in New York or David. Sometimes we'd drop in to see Rosie or Martha at work. I was even invited to the reception for Joey, Jr.'s wedding.

The Honolulu *Advertiser* and *Star-Bulletin* were happy to get our press releases. It encouraged them seek out information on their own and, perhaps, attend some of the hearings. When their court reporters had a slow news day, they would check court records. Small articles about rather trivial matters sometimes unexpectedly appeared. This caused a problem for my parents during the six months of the year that my grandfather was staying with us (see page 32). Colonel George Blair, a combat veteran of World War I, was now 93 years old (Blair, 2024, 79–80). The first thing he did each morning was sit back in his easy chair and read the Honolulu *Advertiser*. It might upset him to suddenly discover that his grandson, a card-burning draft resister, was in trouble with the law. For that reason, they woke up early and checked for any articles about the case and clipped them out. Many of them found their way into a second scrapbook that Mom made for me, to which I have been referring while writing this article.

Mary Neilson also arranged for me to speak on October 2 to a class at St. Louis High School that was studying Comparative Political Systems. Apparently, they had been discussing my case in class. This gave them an opportunity hear my point of view and share their opinions in a written assignment. Some addressed their comments to me. One, in particular, caught my attention:

I think you are right, but I think you should slow down on what you are doing, because in

the last school that I went to we had a teacher named James Albertini and he was just like you, but now he is in jail.

Yes, having refused to pay his fine, Albertini found himself behind bars in Halawa Valley. It was my turn to visit him. He served a 90-day sentence for contempt of court, but never paid the original \$500 fine nor the additional \$250 fine for contempt (Breems, 2022).

In late September I had been *ordered to report*, not for induction, but for jury duty. I was summoned to appear before the Honorable Dick Yin Wong on Tuesday, October 10, 1972, at 8:15 am as a prospective *trial juror*. Hmm. Another case of involuntary servitude. Should I refuse? Will I be acceptable? Will they think to ask me if I am or have ever been charged with a criminal offense? We will never know, because the order to report was cancelled and I was never ordered to report again.

The similarities are obvious, the differences interesting. Nobody registers for jury duty, the names and addresses come from voter lists. There are no cards to carry or burn in protest. What happens if someone fails to report? Is it a crime? Interesting questions for further research.

### **Judge Solomon's Rocket Docket**

As the wheels of justice slowly turned, I continued with my draft counseling activities. Mary Neilson was even more proactive, often asking me to tag along with her and help with various paralegal projects<sup>17</sup>. I, for example, would check the pending criminal docket in federal court for Selective Service cases *to report* about them in Hawaii Draft News. She would try *to contact* the defendants to see if we could be of any assistance. One day we knocked on the door of a Jehovah's Witness who had refused induction. He didn't want anything to do with us, so we left. In mid-October, she and I attended the trial of Lester Uyeda before visiting Judge Gus J. Solomon from the District of Oregon. There was no jury<sup>18</sup>. There was no defense. It was a complete charade.

We arrived in court before the defendant and his attorney. The judge and Assistant District Attorney were already there, having disposed of the previous case, perhaps<sup>19</sup>. The court-appointed "defense" attorney arrived before his client. He and the judge started discussing the upcoming case. The attorney had prepared no defense and had no intension of presenting one. In that case, said Solomon, he would let the defendant take the stand and make any statement he wished before sentencing him.

That is exactly what happened, when Uyeda arrived a few minutes later with his mentor Toshi. Toshi

was a kooky local artist known for his large abstract bamboo structures<sup>20</sup> on the Manoa campus of the University of Hawai'i. The defendant was charged with two counts (U.S. v. Uyeda, 476 F. 2d 958): (I) failure to report for induction on 17 February 1971 and (II) refusal to report on April 14.

Uyeda had lost his II-S deferment as a UH student in December 1970, but quickly enrolled in Leeward Community College, nine days *before* his Local Board sent him the February 17 order to report for induction. On February 4, he requested a I-S(c) student deferment but failed to clarify the date of his enrollment. Misled into thinking that he had enrolled after the order to report, his Local Board sent him the other order to report for induction, on April 14. None of these facts were presented at trial. Instead, in an empty gesture of magnanimity, Solomon dismissed the first count. Then he, the prosecutor, or defense attorney—it doesn't really matter who—put Uyeda on the stand. Uyeda gave a very short, unprepared speech against war. Solomon cut in demanding to know "Who told you to say that?" He was looking directly at the defendant but referring to the two observers—Mary Neilson and me.

"No one," said Uyeda, "I thought it up myself, just now." Then the trial was over, all within a matter of minutes. Solomon *immediately* sentenced him to two year's imprisonment, without any stay during the appeal process. In fact, he added an order that the defendant be sent off to prison on the mainland<sup>21</sup> *without delay*. The U.S. Marshals swiftly whisked Uyeda off to Halawa Jail.

This was the bleak picture of resistance that my mom had painted for me in the summer of 1971 (Blair, 2024, 91–92). My trial was going to fall somewhere between the two extremes of Lester Uyeda's sad little affair and the Hickam Three's grand spectacle. My trial would last a full day before a jury and a couple of dozen spectators. It would be preceded by several days of pretrial motions with a dozen or so observers. Sentencing would take place in a packed courtroom a full two months after the trial and after an extensive Presentence Investigation Report by Probation Officer Earnest Lee, including several letters on my behalf. Each turn in the legal process was accompanied by media attention.

After witnessing this travesty of justice in Solomon's court, Mary secured for Uyeda a competent criminal attorney, David Bettencourt. The two of us described the collusion before the defendant arrived and the farce that followed, and Bettencourt went to work. He filed a motion to have Uyeda released. Solomon denied it without listening to oral arguments. As soon as he was gone and Judge Pence had returned, Bettencourt convinced Pence to free ... Uyeda pending his appeal to the Ninth Circuit (Paulicka, 1972). The defendant had spent two weeks in jail. Now he was free and would remain so. On 27 March 1973, Judges Browning, Goodwin, and District Court Judge Taylor from Idaho allowed Bettencourt to present facts and make arguments that, obviously, had not been put into the trial record (476 F. 2d 958). They then decided that Uyeda would have been guilty of ignoring the first order to report, had Solomon

not dismissed Count I. The Local Board, however, had all the information that they needed to defer him before they issued the second order to report. Count II should, therefore, have been dismissed. His conviction was reversed.

When the year 1972 came to an end, men with **lottery numbers from 1 to 95** had been called up for induction and 49,514 had been inducted. Seven hundred and fifty-nine U.S. troops had been killed. Selective Service issued a call-up on December 7. It turned out to be the last. President Nixon won reelection with 520 electoral votes to McGovern's 17. FBI Director Patrick Gray had destroyed the documents from E. Howard Hunt's safe.

### **1973: Call-ups by Lottery for Men Born in 1953**

President Nixon was looking forward to a new era of peace during his second inauguration. On January 27 the Paris Peace Accord was signed, giving the United States 60 days to pull its troops out of Vietnam. The next day, Secretary of Defense Melvin Laird announced that there would be no more call-ups. Starting on February 12, American prisoners of war returned home.

As the Vietnam War was coming to a close, however, the Watergate Scandal was just getting started. The first Watergate trial began on January 8 with five of the defendants changing their pleas to guilty. Lawyers for G. Gordon Liddy and James McCord, Jr. fought the evidence for three weeks, but on January 30 both were convicted. A week later, four democrats and three republicans were named to the newly formed Senate Watergate Committee. It would look into the coverup.

By February it was time for me to make a choice about my leave-of-absence. If I tried to extend it again, Caltech might insist that I take another full year off (see page 33). Feeling that three years would be too long, I decided to request the court's permission to return to school. Judge King granted the motion on February 20 with the comment "We don't want him to be dumb." He was trying to inject a little humor, I suppose, but Mom really resented it. A hearing on pretrial motions was set for March 5.

On March 5 Paul Miguel brought his high school class at MidPac Institute to Courtroom II to observe the hearing. Colonel Henry C. Oyasato<sup>22</sup> testified<sup>23</sup> with respect to a motion to dismiss Count II, destruction of the Notice of Classification. The fact that my II-S classification was due to expire on 30 September 1971, a full month before it was burned, was clearly visible on the card (see Appendix 1). I argued that any duty to possess the card and keep it intact had expired on that date. On the stand Colonel Oyasato



explained that along with the extension of the Military Selective Service Act on September 28 (see page 28) some new regulations had been enacted and published in the Federal Register. They could not legally take effect for thirty days. In the interim all processing of registrants, including change of classification had been suspended. Normal operations were resumed on November 2. The II-S classification was still valid on that day. The point I was trying to make seems to have been missed. Due Process under the Sixth Amendment to the Constitution requires that *registrants be given sufficient notice* of any laws that they are required to obey.

There should be no question that *old* Notices of Classification can be destroyed and disposed of. The tricky question is *when* do they become legally old: (a) the expiration date on the face of the card, (b) when the registrant has been reclassified, or (c) when they get a new Notice of Classification? The government argued for (b). I argued for (a). Judge Pence sided with the government and denied our motion to dismiss. We would raise the issue again on appeal. Further hearings for pretrial motions were set for March 12.

Judge Pence would occasionally talk off the record about how the legal system works. He was relaxed and seemed to enjoy the role of teacher. I still remember the principles he explained in three of these mini lectures: (a) not everyone that is indicted is guilty, (b) the function of appeals courts is to fix the mistakes of district judges, and (c) courts prefer to base their decisions on small, uncontroversial precedents, rather than tackle large, unsettled issues. He illustrated the first principle by recounting how he himself had once been *falsely accused* of a crime.

Although the President's authority was due to expire at midnight between June 30 and July 1, the lottery continued. Registrants born in 1954 got their lottery numbers on March 8. My brother Greg got the lowest number in our family—186. All four of us boys had been very lucky.

Airstrikes in Cambodia and other supporting operations had continued after U.S. combat troops had left. In March Nixon indicated that the United States might reenter Vietnam to enforce the provisions of the Paris Peace Accord. Nixon, however, was facing formidable opposition in Congress.

Pretrial hearings continued, on March 12. The legal issue was selective prosecution. Melvin Sanehira had burned his cards at the same time as I did. Only one of us was indicted. Numerous men in Hawaii Draft Resistance had publicly destroyed cards. None of them had been indicted. On March 12 Don Sharp and John Witeck courageously testified under oath in federal court that they had violated the law with impunity. They described their illegal actions in great detail. This was my evidence to argue that I had

been singled out for prosecution because of my *perfectly legal* draft counseling activities for the American Friends Service Committee. I contended that the charges should thus be dismissed.

When I finished, it was time for Assistant District Attorney Eggers' rebuttal, but he told Judge Pence that he would rest his case without any rebuttal. Pence warned him against it. Apparently, I had succeeded in establishing a *prima facie* case. Without any counter evidence, the charges against me would have to be dismissed. Eggers took the hint and brought his own witnesses to court the next day.

Blanchfield and I arrived at court a little late. Judge Pence fined me one dollar per minute, a total of five dollars. Blanchfield objected, saying it was *his* fault that we were late. Pence insisted on fining *me*, since I was representing myself. He pointed out that Blanchfield could pay the fine, if he wished.

Eggers called three witnesses to the stand: an FBI agent, the State Director of Selective Service, and a former federal prosecutor. I do not recall the content of the testimony given by Colonel Oyasato. The full court transcripts<sup>23</sup>, however, are available in the Hawaiian and Pacific Collection of Hamilton Library on the Manoa Campus of the University of Hawai'i.

Special Agent Henry Burns<sup>24</sup> explained why Melvin Sanchez had not been indicted. Selective Service clerks who had witnessed the demonstration were unable to pick him out of a photo lineup. They identified my photo without any trouble because of my previous visits to their office to inspect public information. In addition, Melvin's cards had been more thoroughly burned (see Appendix 1) making them harder to identify. It would have been difficult to prove Melvin's case<sup>25</sup>, mine was an easy slam dunk.

Joseph M. Gedan had been an Assistant District Attorney before Nixon appointed District Attorney Harold M. Fong. He testified that he and some of the other federal prosecutors under the previous administration had placed cases involving draft card violations, such as Sharp's and Witeck's, at the bottom of their piles, and then they never surfaced. He confessed that he had done this without authorization and had felt a bit guilty about it. Thus, I had not been selected for prosecution. The other cases had fallen through the cracks provided by arbitrary decisions of assistant prosecutors<sup>26</sup>. These pretrial motions continued the next day.

This time the prosecutor arrived two minutes late. Blanchfield immediately pointed it out to the judge. Judge Pence presented me with a choice: (a) he could fine Eggers two dollars or (b) reduce my fine by two dollars. I did the math, seven dollars for the U.S. Government OR three dollars. I chose three dollars. Then it was time for arguments.

Eggers had successfully countered our contention, but only partially. The arguments in court focused entirely on the decision at the *local level*. Even though, the District Attorney's Office had overwhelming evidence, Eggers was reluctant to seek indictment, until consulting with the *Justice Department* in

Washington, D.C. (see page 33). That fact had come up in a private conversation between Blanchfield and Eggers, which was later relayed to me in casual conversation.

Unknown to us, Jeffrey Falk (see page 31) had made a similar motion for dismissal. He, too, was a draft counselor charged and convicted of draft-card violations. The formal decision to prosecute included not only the Assistant U.S. District Attorney, but also three other three higher-ranking staff members in the Office of the Northern District of Illinois, and then the *Justice Department* in Washington. The trial court refused to hear his arguments. In October 1972, a three-judge panel of the Seventh Circuit Court of Appeals affirmed that decision, the convictions, and the sentence by a vote of 2 to 1 (472 F. 2d 1101). Two months later, however, they granted a rehearing before the full circuit court. The *Falk* case and my own point to the possibility that discriminatory prosecution was occurring at the *national level*.

We had missed a golden opportunity to challenge the Nixon Justice Department. Judge Pence denied our motion to dismiss and set the trial date for April 24. On April 19, by a decision of 5 to 3, the Seventh Circuit Court of Appeals reversed Falk's convictions and remanded the case back to the district court for a hearing on the motion to dismiss because of selective prosecution (479 F. 2d 616).

On March 21, just two days before the day that was set for the sentencing of the seven Watergate defendants, Judge John Sirica received a letter from James McCord, Jr. confessing perjury and implicating White House officials in a cover-up. Watergate was not a CIA operation. The judge made the letter public, postponed McCord's sentencing, and handed down provisional sentences to pressure the other defendants into revealing more information before final sentences were imposed. Presidential advisor John Dean notified Nixon that there was "a cancer on the presidency". Within two weeks, he also began cooperating with prosecutors.

I returned to Caltech for the first time in two years. Suddenly I was living in a different world, my academic world. It's all a blur now, not even a blur, completely erased from my mind. I lived on campus in Lloyd House, ate on campus, and majored in history, but only remember one course—Physics 2, Quantum Mechanics, which I later dropped. There was a physics mid-term exam in April, but I had to return to Hawaii for my trial. I talked to my professor, Richardo Gomez. He told me not to worry and wished me luck.

Then I was back in my world of protest and politics. I stopped in to see Blanchfield. He was very happy and looking forward to the trial. Eggers had offered us a plea bargain—if I joined the Army, he would drop the charges. Blanchfield told me how much he enjoyed turning it down and telling Eggers that *we were going to win* in court. As always, he was cheerful and optimistic heading into court.

April 24 was another beautiful, sunny day in paradise. The trial started at 9am and took the entire day. The first order of business was to select a jury. I wanted the make-up of the jury to be as diverse as possible, so I suggested waving preemptory challenges. The defense has more of them than the prosecution. Eggers agreed. Judge Pence questioned the jurors about their connections to the military and asked if they could be impartial. Only a few were removed for cause, one of them exclaiming that *the Selective Service System* should be on trial as he left the jury box. Twelve jurors and one alternative were quickly chosen and sworn in.

Two of the Local Board clerks, Hannah Kaaihui and Yaeko Morisaki, testified that they saw me burn my draft cards and return them. The cards themselves were entered into evidence. Upon cross-examination, Morisaki, identified the cards and admitted that none of the information on them, except the first name on the Notice of Classification had been affected (see Appendix 1). When asked to read the information, she had no trouble reading the name, selective service number, date and place of birth, the clerk's signature, the name of the local board, the date of registration, the classification and its expiration date, the date of mailing, and the advice and warning printed on the back. The usefulness of the cards for their intended purposes was unimpaired. When the government rested its case, I made a motion for a directed verdict of not guilty on both counts. The cards had NOT been destroyed. Nevertheless Judge Pence denied the motion.

I took the stand. Instead of questioning myself, Jim Blanchfield was allowed to question me. Then Eggers cross-examined me. He asked me if I had intended to *destroy* my draft cards. My answer was no. I had intended to and did *burn* them to demonstrate my opposition to military conscription. The fire had gone out before they were destroyed. I did not try to relight them. I simply abandoned them. In fact, I had, for some time, intended to *return* my cards to the Local Board. I only decided to burn them when invited to do so as part of the All Souls' Day protest. In any case, the message to the Selective Service was the same—I resign, I am not going to cooperate.

Eggers asked if I understood the law and its consequences. I affirmed that I understood that the maximum penalty for mutilation or destruction of cards was five years in prison and a \$10,000 fine. My failure to possess the cards was also a violation. I continued, however, to deny that the cards had been destroyed. That issue had come before the judge and would come before the jury. Eggers called Colonel Oyasato to the stand for rebuttal. I again made a motion for a directed verdict of not guilty on both counts. Judge Pence again denied the motion. The jury would have to decide.

Pence gave the jury their instructions. It was about 4 pm when the jury began their deliberations. An hour later the deadlocked jury requested further instructions on the meaning of “destruction”. Then

Eggers, Blanchfield, and I went to the judge's chamber to discuss the issue. There was no consensus. When Pence had had enough, he suddenly stopped the discussion, took the bench, and instructed the jury. He gave a long rambling explanation that included both the government and defense's sets of requested instructions, some dictionary definitions, a legal definition, and some comments of his own referring to the *Weissman* case (see page 31). Five minutes later the jury returned their verdict—guilty on both counts. The young clerk's voice cracked a little with emotion when he read it. I again made a motion for a directed verdict of not guilty on both counts. Judge Pence again denied the motion.

Eggers gleefully informed the judge that he hadn't said "the magic words". Judge Pence dryly replied that there was no "magic" in them and continued. He ordered me to undergo a presentence report. I asked that the sentencing be postponed until I finished the school year. He set a date for sentencing—July 2. I told him that I would be back in June, but he insisted on that date and demanded that I waive my Right to a Speedy Hearing. I agreed.

One of the jurors followed Mom and I into the elevator. She was haunted by the idea that I was going to go to prison. I assured her that it was all right. I was ready for it. I had always assumed that I was headed there. She said that she wouldn't be able to sleep. Mom took her contact information and kept in touch with her.

Within a few days I was interviewed by a probation officer. Ernest K. K. Lee filed his five-page Presentence Investigation Report on May 13 and attached letters on my behalf from Mom, Dad, Brother Russ, and Steven Kroll. It covered my offense, my family background, prior criminal record<sup>27</sup>, home and neighborhood, education, religion, physical and mental health, employment, military record<sup>28</sup>, financial condition, interests and leisure-time activities.

Back in Washington, D.C., FBI Director Patrick Gray was being interviewed as well—confirmation hearings by the U.S. Senate. At the end of February, he had admitted providing daily updates on the Watergate investigation to the White House at the request of John Dean. When the committee found out that he had also destroyed documents from E. Howard Hunt's safe, support for his confirmation dried up. On April 27, he was forced to resign. Three days later, the President's closest advisors: H. R. "Bob" Haldeman and John Ehrlichman resigned at the request of President Nixon. Nixon simply fired John Dean. Act II of the Watergate scandal was about to unfold.

In America May 1 is Law Day. Judge Pence was invited to a luncheon at Pearl Harbor Officers' Club where he gave a "blunt and hard-hitting speech" to local attorneys and military officers (Milz, 1973). Punishment, rather than rehabilitation, should be the aim of the correctional system. Two days later an editorial by John Griffin in one of our local newspapers questioned my prosecution, noting that

the case had come from “the same Administration that brought you the Watergate scandal, the bombing of Cambodia, and so much talk of peace with honor (3 May 1973)”. Mom noticed both articles and added them to my scrapbook.

In Pasadena, school friends were delighted to see me, assuming that I had been acquitted. I soon disabused them of that notion, informing them that I was going to be sentenced on July 2. A pink slip for Physics was waiting in my mailbox. I had missed the mid-term exam and was flunking. I decided to drop it and take it again later. As always, I concentrated on my studies with a break in the afternoon for sports. It was a routine familiar from military school (Blair, 2024, 84).

Across the United States, the political climate had changed. The campus unrest of my first two years of college had been replaced with a deep interest in the drama of Watergate. The Senate Watergate Committee had opened hearings on May 17. All four TV channels were broadcasting them live during the daytime, something that hadn’t happened since the Kennedy Assassination (Blair, 2024, 82). After a while, the four channels agreed to rotate coverage. The hearings were rebroadcast at night on PBS (Public Broadcasting Service). America was officially “wallowing in Watergate” with Elliot Richardson as the new Attorney General and Archibald Cox as the Special Prosecutor.

The Court Clerk mailed an official Notice (see the top half of Appendix 8) to remind me of my date with destiny. At the beginning of June, I flew back to Hawaii.

There wasn’t much to do except wait for July 2. Happily, I got an invitation to accompany Molly March and a friend on a trip to Maui and Molokai. The Marches were old family friends. We first met them at Fort Meade, Maryland. Their father, an Annapolis graduate and expert on Russia and the Russian language, was working for the National Security Agency (NSA). They followed us to Arlington, Virginia where our fathers worked at the Pentagon and then in 1972 to Honolulu, Hawaii. Their quarters were located between Pearl Harbor Naval Base and Foster Village, where we lived after Dad retired from the Army. Admiral Patrick G. March had three lovely daughters: Molly, Terry, and Peggy. Terry, who was my age, had attended Pershing Hill Elementary School and Gunston Jr. High with me. In fact, I had visited her at Cornell University in 1970 (see Blair 2024, 88). Molly was a year or two older.

I needed Judge Pence’s permission to leave the Island of Oahu and got it (Appendix 7). It was a memorable trip. The three of us spent two days hiking from the top of Haleakala<sup>29</sup> down to the ocean. We read Winnie-the-Pooh stories around the campfire. Hitched a ride along the north shore of Maui to the airport. Chartered a small plane to take us to Molokai. Spent a week on the beach on the eastern end of the

island. Then we flew back to Honolulu.

I got a phone call from Don Sharp. He wanted to burn his draft card in protest on the day of my sentencing. I discouraged him from taking such a great risk on my behalf. He and John Witeck had already testified under oath in federal court about their numerous draft card violations (see page 51). I expected to be sentenced to two or three years in prison but realized that the Ninth Circuit Court of Appeals might reverse my conviction, thus vacating that sentence.

On June 25, John Dean began four days of testimony before the Senate Watergate Committee. It was his word against the President's. He insisted that President Nixon was well aware of the coverup. They had discussed it at least 35 times. Dean's accusations were a sensation, but there was no evidence to back them up, not yet.

Sunday July 1 the draft was officially over. Young men still had to register with the Selective Service, but the President's authority to order them to report for induction had expired. At 3 o'clock the next afternoon, I was back in Courtroom II with my supporters, including Dana Park, John Witeck, Don Sharp, Jim Albertini, and Chuck Guili. First up was the Assistant U.S. District Attorney, not Eggers, but William McCorrison. He recommended a fine of \$2,500. I was shocked. What did money have to do with my crime?

Next it was my turn to speak. I had prepared a speech<sup>30</sup>, assuming that I would be sent to prison. I now prefaced that speech by pointing out that I would have the same problem with a fine that Albertini had had<sup>31</sup>. I remember praising the courage of draft resister Dana Park, whom Pence had sentenced in 1968 to six years under the Federal Youth Corrections Act. Acknowledging that I "had acted neither in haste nor in ignorance of the [draft] law", I affirmed that I "remained 'unalterably opposed to [it]'" (Coughlin, 3 July 1973).

Judge Pence told me to stay standing at the lectern (Lind, 18 July 1973). He announced that he had found an abandoned draft card that had been slipped under the door of his chamber, undoubtedly Don Sharp's. It would not, he assured us, influence his decision. Then he began by eliminating the possibility of probation. "All the probation officers in the world wouldn't stop you... You would do it all over again". Blanchfield, no longer my legal advisor, now my attorney, stood up and said, "This sounds ominous". Freedom of Speech, of course, allows judges to sound just as ominous as they like, and Pence continued, referring to Dana Park. "You just want to join Dana Park. Well, I'm not going to put you where I put him." Pointing out that the draft had ended, he declared that he would not feed my "martyr complex. You even want the scars<sup>32</sup>." Instead, he would fine me \$250 for each of the two counts, a total of \$500. It was the

same sentence as the Hickam defendants had gotten. Like them I had no intention of paying it. Blanchfield announced our intention to appeal the conviction.

I went home. In tears, Mom wanted me to drop the appeal and pay the fine. Dad patiently explained to her that an appeals court could not increase the sentence. There was nothing to lose. The Ninth Circuit Court of Appeals could only affirm or reverse my conviction. I immediately went over to the Marchs' house to deliver news of the day's event. Terry asked me if I had a martyr complex. I don't remember if I answered her question. Today I would say no. Like any soldier, I took a risk when I challenged the Selective Service System, but I also kept my head down and tried to keep out of prison.

## Ranking Judges

Now the pressure was off. Prison was off the table. I was only facing a fine, even if my appeal failed. It was all in the hands of the lawyers. Blanchfield and Eggers would be facing the judges of the Ninth Circuit Court of Appeals.

How about the district court judges that I had encountered: Martin Pence, Samuel King, and Gus Solomon? Solomon's shameful behavior in the *Uyeda* case was simply a disgrace to his profession. As Forest Gump would say, "And that's all I have to say about that."

Most of my court time had been spent in Judge Pence's courtroom. So much so, that Mom came to refer to him as "your judge". He had the reputation of being a tough judge. The Hickam defendants had been delighted that he recused himself from their case, and Judge King took over. I, however, came to have greater respect for Pence after seeing how they both handled the *Yamada* case (#73-13,269). It happened as the summer of 1973 was turning to fall, just before I returned to Caltech to continue my studies and await my appeal.

Calvin Kiyoshi Yamada was a Selective Service violator. He had refused induction. His attorney, James Blanchfield, wanted an investigator to scrutinize his client's draft board records, all at government expense. He decided to ask the court to appoint Mary Neilson and I as the investigators. Needless to say, Assistant U.S. District Attorney William J. Eggers, III was not thrilled with his choice. He wrote a brief in opposition to the motion. It would provide Mary and I, he wrote, another opportunity to advocate draft resistance, oppose the Vietnam War, and turn the *Yamada* case into a political trial.

Then it went before the bench, Judge King presiding. He *summarily* dismissed the motion. One of the investigators had recently been convicted and sentenced in federal court. Me, of course. No discussion. That was the end of it ... until Blanchfield took the same motion to Judge Pence's court. This judge was



*willing to listen.* “Why” he asked, “do you want these particular individuals?” Strangely, Blanchfield’s reason was economic, rather than the quality of the service we could provide. Using us would save the government money. The ball was now in Egger’s court, figuratively speaking. It was an easy slam. The government was willing to pay a premium. The motion was again dismissed.

As in this example, Pence turned down almost all my motions, but he was fair. He always listened patiently to both sides before making his decision. Some of his decisions were favorable. He released me on my own recognizance, appointed an attorney as my *legal advisor*, granted the motion to appoint Blanchfield, and stayed my sentence pending appeal. And, of course, his sentence was a very lenient one for a draft case. Typically, Selective Service violators are sentenced to prison. Fines are almost unheard of. While researching draft cases, I have come across two examples. One judge, apparently unsatisfied to simply imprison Vietnam draft resisters for the full five years, also imposed the maximum fine of \$10,000. At the other end of the spectrum, a judge in Arizona sentenced Japanese American draft resisters from World War II relocation camps to a one-penny fine and no imprisonment (Muller, 2023).

## **Do Not Publish**

On Friday July 13, the Senate Watergate Committee unearthed a bombshell when Haldeman’s top deputy revealed the existence of a comprehensive taping system in the White House. Alexander Butterfield was called to testify at the public hearing on Monday. Within hours, Haldeman’s replacement as White House Chief of Staff ordered the system turned off and removed. Nixon refused to turn the tapes over to the Committee until ordered to do so by the Supreme Court a year later.

In September, I returned to Pasadena, to my studies, and to the wrestling team as the investigation of the new Watergate Seven continued, including John Mitchell, H.R. Haldeman, and John Ehrlichman. It would be March before they would be indicted. President Nixon was named as an unindicted co-conspirator. In October Vice President Agnew was forced to resign for corruption that began during his time as Governor of Maryland. Gerald Ford was nominated to replace him. Nixon ordered his Attorney General to fire the Special Prosecutor. Elliot Richardson refused and resigned. His deputy William Ruckelhaus also refused and resigned. Finally, Solicitor General Robert Bork was brought to the White House in a limousine and sworn in as acting Attorney General in order to carry out the “Saturday Night Massacre”. Nixon appointed Leon Jaworski to replace Archibald Cox.

Meanwhile back in Honolulu, James Blanchfield and William J. Eggers, III exchanged legal briefs that they filed with the Ninth Circuit Court of Appeals. Oral arguments were going to be delivered in

late December, and I wanted to attend. I arranged a flight home for Christmas on a jumbo jet that flew a triangular route: Honolulu to Los Angeles to San Francisco to Honolulu. I pulled an all-nighter to finish a term paper and catch the flight. I was the only customer on board for the leg from Los Angeles to San Francisco. Unfortunately, San Francisco Airport was fogged in, so we circled for a few hours. When fuel ran low, the pilot had to make a choice: return to LA, or land in the fog. We landed. Irene Dobzranski picked me up and took me straight to the courthouse, but it was too late. Neither had Blanchfield or Eggers appeared. Blanchfield, with my permission, was looking at land in Australia. A partner in his firm argued for a reversal of my conviction. Eggers had been injured in a motorboating accident. Another assistant district attorney defended the government's case against me.

The Court of Appeal's decision came out in January, when I was back at school. Elated, Mom made her first long-distance phone call ever, prohibitively expensive in those days. She knew I wouldn't pay the fine and dreaded paying on my behalf, imagining that it would damage our relationship. She needn't have worried. Blair family ties remained stronger than that.

At the top of the printed decision (see the bottom half of Appendix 8), in capital letters—DO NOT PUBLISH. At first, I thought it was a gag order, a secret decision. “We are obliged to reverse the judgement.” The three-judge panel, two circuit court judges and a visiting district court judge, wanted to affirm the conviction, but couldn't. Federal prosecutors had made a fatal mistake. My draft cards were mutilated, not destroyed. Both mutilation and destruction are felonies. The penalties are the same, but the government must prove the charges stated in the Grand Jury's indictment. Yes, the Grand Jury made a mistake. Did any of the jurors vote against the indictment? The decisions of trial juries are required to be unanimous, but not grand juries. If grand jury records are available, historians can examine them to see if their decisions are simple rubber stamps. The trial jury, too, had made a mistake. Those in favor of acquittal in the first hour of deliberations should have stuck to their arguments and prevailed.

Judge Martin Pence made the same mistake when he denied our motions to dismiss. His musing about jurisprudence (see page 51), however, prove correct. First, criminal charges can be false—completely or slightly off the mark. They should be scrutinized with care. Secondly, one of the functions of appeals courts is to fix the bad decisions of district courts. The Ninth Circuit Court of Appeals did that in a unanimous decision, even though they didn't seem happy about the result. Finally, courts prefer to base their decisions on uncontroversial principles. By declaring my drafts to have only been “burned at the borders”, they could avoid more difficult questions. It became unnecessary to balance the slight amount of destruction or mutilation against the speech element that was recognized in the Supreme Court's *O'Brien* decision. Nor was it necessary to decide at what point a Notice of Classification is no longer protected, the

expiration date of the II-S classification stamped on the front of the card, or some other date.

Burgeoning caseloads have forced the Federal Circuit Courts to sort cases out for differing types of treatment (Wasby, 2004, 67–69). Some are published in the Federal Reporter; increasingly more are not. The use of unpublished memorandum dispositions (called memodispos in the Ninth Circuit) began sometime in the 1960s or early 70s. They existed in the libraries of the various appeals courts, identified only by their numbers—no citation in the Federal Reporter. Citing them as precedent was even prohibited. The Ninth Circuit had effectively buried their decision in their law library. While the opinion has remained under the radar for the legal community, it did serve notice to my attorney and the U.S. Attorney's Office. Jim Blanchfield released a statement to the press (Unknown, January 1974), explaining that the conviction was reversed and expunged from my record. The government could have re-charged me, but decided not to.

The Watergate defendants were convicted and eventually sent to prison. Their co-conspirator President Nixon resigned in the face of impeachment in August 1974. Vice President Ford became President and in September granted a “full, free, and absolute” pardon to Nixon (Proclamation 4311). A week later he established a program of *conditional clemency* for “draft evaders” and military deserters, except those that had fled the United States (Proclamation 4313). In March 1975 he terminated Selective Service registration (Proclamation 4360).

The day after his 1977 inauguration, President Carter pardoned all Vietnam War Selective Service violators (Proclamation 4483). Then in July 1980, he reinstated the requirement to register and to keep Selective Service informed of one's current address (Proclamation 4771). The Selective Service no longer issues Registration Certificates or Notices of Classification. A “registration card” can be printed once only, at the time of registration. Registrants do NOT have to carry that card, nor is it against the law to destroy it.

## Notes

- 1 The Second Circuit covers the states of New York, Connecticut, and Vermont. The Eighth Circuit is made up of Missouri, Iowa, Arkansas, Nebraska, Minnesota, North and South Dakota. The First Circuit covers the states of Massachusetts, Rhode Island, New Hampshire, and Maine.
- 2 The very same day that Cousin Bob (Major Robert H. Blair) was evacuated from Loc Ninh in the face of North Vietnam's bold Easter Offensive.
- 3 Criminal case #13,021 is sometimes called #72-13,021 to distinguish it from criminal cases in other years.
- 4 The original indictment was soon withdrawn and superseded on April 25 by a two-count indictment (see Appendix 5).
- 5 The standard operating procedure in most criminal cases is for FBI agents to make the arrest and turn the defendant

over to U.S. Marshals.

- 6 Special Agent Henry Burns would later testify during pretrial motions about the role of the FBI in my prosecution.
- 7 Due to a complicated family situation, Chuck Bollingmo had a choice of family names. He is now better known as Charles H. Smith.
- 8 I never actually saw the badges and IDs of the FBI agents during my interview (Blair, 2024, 94–95) or my arrest. The names that I remember and have used here are Agents Bender and Charles Malone.
- 9 **Your Rights:** Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions and to have him [sic] with you during questioning. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish. If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.
- 10 **Waiver of Rights:** I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.
- 11 Since the building of a new federal courthouse, it has become known as the King David Kalakaua Building.
- 12 Interstate H-1 used to designate a stretch of highway that continues straight past Fort Shafter, Halawa Valley, and Aiea. Interstate highways in Hawaii, obviously do not connect to other states, but get the same federal funding as other interstate highways.
- 13 The building is now used as a “special needs” facility for maximum security, protective custody, and mentally ill prisoners. A much larger medium security facility was built in 1987. Federal prisoners used to be housed in Halawa Jail. Since 2001 they have been incarcerated in the Federal Detention Center located next to Honolulu International Airport.
- 14 Brown uniforms were for prisoners *awaiting trial*. Blue uniforms were for those that *had been convicted* and were serving sentences of one year or less. Convicts with longer sentences were moved from Halawa Jail to state prisons or to federal prisons, typically the ones located at Lompoc, California or Safford, Arizona.
- 15 Judge Pence recused himself during pretrial motions. Judge Samuel King presided over the trial, which began on schedule.
- 16 Destruction of government property was a felony if and only if the property was worth \$100 or more. Otherwise, it became a misdemeanor. Felonies are crimes where the maximum length of imprisonment is more than one year. Crimes with a maximum length of imprisonment of one year or less are misdemeanors.
- 17 She later became a professional paralegal.
- 18 My recollection here is contradicted in newspaper articles that appeared the following week (see Unknown, 25 October 1972 and Unknown, October 1972), apparently based on Mary Neilson’s press releases and court records. I, however, have absolutely no recollection of a jury or jury selection.
- 19 Meyer Eisenberg referred to Solomon’s speedy approach to judicial procedure as a “rocket docket” (Stein, 2006, 143). Judge John R. Ross called him “the Fastest Gavel in the West”.
- 20 The structures were well overhead, maybe 10 or 15 feet in height. There may have been some deep oriental philosophy of life behind his work. The University allowed his creations to remain for a period of weeks or months.
- 21 There were no federal prisons or detention centers in the State of Hawaii. Most Selective Service violators were sent to the Correctional Institution at Safford, Arizona.

- 22 Colonel Oyasato's name was misspelled on the docket sheet entry for March 5 (Appendix 6).
- 23 The full court transcripts for the pretrial hearings on February 26, March 5, and March 12–14 and for the trial are available in the Hawaiian and Pacific Collection of Hamilton Library on the Manoa Campus of the University of Hawai'i.
- 24 Agent Burns, you may recall, arrested James Albertini and almost ran into Albertini and I having lunch, while I was still a fugitive (see page 40).
- 25 Difficult, but perhaps, not impossible. KGMB-TV had filmed the part of the demonstration where we burned our cards, and a Honolulu Advertiser photographer had taken lots of photos, one of which was published in Hawaii Draft News (see page 39). The film and photos would make it easy to identify Melvin. Enhanced images might have allowed verification of the draft cards. Was Melvin ever questioned by the FBI? I don't know. If so, they must have been unable to trick him into a confession.
- 26 Eggers had had similar feelings, but consulted with his superiors in Washington, D.C. (see page 33).
- 27 Trespassing 13 July 1971 at an AWOL Sanctuary (Blair 2024, 91). Found not guilty 4 November 1971 (Blair 2024, 94).
- 28 Registered at Local Board #2, classified I-A, lottery number 209.
- 29 Haleakala (meaning house of the sun) is a massive volcano that rises 3,055 meters (10,023 feet) above sea level on the eastern coast of Maui.
- 30 That speech has been lost. I am relying on a combination of (a) my memory, (b) *Another Voice*, and (c) the Honolulu *Advertiser*.
- 31 James Albertini refused to pay his fine of \$500 and was sent to jail for 90 days (see pages 47–48).
- 32 Pence assumed that I wanted to keep the criminal conviction (the scars) on my record. Convictions under the Youth Corrections Act are expunged after the sentence has been served. Imprisonment is for up to six years. The parole board, however, may release these prisoners at any time.
- 33 The photo of the burned cards at the bottom of Appendix 1 was published in the Honolulu *Advertiser*, page 2 on November 3, 1971.

## Acknowledgments

I wish to express my sincere thanks to Richard Hough and Paul Tanner for their encouragement and their reactions to an earlier draft. Not all the advice received was necessarily heeded, however, and I retain full responsibility for the final product, including the documents in the Appendix.

This paper is dedicated to the memories of Mary Neilson (1927–2012), James Blanchfield (1938–1982), Elaine “Woody” Schwartz (1924–1999), Dana Rae Park (1948–2016), an old family friend, Rear Admiral G. Patrick March (1924–2009), and to those who risk either life or liberty to make our world a more peaceful place.

## Points of Contact

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## Appendix

Burned cards and statement <sup>33</sup> Four cards, one seems to have expired before being burned.	... Appendix 1
Indictment This was the second indictment. The first was withdrawn.	...Appendix 2-3
Arrest Warrant FBI agents make arrests, then marshals transport the prisoners to jail, to court, and to prison.	...Appendix 4
Docket sheet Before being arrested, I saw docket sheet #13,021 for the first 1-count indictment, not this one (#13,032) with 2 counts.	...Appendix 5-7
Notice of Sentencing Notice the date, one day after the draft ended.	...Appendix 8 (top)
Opinion of the 9 <sup>th</sup> Circuit Court of Appeals Not published even though the conviction was reversed.	...Appendix 8 (bottom)

### Note:

In the spring of 2023, I realized that it was time to make a decision. The generation which had lived under the threat of induction was now living under the threat of death, the destiny of all living things. Resistance leader David Harris had passed away in February, my brother Bob was losing his fight with cancer. What, I wondered, would happen to these documents that I had been saving for fifty years? Was the next generation even interested in them? I e-mailed the newspaper articles to my children. Not much of a response. One of my nephews was a lawyer, so I e-mailed a page of the indictment (Appendix 3). His response ... “This belongs in a museum.”

Absolutely right. I then *resolved to publish them* as an appendix to my story. Appendix 2-4 and 8 are images of *my personal copies*, undoubtedly the only surviving copies, of the indictment, the arrest warrant, and notice of sentencing. The opinion of the Ninth Circuit (appendix 8) is an image of *my personal copy*. The copy of the docket sheet (Appendix 5-7) was provided by the Hawaii Federal District Court Clerk’s Office, where it is available for public inspection and copying.



On Memorial Day 1969 we, the cadets of Culver Military Academy, marched to the chapel to listen as the names of all our alumni that had died on the battlefields of two world wars, Korea, and Vietnam were read aloud. I couldn't help but to feel a sense of uneasy community with the men whose names I heard. This day was my eighteenth birthday. Shortly after this chapel service I reported to the Commandant's Office and submitted to registration with the Selective Service.

In the course of the next year, the impact of three events changed my life and its commitments. The National October Moratorium introduced to me the suffering and destruction that has been taking place in Vietnam, the same suffering that occurs in all wars. (Strange that my three years of Jr. ROTC instruction had not touched upon this aspect of war.) The following May brought with it the invasion of Cambodia (and Kent & Jackson State Universities). I began to see responsibility for the illegitimate destruction of human life within the civilian government as well as the military. In early June a magazine interview with Joan Baez opened up my eyes to some non-violent alternatives to armed conflict. Since then I have slowly developed a commitment to a life of non-violence.

Today, on All Souls' Day, as we again pay tribute to the memory of all of the dead, I make public my commitment to life. No longer will I SUBMIT to Selective Service procedure. I refuse to: 1) keep SS informed of changes in my "status" 2) retain possession of "draft" cards 3) submit to SS physical examinations 4) submit to induction 5) destroy human life

Rather than serve America in body only, I shall serve my country and all of mankind with BOTH my body and my conscience.

Mr. ROTC instruction had not touched upon this aspect of war. The following May brought with it the invasion of Cambodia (and Kent & Jackson State Universities). I began to see responsibility for the illegitimate destruction of human life within the civilian government as well as the military. In early June a magazine interview with Joan Baez opened up my eyes to some non-violent alternatives to armed conflict. Since then I have slowly developed a commitment to a life of non-violence.

To the memory of all those who have died in the service of their country, I refuse to...

Handwritten forms and stamps including 'SELECTED FOR MILITARY SERVICE', 'DEFERRED FOR FURTHER CONSIDERATION', and 'NOV 10 1970'.

Rather than serve my country and all of mankind with BOTH my body and my conscience.

Today, on All Souls' Day, as we again pay tribute to the memory of all of the dead, I make public my commitment to life. No longer will I SUBMIT to Selective Service procedure. I refuse to: 1) keep SS informed of changes in my "status" 2) retain possession of "draft" cards 3) submit to SS physical examinations 4) submit to induction 5) destroy human life

Sincerely,  
Richard Jeffrey Blair

Appendix 2

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
RICHARD JEFFREY BLAIR, )  
 )  
Defendant. )

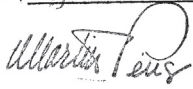
CR. NO. 13,032  
(50 USC App. § 462(b)(3))

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

APR 25 1972  
at 11 o'clock and 55 min. P.M.  
WALTER A.Y.H. CHINN, CLERK  
(S) Roy T. Sakai  
BY \_\_\_\_\_ Deputy

I N D I C T M E N T

I hereby order a Bench Warrant to issue forthwith  
on the within Indictment for the arrest of the defendant  
named therein, bail being fixed at \$ 2,000.

  
UNITED STATES DISTRICT JUDGE

ATTEST: A True Copy  
WALTER A.Y.H. CHINN  
Clerk, United States District  
Court, District of Hawaii  
By Roy T. Sakai  
Deputy

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CR. NO. _____
	)	
RICHARD JEFFREY BLAIR,	)	(50 USC App. § 462(b)(3))
	)	
Defendant.	)	

I N D I C T M E N T

COUNT I

The Grand Jury Charges:

That on or about November 2, 1971, in the District of Hawaii, RICHARD JEFFREY BLAIR wilfully and knowingly and unlawfully destroyed his Selective Service Registration Certificate, in violation of Section 462(b)(3) of Title 50, Appendix, United States Code.

COUNT II

The Grand Jury Further Charges:

That on or about November 2, 1971, in the District of Hawaii, RICHARD JEFFREY BLAIR wilfully and knowingly and unlawfully destroyed his Selective Service Notice of Classification Certificate, in violation of Section 462(b)(3) of Title 50, Appendix, United States Code.

DATED: April 25, 1972, at Honolulu, Hawaii.

A TRUE BILL

/s/ WILFRED M. MOTOKANE, JR.  
FOREMAN, GRAND JURY

  
ASSISTANT U. S. ATTORNEY

Appendix 4

Warrant for Arrest of Defendant (Rev. 7-52)

Cr. Form No. 12

United States District Court

FOR THE

DISTRICT OF HAWAII

UNITED STATES OF AMERICA

v.

RICHARD JEFFREY BLAIR

Criminal  
No. 13,032

To: ANY UNITED STATES MARSHAL OR ANY OTHER AUTHORIZED OFFICER:

You are hereby commanded to arrest Richard Jeffrey Blair and bring him  
forthwith before the United States District Court for the District of Hawaii  
in the city of Honolulu to answer to an Indictment charging him with

in violation of 50 USC App. Sect. 462(b)(3).

Dated at Honolulu, Hawaii

WALTER A. Y. H. CHINN

on April 25 1972

Clerk.

Bail fixed at \$2,000.00

By



Deputy Clerk.

CRIMINAL DOCKET NO. 13,032  
 UNITED STATES DISTRICT COURT

D. C. Form No. 100A Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES vs. RICHARD JEFFREY BLAIR  Violation 50 USC App. §462(b)(3) 2 counts Destroying Selective Service Registration and Notice of Classification	For U. S.: WILLIAM J. EGGERS, III AUSA <del>EVAN R. SHIRLEY, ESQ.</del> American Civil Liberties Union of Hawaii 235 Queen St., Suite 410 For Defendant: as Amicus Curia HERBERT K. TOM, ESQ. 1000 Bishop Street, Room 901 <del>Honolulu, Hawaii</del> James Blanchfield (CA)

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk	1973			
J.S. 3 mailed AUG 6 1973	Marshal	Mar 14	Blair	3.00	
Violation	Docket fee	16	TUS		3.00
Title					
Sec.					

DATE	PROCEEDINGS
1972	
Apr 25	Entering proceedings - INDICTMENT filed - BW ordered - Bail \$2,000.00 BW issued
Jun 9	Return on service of writ - warrant executed 6-9-72 Clerk's Temporary Commitment filed - committed Halawa 6-9-72
12	Entering proceedings - Arraignment and plea - Deft present without counsel - Arrn waived - request for atty as an advisor granted - plea of not guilty entered as to all counts - motion reduction of bail granted - Deft ROR - motions to be filed in two weeks
13	(DO) PENCE
15	Order Specifying Methods and Conditions of Release filed PENCE Release filed (released on his own recognizance)
26	Motion for Substitution of Attorney, Motion to Dismiss Indictment and Motion for Production of Statements and Scientific Tests and Reports and Affidavit filed
28	Memorandum filed

Appendix 6

DATE	PROCEEDINGS
1972	
Jul 28	Motion For Continuance, Affidavit of William J. Eggers, III and Order filed <u>PECKHAM</u>
26	Supplemental Motion To Dismiss Indictment, Supplemental Motion To Dismiss Count II of The Indictment, Motion For Bill of Particulars, Memorandum and Affidavit filed
27	Certificate of Service filed
Sep 8	Motion for Continuance, Affidavit of William J. Eggers, III and Order filed
15	Motion for Leave to File an Amicus Curiae Brief, Affidavit of Evan R. Shirley and Certificate of Service filed <u>PENCE</u>
21	Amicus Curiae Brief and Affidavit filed
22	Entering proceedings - M/Dismiss - argument - M/Dismiss denied in part - M/Substitution of Atty - contd - (DO) <u>PENCE</u>
Jun 12	Appointment filed <u>PENCE</u>
Sep 25	Affidavit of William J. Eggers, III filed
29	Order filed (Court apptd James Blanchfield) <u>PENCE</u>
1973	
Feb 5	Motion for Order Permitting Defendant To Leave the Jurisdiction Prior To Trial - Affidavit of Richard Jeffrey Blair filed
16	Motion to Set and Notice filed - hrg on Deft's M/Dismiss set on 2-20-73 at 1:30 p.m., Ctrm II
20	Entering proceedings - Further hearing on M/Dismiss set for 3-5-73 at 11:00 a.m. - M/Leave Jurisdiction GRANTED (DO) <u>KING</u>
21	Motion for Discovery and Inspection - Memorandum of Points and Authorities Affidavit of Richard Jeffrey Blair - Affidavit of Don Sharp - Affidavit of John Witeck - Exhibits A.1 to A.2 - Notice of Motion filed - set for 2-26-73 at 2:30 p.m., Ctrm I
26	Entering Order - case cont'd to 3-5-73 at 11:00 a.m.
Mar 2	Supplemental Memorandum in Support of Defendant's Motion to Dismiss Count II of the Indictment - Exhibits A, B, C, D. filed Government's Response to Supplemental Motion to Dismiss Indictment filed Memorandum in Opposition to Defendant's Motion for Discovery and Inspection filed
5	Entering Proceedings - Col. Henry C. Uyesato CST - Govt's Exh #1, & 2 admitted - M/D on Count II DENIED - M/Discovery set for 3-12-73 at 11:00 a.m. (TC) <u>PENCE</u>
9	Order filed - deft allowed to leave jurisdiction - <u>KING</u> Defendant's Reply Memorandum In Opposition To Government's Memorandum In Opposition To Defendant's Motion For Discovery and Inspection filed
12	Entering proceedings - Various Motions - M/Discovery on National Basis - denied - Govt's exhibit P-1 admitted - witnesses Don Sharp & John Witeck CST - case contd to 3-13-73 ¶ 9:00 a.m. - (TC) <u>PENCE</u>
13	Entering proceedings - Further hrg on Various Motions - witnesses Henry Burns, Col. Henry C. Oyasato and Joseph M. Gedan - Govt's exhibits P-2 thru P-9 admitted - Court ordered P-3 thru P-8 be kept in a sealed envelope - case contd to 3-14-73 ¶ 9:00 a.m. - (TC) <u>PENCE</u>
14	Entering proceedings - Further hrg on Various Motions - parties rested - argument - M/Discovery & Inspection granted in part - M/D because of Selective Prosecution denied - M/D denied - Jury Trial 4-24-73 @ 9:00 - Instructions & Voir Dire to be filed by 4-23-73 @ 4:30 - Govt's P-10 admitted - (TC) <u>PENCE</u>

D. C. 100A  
 CRIMINAL DOCKET CR 13,032 U.S.A. vs Richard Jeffrey Blair

DATE	PROCEEDINGS
<u>1973</u>	
Apr 23	Plaintiff's Requested Instructions filed Defendant's Requested Instructions filed
24	Entering Proceedings - Jury Trial - Parties stipulated to waiving their preemptory challenges - 12 jurors & 1 alternate sworn - witnesses: Yaeko Morisaki & Hannah Kaaihui CST - Govt's exhs P-1 & P-3 admitted - Govt rested - M/Directed Verdict DENIED - Richard Blair CST - D-1 admitted - def rested - Henry Oyasato CST as rebuttal witness - Renewed M/Directed Verdict DENIED - Instructions settled - closing arguments - jury instructed - jury ret'd with verdict at 5:40 p.m. - deft found GUILTY as to Counts I & II - M/Judgment of Acquittal Notwithstanding the Jury Verdict DENIED - case cont'd for presentence investigation & report - Notes from Jury filed (TC) <u>PENCE</u> Verdict filed
May 1	Waiver of Right to Speedy Hearing on Sentencing filed
2	Withdrawal of Counsel filed - Blair, pro se <u>PENCE</u>
18	Notice of Setting of Case for Sentencing filed - 7-2-73 at 3:00 p.m., Ctrm II - cc: U.S.A., Blanchfield, Deft
Jun 14	Order - Affidavit of Richard Jeffrey Blair filed <u>PENCE</u>
25	Order - Affidavit of Richard Jeffrey Blair filed - to Maui & Molokai <u>PENCE</u>
Jul 2	Entering Proceedings - sentencing - deft 21 yrs of age - FYCA (18 USCA §§5005-5024) - in accordance with provisions of 18 USCA § 5010(d) deft fined Ct I \$250.00; Ct II \$250.00 to the United States - mitt stayed to 8-6-73 (DO) <u>PENCE</u> Judgment and Commitment filed <u>PENCE</u>
13	NOTICE OF APPEAL - Motion for Leave to Proceed on Appeal in Forma Pauperis from District Court to Court of Appeals - Motion for Stay of Execution of Sentence Pending Appeal - Affidavit of Richard Jeffrey Blair & Notice of Motion filed - 7-16-73 at 2:30 p.m., Ctrm II - cc: 9th CCA, U.S.A., Blanchfield
16	Statement of Docket Entries filed - cc: Clerk, 9th CCA Entering Proceedings - M/for Leave to Appeal in Forma Pauperis GRANTED (DO) <u>PENCE</u>
Apr 24	Plaintiff's Requested Instruction No. 1 filed
Apr 24	Court's Instruction No. 1 filed
Aug 3	Order Allowing Defendant to Appeal in Forma Pauperis filed <u>PENCE</u>
8	Transcripts of Proceedings filed (orig + 2 copies 2-26-73, 3-5-73, 3-12,13 & 14, 1973 and A-24-73) TC Record on appeal in forma pauperis airmailed to 9th CCA cc ltr US Atty and Blanchfield
9	Authorization V No. 3100 - (TC) 761.40 filed
<u>1974</u>	
Feb 15	Order Enlarging Time filed - 9th CCA - USA has up to 3-2-74 to file Pet for Rehearing
28	Affidavit of James Blanchfield In Support of the Motion for Attorney's Fees for Richard Jeffrey Blair filed Appointment filed - V No. 49030
Aug 2	Judgment and Opinion filed - Judgment of DC reversed - notified: USA, Blanchfield

Appendix 8

NOTICE OF SETTING OF CASE FOR SENTENCE D. C. Form No. 15 (Rev. 1968)

United States District Court  
FOR THE  
DISTRICT OF HAWAII

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

MAY 10 1973

at Clerk and  
UNITED S.V.H. CHINN, CLERK

(s) Leimomi Y. C. Calderon  
Deputy

THE UNITED STATES OF AMERICA

vs.

RICHARD JEFFREY BLAIR

Criminal No. 13,032

To Richard Jeffrey Blair  
Lloyd House, Caltech  
Pasadena, California 91109

TAKE NOTICE that the above entitled case has been set for **Sentence** in said Court at Honolulu, Hawaii, on July 2, 1973, at 3:00 p.m. before Judge Martin Pence in Courtroom No. II.

As surety for the said defendant you are required to produce <sup>2</sup> in said Court at said time, otherwise the bail may be forfeited.

May 18, 19 73

WALTER A. Y. H. CHINN, Clerk

By (s) Leimomi Y. C. Calderon  
Deputy Clerk

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

United States of America, )  
Plaintiff-Appellee, )  
vs. )  
Richard Jeffrey Blair, )  
Defendant-Appellant. )

No. 73-2495  
MEMORANDUM

Appeal from the United States District Court  
for the District of Hawaii

Before: KOELSCH and DUNIWAY, Circuit Judges, and GRAY,\* District Judge.

We are obliged to reverse the judgment.

The government's proof was all to the effect that appellant "mutilated" his Selective Service Registration and Notice of Classification certificates. It showed no more than that he burned the borders. But the charge as laid in the indictment was that he "destroyed" the certificates. This variance between the indictment and the proof as to the method and manner by which the offense was committed is material and fatal. *Cipe v. State*, 165 Indiana 433, 75 NE 881 (1905). With a bit more attention in drafting this indictment, the government could easily have avoided this pitfall, for the relevant statute broadly provides that: "Any person... (3) who forges, alters, knowingly destroys, knowingly mutilates, or in any manner changes any such certificate or any notation thereon..." is guilty of a felony. 50 U.S.C.App. 462(b)(3).

REVERSED.