A History of the Selective Service System Violating the Rights of Conscience

Bill Galvin, Counseling Coordinator, with CCW Staff

During the Vietnam War, it was the draft that enabled the country to prolong a war that had long been opposed by the majority of the people. The draft was the focus of many anti-war actions. Finally, in 1973, after 33 years of an active draft, the government ended conscription. On April 1, 1975, Selective Service registration was ended, and the entire system was put into 'deep standby.'

In 1980, President Jimmy Carter brought Selective Service out of standby and resumed registration. The Soviet Union had just invaded Afghanistan, and President Carter wanted to 'send a message' that the US could be ready for war at any time.

In the 38 years since registration resumed, no one has been drafted. During that period, besides registering young men, Selective Service has developed and maintained plans for how a draft might work if it were to resume, including training draft board members around the country and maintaining an alternative service program for conscientious objectors.

They've also kept busy instituting increasingly repressive and invasive ways to coerce people to register.

All male citizens and residents of the US (regardless of documentation or status) are required to register during a 60-day period that begins 30 days before their 18th birthday. The vast majority of men have violated this law by not registering during that window of time. Selective Service happily accepts registrations that are made even years later, but they will not accept registrations from individuals after they turn 26.

Back in 1980, some of those required to register had older brothers who had been drafted during the Vietnam War, and the memory of that war was still very much a part of the public consciousness. Selective Service acknowledged that hundreds of thousands of young men had failed to register during the first year of registration. A significant anti-draft organization formed – CARD, the Committee Against Registration and the Draft, which had chapters throughout the country and organized anti-draft conferences. There were anti-draft marches in Washington, DC and elsewhere around the country. On October 12, 1982, sixty people were arrested for civil disobedience, blocking the entrance at the Selective Service headquarters in Washington, DC.

The government decided to prosecute a handful of resisters, expecting that the publicity would scare others into registering. Instead, the prosecutions had the opposite effect: the defendants became part of the national conversation and were on the evening news, with some describing their resistance to participating with Selective Service as answering to a 'higher law;' others questioned the legitimacy of maintaining the apparatus of a military draft in a free and democratic society. Their witness inspired others to make their own, and non-compliance with registration actually increased in those communities where people were prosecuted.

In response, starting in 1982, the government developed other ways to coerce people to register, known at time as “Solomon Laws,” named after the member of Congress who first introduced them. The first such effort was to link draft registration with federal financial aid. In order to receive Pell Grants, college work/study, loans, or other federal financial assistance for education, one has to verify either that they are indeed registered with Selective Service or that they are not required to register. In solidarity with men’s resistance, some women refused to help the government enforce the law by verifying that they were not required to register. As a result, those women also were denied federal financial aid.

Next, the government linked federal job training programs to draft registration and made registration a prerequisite for

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Talking Points on Selective Service (Draft) Registration

1. Draft registration has been a failure and a burden on millions of men. Rather than continue this burden on men, or extend the burden to women, it's time to end it now. Gil Coronado, the former director of Selective Service said in the 1999 annual report:

   "If we are not successful in reminding men in the inner cities about their registration obligation, especially minority and immigrant men, they will miss out on opportunities to achieve the American dream. They will lose eligibility for college loans and grants, government jobs, job training and for registration-age immigrants, citizenship. Unless we are successful in achieving high registration compliance, America may be on the verge of creating a permanent underclass." [i]

   That was 19 years ago, and today there are even more restrictions and penalties for men who haven't registered. In many states, registration is linked with access to driver's licenses and state IDs, threatening access to the ballot box for people of conscience. If a man fails to register, for whatever reason, many of these penalties stay with him for the rest of his life, even though he will never have been charged, tried, or convicted of any crime! This is not only unconstitutional, it's antithetical to the values we hold dear in our democratic society. Rather than continue this extra-judicial punishment for men or extend it to women, it's time to end it for all!

2. Draft registration is coercion. Maintaining the apparatus of a military draft has no place in a free and democratic society. When given a choice, most men don't register.

   · SSS reports only 88% compliance with registration. [ii] That means millions of men are permanently burdened and punished by failing to register.
   · That 88% refers to all those who are required to be registered. Only 73% of 18-year-old men have registered [iii], and far fewer registered by the 29th day after turning 18, as required by law.
   · 66% of those who registered did so by coercion, not will, as the law instructs, either to get financial aid for college or to get a driver's license. [iv]

3. The cost of Selective Service registration exceeds the $25 million Selective Service budget; for example, schools have the burden of verifying compliance [v] for students, increasing their administrative costs, which get passed on to students at the college. Various state laws requiring registration compliance for state benefits (such as employment or driver's licenses) add costs to a state's budget, yet offer no return on the investment. Extending registration to women would increase those costs.

4. Draft registration is unnecessary. After 9-11, the military had more than enough volunteers. [vi] Activating the draft was never seriously considered.

5. If the Commission finds that registration has value and should continue, they must require Selective Service to provide a pathway for people to register as conscientious objectors, and restore full rights to all people of conscience by overturning lifetime punishments. Doing so would enable people of conscience to be both in compliance with the law and true to their conscience.

6. Though failure to register is a felony, the government has not prosecuted anyone since 1986. Almost all of those who were prosecuted were conscientious objectors who publicly asserted their non-compliance as a religious, moral, or political statement. As a result of this public witness, non-compliance with registration actually increased. If Selective Service is maintained, allowing people to register as conscientious objectors could help the government come closer to reaching its goal of increased compliance.

[ii] FY 2015 Annual report to the Congress of the United States from the Director of Selective Service, p. 5
[iii] Ibid, p.5
[iv] Ibid, p.9
[v] 34 CFR 668.37
Advocating and working for the rights of conscientious objectors (COs) can involve some drama, but organizing a tour for a dramatic portrayal of the struggles and victories of COs in World War I is something new for the staff at CCW.

Nonetheless, the US premiere of This Evil Thing was very much a success.

Written and performed by British actor and playwright Michael Mears, This Evil Thing tells the story of COs in Britain during WWI. It focuses on Bert Brocklesby, a Methodist lay minister from Yorkshire, and Bertrand Russell, the famed mathematician and philosopher, with additional stories from other COs like Clifford Allen and Fenner Brockway, activists like Catherine Marshall, and politicians and military leaders such as Britain’s Prime Minister Herbert Henry Asquith.

This Evil Thing was first performed at the Edinburgh Fringe Festival in 2016, where longtime CO attorney and friend, Peter Goldberger, saw it. Peter spoke with Mears after the show and suggested he team up with CCW to bring the play to the US.

After five months of organizing, the US premiere of This Evil Thing took place on March 13, 2018 at Akron Mennonite Church in Akron, Pennsylvania, to a crowd of 275. Akron had the largest audience, but overall about 1,700 people in total saw the show at one of 17 performances in nine states across the Midwest and Eastern US.

This Evil Thing, referring to conscription, recounts that when WWI started in late July 1914, the UK had an all-volunteer military. But after two years of fighting and hundreds of thousands of soldiers dead, legislation was passed to introduce conscription, or the draft, into Britain in 1916. The play follows the story of the No-Conscription Fellowship (NCF), a group composed mostly of COs and their supporters, working against conscription in the UK. While they were unsuccessful to prevent its introduction, they did secure a “conscience clause,” which provided COs with certain provisions during the war. These exemptions were meager, though, and offered little legal protection for COs. The play movingly portrays how COs were mistreated in their tribunals and abused in jail, similar to treatment US COs endured at the same time. As in the US, some British COs were threatened with execution, and many died at the hands of their military jailers.

Late in the play, Mears portrays a weakened Clifford Allen, suffering from tuberculosis acquired during his imprisonment. Addressing a meeting of the NCF at the end of the war, Allen describes the COs’ profound triumph: “But we are proud to have broken the power of the military authority. We have witnessed at first hand its brutalities. We have seen the cruel degrading of human personality upon which its discipline depends. But we have defeated that authority; and should this evil thing—conscription—continue, we will defeat it again!”

Mears observed that while the history of WWI is more well-known in the UK, the focal point of the play – conscientious objection – is much more alive in the US. In the play, Mears says, “I don’t know where my pacifist gene came from, if there is such a thing as a pacifist gene. But what I do know is that my pacifism has never been tested – not truly tested.” Mears was excited to engage with COs and war tax resisters here and was inspired to hear the stories of people who went to jail for their opposition to war and violence, just like many of the subjects in his play. For more of Mears’ personal reflections on the tour, check out his blog at michaelmears.org.

On the 100th anniversary of WWI, Mears began composing the play as a tribute to the COs, whose witness of peace, he observed, was overshadowed by celebrations of war. He

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employment with federal executive agencies (which encompasses most federal jobs). Simply applying for federal job training programs would automatically get someone registered if they were required to register. And before long, it became difficult to submit the FAFSA (Free Application for Federal Student Aid) form without becoming registered.

As noncompliance remained high, some schools and organizations began to develop alternative sources of financial aid to help non-registrants. In 1986, NISBCO (as CCW was known at the time), in cooperation with other peace groups, created the Fund for Education and Training (FEAT) to provide loans to COs who are denied federal financial aid because of their beliefs.

Soon, Selective Service began to work with state legislatures to encourage them to pass similar laws, and many states did, beginning in 1984. Most commonly, states required draft registration in order for college students to be eligible for financial aid from the state, and some states even made registration a prerequisite for enrollment in a state funded school, even if a student doesn’t need or want state financial aid. In 1986, Ohio required non-registrants to pay out of state tuition to attend state schools. Only six states are free from any punitive legislation related to Selective Service (an annotated breakdown of the laws by state is on our website: open the menu tab “Conscientious Objection,” and click on “Selective Service”).

While these laws coerced many to register, noncompliance was still high, so Selective Service teamed up with states to increase the pressure to register. Beginning this century, Selective Service encouraged states to link registration with obtaining a driver’s license or photo ID. Oklahoma was the first to do so, enacting its legislation on June 1, 2000. Today, 39 states, the District of Columbia, and five US territories have such laws. About a quarter of these policies simply allow an individual to authorize the state to share the information they provide with Selective Service for the purpose of registration; the other 75 percent either outright require one to confirm that they already are registered or consent to being registered in order to receive a license or state ID. This is a genuine burden for some people of conscience. Without a government-issued photo ID one can’t fly on an airplane or even buy a train ticket. This amounts to a de facto violation of Article 13 of the Universal Declaration of Human Rights, “freedom of movement.” And in this era of so-called Voter ID, people of conscience could see their right to vote threatened or denied.

Even with all of these coercive measures, noncompliance still remains around 10 percent. According to the latest Selective Service Annual Report, more than two-thirds of those who register do so through one of these coercive measures, rather than voluntarily presenting themselves to Selective Service, as the law requires.

**It is time to abolish this law** – a law to uphold the draft apparatus, which has not been activated for 45 years, is clearly not supported by the population, and has disrupted many lives. Since 1980 there have been a number of bills introduced in Congress about Selective Service and the draft. Some of these bills proposed bringing back an active draft; some proposed extending it to women; and some proposed to end registration and shut down the Selective Service System.

In 1999 the House Appropriations Committee proposed a budget that would leave Selective Service with only enough funds for the agency to terminate itself. During consideration of the budget by the full House, an amendment to restore funding to Selective Service was introduced, and it failed by a vote of 187 to 232, with 14 not voting! The Senate included funding for Selective Service in their version of the Appropriations Bill, and the Conference Committee adopted doing so, as well. That was the closest we’ve come to ending the registration since 1980, and it was the last time Congress seriously considered the status of Selective Service until now. **Detailed information about the public comment period open right now can be found in the article on page 8.**

**What About Women?**

As the registration began in 1980, there was a challenge in the courts that had been dormant since the Vietnam War draft. A challenge to the male only draft was not decided by the courts because the draft had ended. When President Carter resumed draft registration, the District Court in Eastern Pennsylvania ruled on that case just a few days before the registration was scheduled to begin. The court ruled that a male only registration did, in fact, violate the equal protection clause in the Constitution. Walter Cronkite, ‘the most trusted man in America,’ announced on the evening news that men would not have to register because of that court decision. The Carter Administration appealed and got a ‘stay’ of that decision, allowing registration to begin – but it was not without controversy.

Ultimately, the Supreme Court ruled that a male only registration was constitutional. In the majority opinion, Justice William Rehnquist wrote, “The existence of the combat restrictions clearly indicates the basis for Congress’ decision to exempt women from registration. The purpose of registration was to prepare for a draft of combat troops. Since women are excluded from combat, Congress concluded that they would not be needed in the event of a draft, and therefore decided not to register them.”

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When the Obama administration opened all combat jobs to women in 2013, it reopened the conversation about women and the draft, leading Congress to create the National Commission on Military, National, and Public Service and the current opportunity we have today to effect real change within the Selective Service System. (More on the Commission in the article on page 8.)

The Prosecutions

Even though failure to register is a felony with a maximum penalty of five years in prison and a $250,000 fine, since the time registration began in 1980, millions of young men have violated the law by not registering. A total of only 20 of them have been prosecuted. Here are a few of their stories.

Fifteen of those prosecuted were convicted or pleaded guilty. In the other five cases, the charges were dropped after the person registered. Of those convicted, six resisters were given probation and no jail time, but were required to perform community service. Seven received prison sentences, but no one spent more than six months behind bars. One person was sentenced to four months in a halfway house, and another was sentenced to six months’ house arrest.

All but one of the 20 were public resisters: they identified themselves in letters to the editor or in a letter to the President or some other governmental official. The government acknowledged that there were hundreds of thousands of non-registrants, yet they only indicted a select handful who had been vocal about their objection. The logical conclusion is that those resisters were not being prosecuted because they didn’t register. They were being prosecuted because they spoke out against the draft and the registration requirement. A couple of the resisters initially won this argument in District Court and had their indictments dismissed as ‘selective prosecution.’ But the government won on appeal. To prevent this defense from being used again, the government indicted Phetsamay Maokham Phio, a Laotian immigrant who did not understand his obligation to register. (Phetsamay was one of the five who had charges dropped when he agreed to register.)

Charles Epp argued constructive registration. When he wrote to the Selective Service System telling them that he refused to register, he actually did what the law required: provide his name and other information to Selective Service. Government representatives argued that the registration wasn’t legitimate because he used his own paper and not the one the provided for that purpose. Charges were dropped when Selective Service agreed that Epp had ‘constructively’ registered.

Some of the resisters were COs who argued that registering without the opportunity to claim conscientious objector status was a violation of their beliefs. If they could register as conscientious objectors, they would, but since that was not an option, it violated their beliefs to voluntarily add their name to a list of people who could be called upon to help the government wage war. The judge in Stephen Schlossberg’s case ordered Selective Service to allow him to register as a conscientious objector, and his charges were dropped. Kendal Warkentine, who was convicted and given probation, was also registered as a CO by court order.

David Wayte’s sentence was a bit unusual. He was very engaged in community service, based on the same values that moved him to resist the draft. David’s initial charges were dismissed as selective prosecution, but when the government won their appeal, David was brought back before the same judge who originally dismissed the charges. Now compelled to find him guilty, the judge didn’t want to send David to jail, and requiring him to do community service would be no punishment at all. David was sentenced to six months house arrest, with the stipulation that he could not do any community service during those six months. The headline in the September 1985 Reporter for Conscience’ Sake read, “Wayte Sentenced; Society Loses.”

When Gillam Kerley, executive director of CARD, was arraigned, he pleaded “not guilty by reason of sanity.” He was convicted, and the judge sentenced him to three years in prison and a $10,000 fine. The harsh sentence was based on Gillam’s work with CARD, which the judge said was aiding and abetting others to violate the law. As with others, it is clear that Gillam’s prosecution had little to do with his violating the draft law, and more to do with his work for peace and justice. Granted a new trial, Gillam pleaded guilty. He said that his refusal to register was not criminal, but “an act of conscience and political protest...but if it be a crime, I am guilty of it.” He was convicted and sentenced to time served.

Edward Hasbrouck was sentenced to probation and community service. He figured the best way to serve the community was to keep working to end the draft. The judge disagreed, and Edward was sentenced to six months in jail.

While the government invested a lot of time and effort in these prosecutions, they had little to show for it. Instead, the prosecutions provided a public forum for the resisters to cultivate support for their cause, which they did eloquently and with great courage. The government soon ended prosecutions, with the last indictment issued in January 1986. Thirty-two years later, we have another public forum and another chance to end the Selective Service System’s violations of the rights of people of conscience. Please read the article that begins on page 8 and submit your comments to the Commission without delay. Thank you!
writes, “the young men who showed a different kind of courage, refusing to fight regardless of what punishments were thrown at them, passionately believing that this was the best, indeed the only way to truly serve the cause of peace... aren’t they equally worthy of being remembered?”

At many performances, we asked how many COs were in the audience, and there were usually many from the Vietnam era, but also a few from Korea, and even a couple from World War II. At the North Manchester, Indiana show, one CO in the audience told Mears afterwards he felt very moved that this was asked, observing that usually the question put to public gatherings is “How many veterans are here today?”

Audiences consistently praised This Evil Thing, both for Mears’ outstanding performance and for its focus on conscientious objection. “Thank you so much for travelling to Goshen College to share this most moving sermon of a play. If only this were required viewing for all the school children of this land,” said Duane Stoltzfus after the show in Goshen. Stoltzfus is the author of Pacifists In Chains, the story of four Hutterite COs in WWI.

A recurring theme in the play as Mears portrays the extraordinary faith and courage of the COs is his questioning of his own resolve. Many audience members resonated with this, including a student at Manchester University in North Manchester, Indiana, who said, “The questioning of ‘What would I have done?’ is so powerful and important in this performance. Thank you so much for bringing this show to our campus!”

It was a joy and privilege to have Michael Mears come and perform his powerful play in the US, and also to have the opportunity to get to know him on a more personal level. Thank you to everyone who hosted and attended performances this spring. It is our hope to bring the play back for another tour or two in 2019, performing to audiences in the southern Great Plains, the Southwest, and the West Coast.

If you are interested in hosting or seeing the play in your area, please contact Jake (email jake@centeronconscience.org or call 202-483-2220) for more information.

David’s Story: Protections for COs Save Lives

Cameran Clayton, Research Assistant

At barely 18 years of age, David Singh ended his own life. Growing up in Singapore, David was a dedicated student who longed to attend college in the United States. He had his heart set on NYU, and even kept a picture of the New York City skyline in his bedroom. A talented young man with a bright future, David’s hopes and dreams for himself and the life he might one day lead were darkened by one thing: his impending conscription. David was a Conscientious Objector.

David was by all accounts a gentle spirit and true pacifist who expressed his opposition to war and violence from an early age. At eight years old, he vowed to never allow himself to be drafted. An avid reader with wide-ranging and sophisticated tastes, David was highly creative and excelled at drama and writing. In the months before his death, David became a high school graduate, earning top marks on his International Baccalaureate exams and receiving his school’s highest honor for theater. He spent time with his many friends, studied piano and composed a collection of poems. Graduation and this time in his life were bittersweet, however, as David felt increasingly anxious and depressed, as his conscription date approached.

In Singapore, universal conscription for males typically begins at age 18 when young men finish school and are required to register for National Service. After graduation, conscripted soldiers are expected to report for intake almost immediately. Inductees serve two years full-time, after which they are considered operationally ready reservists obligated to report for up to 40 days of training annually until 40 years of age.

Regrettably, the Singaporean government, flouting the
recommendations of the United Nations Commission on Human Rights, adamantly refuses to recognize the rights of Conscientious Objectors. In a series of resolutions, the UN Commission on Human Rights has explicitly recognized Conscientious Objection as a fundamental human right protected under Article 18 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In response, the government of Singapore has repeatedly announced its intention to continue its policy of universal conscription. The government argues that the right to Conscientious Objection is unfair to those who serve, while at the same time it refuses to establish an alternative service program for COs to serve out their obligations in a manner consistent with their conscience.

The consequence of refusing to serve in the Singapore Armed Forces is 12 to 15 months detention, followed by an additional two year sentence, amounting to a total of three years in prison. In addition, the stigma and criminal record that come with refusing military service can have a profound impact on a young man’s ability to find employment and move forward with his life. Nonetheless, many COs like David are willing to endure this harsh punishment rather than violate their conscience. Jehovah’s Witnesses in particular suffer imprisonment for their belief that war is wrong. Just days before ending his life, David expressed to his family that he was thinking about going to prison rather than go against his conscience.

The UN High Commissioner on Refugees has called upon states to recognize Conscientious Objectors fleeing conscription as refugees and to honor their claims for asylum, particularly in cases where no system of alternative service is in place, as in Singapore. Sadly, very few countries have opened their doors to COs. Some countries, such as New Zealand, Canada and, more recently, France have approved CO asylum claims. These cases are rare, however, and meeting the legal burden can be difficult. COs like David are faced with few options.

For David, serving in the armed forces would have gone against everything he stood for. David cared deeply about his fellow human beings. His pre-enlistment examination confirmed for him his suspicion that the military stood for something very different. During his exam, David told his doctors that he was a CO and that his impending conscription was causing him severe anxiety and mental anguish. Even though he mentioned that he was having suicidal thoughts, medical officers chose not to classify David as unfit for service and instead used his medical examination as an opportunity to humiliate him.

It is unclear how many young men like David suffer because of their beliefs. Service member suicides are not unheard of, although it is impossible to know how common they are. The Singaporean government does not release statistics, and when a service member dies, the cause of death is not always disclosed. Loved ones are often left with unanswered questions, and cases like David’s are brushed aside. The government’s close monitoring of the media dissuades journalists from publishing stories that could be interpreted as critical of the government.

Since David’s passing, his family has reached out to several human rights organizations, including the Center on Conscience & War. They hope that David’s story will help raise awareness of the rights of Conscientious Objectors and how they are being violated in Singapore and around the world. Today, conscription is enforced in over 100 countries and many do not respect the rights of COs. David’s family continues to work to in support of rights of conscience in Singapore, knowing first hand the devastating consequences that families can face when those rights are not honored.

David Singh. Photo courtesy of Harmohan Singh, David’s father.
The National Commission on Military, National, and Public Service is at work right now to determine the fate of Selective Service (Draft) Registration, and they need to hear from people of conscience!

Congress established the Commission in September 2017 following negotiations over the National Defense Authorization Act (NDAA) and the deeply contested issue of requiring women to register for the draft. The Commission’s mandate is to consider issues of national service, both military and civilian, including important questions about Selective Service registration: should it continue, should women be required to register, and are there changes that should be made to the Selective Service System, such as those we at the Center on Conscience & War (CCW) have long advocated for, which would protect the rights of conscientious objectors.

It has been decades since there has been a serious national conversation about Selective Service. This is a great opportunity to lift our voices to call for an end to Selective Service (draft) Registration. All branches of our government have affirmed that the primary purpose of Registration is to be prepared for war. For many people of different faiths and beliefs, any cooperation with war—even registration—is a violation of conscience. Currently there is no option to register as a Conscientious Objector; as a result, individuals who cannot participate are punished for life, without due process.

If the Commission fails to endorse ending Registration, they must urge Congress to allow people to register as conscientious objectors and restore full rights to people of conscience.

You can submit written comments now — through the Commission’s website (inspire2serve.gov), via email, including the subject line “Docket 05-2018-01” to national.commission.on.service.info@mail.mil, or by mail:

National Commission on Military, National, and Public Service
Attn: RFI COMMENT—Docket 05-2018-01
2530 Crystal Drive, Suite 1000, Room 1029
Arlington, VA 22202.

The official comment period ends September 30, 2018, but the Commission will accept comments through early 2019.

Helpful talking points are inside on page 2, and a more detailed discussion of the problems with Selective Service is on the front page of this newsletter and on our website under Conscientious Objection.

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