



The Reporter

for Conscience' Sake

The Center on Conscience & War

Working to defend and extend the rights of Conscientious Objectors to war since 1940

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The Little Commission that Could, but Didn't: *A Recap of the Three Year Journey of the Commission on Military, National and Public Service*

By **Bill Galvin and Maria Santelli**

When President Carter resumed draft registration in 1980, there was widespread opposition. The wounds of the U.S. war in Vietnam were still fresh. The draft ended in 1973; the war, and with it draft registration, ended in 1975. But besides the fatigue of war, another part of the resistance to restarting registration was about sex discrimination. A court case challenging the male-only registration as unconstitutional had actually succeeded in the lower courts. On July 18, 1980, just days before the registration was scheduled to begin, Walter Cronkite, who, at that time, was considered the 'most trusted man in America,' announced on the evening news that men did not have to register because of the court decision. The government appealed, and a stay by the court allowed registration to begin. The Supreme Court eventually decided that male-only registration was constitutional, saying, "[S]ince women are excluded from combat service by statute or military policy, men and women are simply not similarly situated for purposes of a draft or registration for a draft, and Congress' decision to authorize the registration of only men therefore does not violate the Due Process Clause" (*Rostker v. Goldberg*, 453 U.S. 57 (1981)).

That all changed on January 24, 2013, when then Secretary of Defense Leon Panetta announced the end of the 'combat exclusion' of women. With that official change in policy the justification for the 1981 decision was invalidated, and almost immediately officials and activists began to call for the inclusion of women in the draft and Selective Service registration.

Meanwhile, two court cases challenging the male-only registration were working their way through the courts and suddenly had a renewed urgency. Bills requiring women to register with Selective Service were introduced in Congress. In 2016, the Senate approved an amendment to the 2017 National Defense Authorization Act (NDAA) to require women to register for the draft, but the House did not. The final NDAA approved by the full Congress created the *National Commission on Military, National, and Public Service* as a compromise to review the Selective Service System (SSS) and make recommendations on its future, including whether women should be required to register.

The Commission is Born

In September 2017 members of the Commission were appointed by Democratic and Republican leadership in Congress, as well as President Obama. While the Commission may have been 'bipartisan,'

continued on page 5



CCW

Why the Silence Around John Lewis' Conscientious Objection To War?

By Chris Lombardi

If you blinked, you missed it. The heroic John Lewis was a conscientious objector to war, something barely mentioned in all the elegies unfurled since his passing in July.

Like many of us, I turned that night to documentaries about Lewis, both the new film *Good Trouble* and a 2005 CNN documentary called *Get in the Way*. Neither film even mentions the phrase "conscientious objector." And in all the beautiful words spoken at the funeral in Ebenezer Baptist Church, there was no mention of Lewis' deep opposition to war and militarism. That was true even of the great Reverend James Lawson, who spoke that day about teaching Lewis in those 1958 workshops Lawson led in the basement of his Nashville church. But Lawson was himself a conscientious objector, like fellow civil rights icon Bayard Rustin—and like Rustin he spent years in prison for it, and then went to India to study Gandhian

practices of nonviolent action. Lawson knew that his acolyte, after years enacting such practices in Freedom Rides and at lunch counters, told his 1961 draft board that he, too, was a conscientious objector.

When the draft board denied Lewis' CO application in 1961, Lewis appealed that determination repeatedly, during which time he also spoke at the March on Washington and mobilized hundreds to register voters during the 1964 "Freedom Summer." And at the end of that summer Lewis' appeal was granted, making him the first Black conscientious objector in Alabama. That decision was reversed two years later, after the Student Nonviolent Coordinating Committee (SNCC), which Lewis chaired, published an anti-war manifesto, a year before Dr. King's "Beyond Vietnam" speech.

By then, Lewis was nationally

continued on page 3

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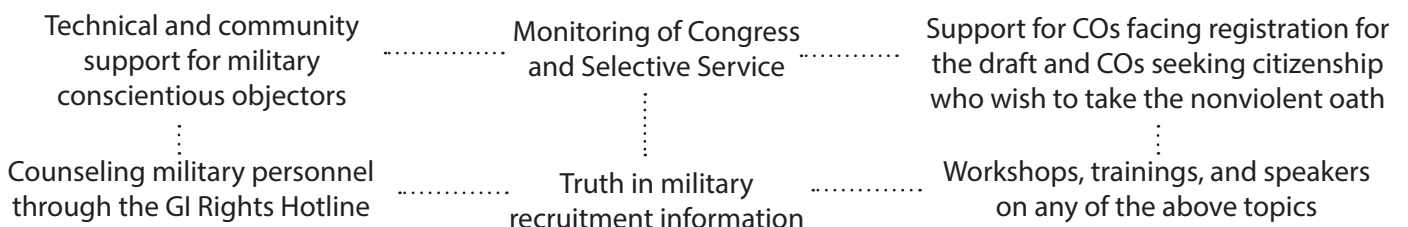
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John Lewis, continued from page 2

known for his voting-rights activism and March 1965 heroism on “Bloody Sunday” in Montgomery; a few knew that when he got to Selma, he was carrying a book by Thomas Merton, a Catholic monk who had hosted peace activists including Father Dan Berrigan. That August, Lewis was in Washington on the day when President Lyndon Johnson signed the Voting Rights Act. Only a few months later, in January 1966, the always-internationalist SNCC threw a shot at the bow of the Johnson Administration’s cornerstone military policy, not just opposing the war in Vietnam but supporting draft resistance. “We [also] take note of the fact that 16% of the draftees from this country are Negroes called on to stifle the liberation of Vietnam, to preserve a “democracy” which does not exist for them at home.” Lewis didn’t write that statement, but when asked he told reporters he supported every word. Soon after, the FBI in Atlanta wired Washington; Lewis’ 1-O classification was cancelled, and he was now declared 4-F, “morally unfit” to serve because of how often he had been arrested. In those days, activists hailed a 4-F as a badge of honor of sorts, a way to keep organizing.

Decades afterward, Lewis carried his conscientious objection onto the floor of Congress—perhaps especially in response to the U.S.’ 21st-century wars. Arguing in 2002 against the invasion of Iraq, Lewis thundered on the House floor: “What fruit will our actions bear, not just for us but for our children?” Lewis asked. “And not just for the children of our own land, but the children of the West, and the Middle East, and the world? It is the children, our little boys and girls, who must live with the consequences of our war.”

His internationalist SNCC voice continues: “What do our children gain when we have destroyed another nation? What do we gain when we have killed hundreds of thousands of their men, women, and children?” Five years later, Lewis was the first member of Congress to actively support the Appeal for Redress, in which thousands of active-duty personnel appealed for a withdrawal from Iraq using their constitutional right to seek redress of grievances. More recently, Lewis

responded to the assassination of Iranian general Hassim Soleimani in January by returning to the House floor just two weeks after his cancer diagnosis to vote to prevent the president from taking any further military action against Iran. In 2019, Representative Lewis was a cosponsor of the Prevention of Unconstitutional War with Iran Act, and in every year except his first term in Congress (1987-88), Lewis cosponsored the Religious Freedom Peace Tax Fund bill to legalize conscientious objection to paying for war. Lewis has been the lead sponsor of the bill since 1997.

All of the above was public knowledge, about a man who made living true to his conscience and speaking truth to power his life’s work. But none of it was included in the well-written obituaries and elegies, or the words spoken at Lewis’ funeral. Did neither Barack Obama, James Lawson nor Bernice King think Lewis’ lifelong witness against war worth mentioning? Did it perhaps feel less relevant in this particular time of tumult, this exposure of racial capitalism?

I disagree. The George Floyd moment needs that piece of good trouble—the spirit of war resisters. That spirit is already visible, in those resisting militarized police and Federal agents in camo. They know, as Lewis did, that the “infrastructure of oppression” mentioned by Obama is international in scope, and that their nonviolent protests trace back to those resisting war. Lewis himself affirmed that in his final testimonial for the *New York Times*: “In my life I have done all I can to demonstrate that the way of peace, the way of love and nonviolence is the more excellent way.”

Yes, President Obama, Lewis is the “founding father” of the new America being born. But his biography must include Lewis the conscientious objector. His erasure is a crime against truth.

Chris Lombardi is the author of I Ain’t Marching Anymore: Dissenters, Deserters and Objectors to America’s Wars (The New Press, Fall 2020).



The SCOTUS 2019-2020 Religion Decisions and Implications for Military Conscientious Objectors

By Deborah H. Karpatkin
and Peter Goldberger

In its 2019-2020 term, the Supreme Court issued a number of decisions considering the scope of the Establishment Clause and the Free Exercise clause. While none bear directly on the rights of military conscientious objectors, they indicate a direction of the Court favoring individual religious rights against neutral government rules, regulations and policies that may adversely affect those with religious beliefs. If the current trend on religious rights in general were to be even-handedly applied to conscientious objectors, the legal rights of COs could be greatly expanded and much better protected.

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Funding for Religious Schools

In *Espinoza v. Montana Department of Revenue*, the Supreme Court invalidated Montana's rule that the state could subsidize private secular education, but not private religious education. The Court, by a vote of 5-4, ruled that if Montana subsidized private education, it could not disqualify religious private schools from the subsidy.

More RFRA Protection for Non-Religious Employers Opposed to Contraception

The Religious Freedom Restoration Act (RFRA) is a federal law requiring the federal government to demonstrate a compelling interest that cannot be achieved by less restrictive means before it may enforce a neutral, generally applicable law against a person whose sincere religious beliefs would be substantially burdened by the law. RFRA has been used by employers to argue that their sincere

religious beliefs would be substantially burdened by the Affordable Care Act's requirement to include contraceptive coverage at no extra charge in their employer-provided health insurance. In *Little Sisters of the Poor v. Pennsylvania*, SCOTUS extended its decision in *Burwell v. Hobby Lobby*, which had ruled that RFRA allowed private corporations to exempt themselves, on religious grounds, from a federal regulation mandating contraception coverage. The Trump Administration expanded the exemption's protection for private employers claiming religious

or moral scruples about contraception, making it inclusive of more religious and moral exemptions and without any burdensome application process, and SCOTUS upheld those broader exceptions. As

Justice Ginsburg wrote in dissent, the Court's decision "for the first time ... casts totally aside countervailing rights and interests in its zeal to secure religious rights to the nth degree."

Ministerial Exception Expanded; More Protection for Religious Employers to Avoid Discrimination Claims

The ministerial exception to Title VII of the Civil Rights Act of 1964 and other laws prohibiting workplace discrimination allows religious employers to avoid discrimination claims asserted by their "ministerial" employees, on the grounds that defending such claims would impermissibly involve courts in religious doctrine. In *Our Lady of Guadalupe School v. Morrissey-Berru*, SCOTUS expanded the definition of who was a "minister" for purposes of this exception, concluding that two

continued on page 5

SCOTUS Decisions, continued from page 4

teachers at Catholic elementary schools could not proceed with discrimination claims against their schools because they were “ministers,” even though neither was ordained and neither had any indication or personal belief that they were ministers. As Justice Sotomayor noted, the decision took away from “hundreds of thousands of employees” any right to sue their employers for any violation of the anti-discrimination laws. This decision will make it easier for religious employers to avoid discrimination claims by asserting that these employees are “ministers” and therefore the ministerial exception applies.

Coming up in 2020-2021

Two important RFRA cases are on the SCOTUS 2020-2021 docket (so far), which may test the statutory religious preference of RFRA against the constitutional requirements of the Establishment Clause. In *Tanzin v. Tanvir*, a Muslim man is seeking monetary damages under RFRA, claiming that the FBI caused him to lose his job because they put him on the “no fly list” after he refused to give the FBI information about fellow members of the Muslim community. RFRA may also be tested in *Fulton v. City of Philadelphia*, which involves Philadelphia’s decision to exclude Catholic Social Services (CSS) from participating in City-administered foster care placements because CSS refuses, on religious grounds, to recognize same-sex couples as foster parents as required by the City’s standard contract for social services providers.

What Does This Mean for Military Conscientious Objectors?

None of the last Term’s decisions squarely address any of the many legal issues facing military COs. But we note the growing strength of RFRA as a basis for challenging government rules that substantially burden a person’s sincere religious beliefs – an argument that can be made against the extremely

burdensome rules and regulations, and slow-moving, often hostile process facing a military service-member seeking recognition as a conscientious objector.

Peter Goldberger and Deborah Karpatkin are lawyers in private practice. Both have worked with CCW on a number of CO cases and have represented many COs in hearings and in habeas corpus litigation.

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The Little Commission, continued from page 1

all but three of the eleven members have direct or close ties to the U.S. ‘national security’ apparatus or the military.

The Commission’s work launched officially in January 2018, and CCW introduced ourselves right at the beginning—before they even had adequate staff to return phone calls. Given our long history of monitoring and interacting with Selective Service, and the fact that we were integrally involved with the placement of conscientious objectors in Civilian Public Service (CPS) camps during WWII, the first civilian national service program created by the government, we believed that our insight and experience could be of value to the Commission.

In April 2018, fresh off our U.S. tour with the play, *This Evil Thing*, which portrays the hardships and triumphs of COs in World War One (WWI), we met with the Commission staff. It was important to us that they understood the history of the Selective Service System and how cruelly and unjustly it had treated conscientious objectors throughout history. We also wanted to be sure they understood that for some conscientious objectors, simply registering for the draft is a form of participation in war – something they cannot do. We emphasized the injustice of the lifelong penalties imposed on these conscientious objectors. We explained that the best way to serve conscientious objectors and ensure equal treatment under the law *for both men and women* is to end the draft registration.

continued on page 7



Dramatic Court Developments in SSS Litigation

By Peter Goldberger

There have been dramatic developments recently in the slow-moving court challenges to the legality of an all-male draft system.

In 1980, a three-judge federal court sitting in Philadelphia ruled that the Selective Service System was unconstitutional, because it required men but not women to register for the draft. That lawsuit had originally been filed in 1971 as a kitchen-sink attack on the legality of the Vietnam War, with the gender-discrimination claim thrown in as a minor, long-shot afterthought. But after nine years of dragging through the court system, the discrimination (“equal protection”) claim was all that was left of the case. Coincidentally, the case finally came before the court for decision in the same week that President Carter reinstated active registration. The Philadelphia court’s injunction against draft registration lasted exactly one day, before the Supreme Court entered a stay pending its own decision of the case. Following briefing and argument – with the plaintiffs supported by the ACLU’s fabled Women’s Rights Project – the Supreme Court reversed the Philadelphia decision. By vote of 6–3, the Court held in *Rostker v. Goldberg* (1981) that since the purpose of the draft was to ensure that a sufficient number of soldiers would be available for combat arms, and women were excluded from serving in combat positions, the male-only draft was reasonable, not discriminatory.

It is no surprise that when Congress and the military between 2013 and 2015 changed their official policy on the categorical exclusion of women from “combat” positions, draft opponents saw an opportunity to revive the legal challenge to male-only registration. The cases that were filed, however, were under the control, not of the ACLU or other advocates of women’s equal rights, and not of principled opponents of war and conscription, but rather of lawyers associated with the often-

misogynist “men’s rights movement,” who believe that it is males, not females, who receive unfair treatment under the law and in society generally. Two such cases were filed, one in the federal court in New Jersey, with a young female plaintiff, and the other in California, with male plaintiffs. The California case, which sought class-action status, was soon transferred for legal reasons to a federal court in Texas.

Neither case moved quickly, but the Texas case made more progress than the one in New Jersey. Then suddenly, in the summer of 2020, both cases burst into the headlines. The Texas case had produced a trial-court ruling that draft registration, as currently conducted, was unconstitutional. Although the judge declined to enter an injunction against enforcement prior to a final appellate decision in the case, the Department of Justice, on behalf of Selective Service, appealed. This spring, the case was argued before a three-judge Fifth Circuit appeals panel sitting in New Orleans; the plaintiffs were represented by the same “men’s-rights” lawyer from Los Angeles who had initiated the case. While the government’s appeal was pending decision by the Fifth Circuit, the New York lawyer who had initially been in charge of the New Jersey case, but had withdrawn to a supporting role a year or so earlier, apparently became overcome with frustration and jealousy that his case was not the one that was on the path to potential landmark status. Shockingly, he traveled to California and murdered the lawyer who was pursuing the Texas case. He then returned to New Jersey and tried to assassinate the judge in that case, but ended up killing the judge’s son (and wounding the judge’s husband) instead. The crazed lawyer fled but killed himself the next day.

Less than a month later, on August 13, 2020, the

continued on page 11

The Little Commission, continued from page 5

Protecting Conscientious Objectors

We explained to the staff that if the Commission did not see the obvious value of ending the registration, there are ways that the Selective Service System could be improved to better serve conscientious objectors – a goal enshrined in its own mission statement. Specifically, we advocated that there be a way for COs to express their objection at the time of registration (i.e., a CO checkoff box). Such an option would provide limited relief for some conscientious objectors.

We discussed with the staff that most faith communities teach some version of Just War Theory, (meaning they believe that war can be justified in some cases), and that this is a belief that dominates our culture. Yet people who hold this belief may find themselves without legal protections as a CO, if they cannot say they oppose all war. We hoped the Commission would acknowledge this injustice and recommend that the definition of conscientious objection be expanded in the law to allow these COs to live true to their conscience.

We told the staff that in order for them to fully understand the real-life consequences of the agency they were tasked to study, the Commission really needed to meet with Hutterites, Mennonites, and other faith communities that had suffered so much at the hands of Selective Service – particularly in WWI, when protections for COs were weak. It would be tragic to lose any of the ground we have gained since then.

In 2018 the Commission visited 23 different locations, covering all nine census districts. They held public events in most of these locations, claiming that the purpose of these events was to listen to the public. The events were scripted, essentially pep rallies for national service, with invited participants from Americorps, local service agencies, government entities and the National Guard. At the end of each event there was a small amount of time for people in attendance to voice their concerns. CCW encouraged our constituents to attend the meetings and speak up, and many of you did, as did we.

The Commission's interim report, released in January of 2019, said very little of what they had learned, and was essentially a restating of their mandate. It listed fourteen 'Faith-Based Organizations' with whom they had met. Only a couple of them were affiliated with an established denomination, and not one was affiliated with a Historic Peace Church.

Official Hearings Begin

During 2019, the Commission held fourteen official public hearings, according to its final report, "to receive feedback from expert panelists and interested stakeholders. Panelists at each hearing were asked to respond to a staff memorandum, which contained policy options under consideration by the Commission." In most cases, the policy options under consideration were not released to the public until hours before the hearing, allowing very little time for 'interested stakeholders' to familiarize themselves with the policies in advance of the hearing. The invited panelists were provided a list of potential questions the Commission might pose so they could prepare responses. In effect, the hearings were largely a choreographed roadshow. To our surprise and the Commission's loss, CCW was not invited to speak, even at the panels that were focused on the Selective Service System, whose policies and practices we have followed since its - and our - founding.

The Commission's official federal hearings about Selective Service were held in Washington, DC in April 2019. The invited panel on Selective Service included leaders of the Army Training and Doctrine Command, a professor at the Navy War College, the head of the Maryland National Guard, the current Director of Selective Service and a former Director, Bernard Rostker (1979-81), who surprised everyone by stating in no uncertain terms that the registration program was useless and should be scrapped.

The panel also included Edward Hasbrouck, one of the 20 people prosecuted in the 1980s for failure to register, before the government realized that those

continued on page 8



The Little Commission, continued from page 7

public prosecutions *increased resistance*. Also on the panel was Diane Randall, General Secretary of the Friends Committee on National Legislation (FCNL). Diane was the only person the Commission officially heard from who represents one of the Historic Peace Churches, and as a Quaker organization, they strongly support conscientious objectors and oppose conscription.

In the time remaining at the end of each hearing, members of the public could sign up to make a two minute presentation, and many testified about their concerns for the rights of conscientious objectors and for an end to the draft altogether. While it did seem like some of the Commissioners were paying attention to some of the public comments, once again, we felt that, like so much of the Commission's public face, these hearings were mostly for show.

CCW staff attended all the official hearings in person, except the ones held in Texas, which we streamed online. We testified at the end of almost all of them, so in due course we were able to speak directly to the Commission for about 30 minutes total. We also submitted official written comments for the record. But it's clear that our voice was not heard by the Commission as much as it would have been had we been invited to testify or meet with the Commissioners in person.

Thanks to the tenacious Edward Hasbrouck, three Commissioners joined a conference call in December 2019 with members of the 'anti-war' community, including CCW, CODEPINK, Truth in Recruitment, and the Committee Opposed to Militarism and the Draft (COMD). By that point, it seemed clear that most of the final decisions already had been made, and meeting with us was just an attempt to display

the appearance of concern for diverse perspectives, which clearly were absent from the Commission itself. In reality, militarism as a legitimate foreign policy tool, and maintaining the apparatus of a draft in order to uphold it, were never going to be seriously questioned by this body, whose members were almost all closely aligned with the military-industrial-national security complex.

A Blatantly Biased Final Report

In their final report, released March 25, 2020, the list of 'Organizations Consulted' is heavily skewed towards the military. There are well over 25 Department of Defense agencies on the list, and that doesn't include individual military branches, ROTC, State National Guard leaders and others. Those of us coming from a peace perspective were unanimous in calling for an end to Selective Service (Draft) registration and the penalties imposed on those who do not register.

Meanwhile, military leaders consistently testified that maintaining the draft apparatus was integral to their war-planning, and our voices were apparently disregarded. The Commission also committed blatant erasures of testimony, omitting from the official record

testimony from the National Council of Churches, which represents Christian denominations with 40 million members, and an official statement from the Bruderhof Community, among dozens of others. According to Edward Hasbrouck, who filed numerous Freedom of Information Act (FOIA) requests, "The Commission's final report says that they received '4,300+' comments from the public. The Commission actually received comments from more than 37,000 members of the public. Almost 90% of those were inexcusably lost, discarded, or ignored by the Commission!"

While it did seem like some of the Commissioners were paying attention to some of the public comments, once again, we felt that, like so much of the Commission's public face, these hearings were mostly for show.

continued on page 9



The Little Commission, continued from page 8

They did seem to pay attention to some input from the public. From the beginning, it appeared that they had an agenda to recommend some form of mandatory national service. But as they traveled the country and heard testimony from the public and agencies like Americorps and other service groups they invited, it became clear to the Commission that mandatory service was not going to be well received. The chair of the Commission, Joe Heck, repeated many times that people want to serve, and policies should facilitate them doing so if they want to, but generally, the public is strongly opposed to being *required* to serve.

Most of the recommendations from the Commission's final report involve ways the government can facilitate service and encourage people to serve. We believe that is a good thing. We were disappointed, but not surprised to see that they recommended a continuation of Selective Service registration, and that it be expanded to include women. They rejected our proposal to allow conscientious objectors to document their objection at the time of registration (via a "CO check-off box") because they said it would be "too confusing." Hmm. What's truly confusing is how a country that daily touts 'religious freedom' still clings to the idea of forcing people to kill against their will.

A Lukewarm Response to CO concerns

Interestingly, the Commission did recognize the shortcomings of the current coercive 'automatic' registration system, which 'passively' registers a vast majority, usually through driver's licenses or financial aid applications. This passive registration occurs often without the knowledge, discernment, or active consent of the person being registered. To remedy this, the Commission proposes that Congress appropriate additional money to Selective Service to increase advertising, and "implement methods to convey to registrants the solemn obligation for military service in the event of a draft," even to the

point to creating a video that those registering online must watch in order to complete their registration. This is one of the Commission's most insightful recommendations. Since the implementation of the "Solomon" laws in the 1980s, which were the government's response to the high noncompliance with registration, we have bypassed our national conscience on issues of war and the draft. We also have compromised our constitutional guarantees to due process, equal protection, and freedom of religion and belief. Under current state and federal laws, a conscientious objector who cannot register for the draft for reasons of conscience will be punished for life without ever being prosecuted or convicted. This is wrong, and must end. The Commission did see some reason in this argument and included a weak remedy to this extra-judicial punishment: allow COs and other non-registrants to register at any time in their lives in order to have the penalties lifted (the current cut-off is before the 26th birthday). While the Commission may believe this addresses our concerns, it is, in reality, a cop out. These unconstitutional laws must be repealed.

Militarism is Not Equality

The Commission's rationale for recommending expanding draft registration to women is equally inadequate: "That women register, and perhaps be called up in the event of a draft, is a necessary prerequisite for their achieving equality as citizens, as it has been for other groups historically discriminated against in American history" (p. 118 of their final report). Their argument is offensive, and it is simply not true. Women's equality in the eyes of the law should not be dependent upon their complicity in militarism.

The Commission issued its report at the end of March, but because of the COVID-19 pandemic they were not able to host a public event as originally planned. There have been a series of Zoom and YouTube presentations in which

continued on page 10



The Little Commission, continued from page 9

members of the Commission and invited panelists primarily talked about the value of service, largely skirting issues of the draft, conscience and war.

On June 25 they held their 'culminating presentation,' *Inspired to Serve, A Path Forward*. The first major speaker was Leon Panetta who, years earlier as Secretary of Defense, eliminated the 'combat exclusion' for women in the military and paved this road we are now traveling. He began by citing Alexis de Tocqueville, who observed on his visit to the U.S. in the 1800s, "The principle quality of the United States of America, something he had not seen in Europe, was a sense of community, of caring for one another. And I think that combination of caring for one another and duty is what makes America the country it is." The absurdity of Panetta opening with this quote at a time when so many in our country are currently unwilling to care for one another by following common sense health and safety guidelines, such as wearing a mask, should not be lost. It also cannot be overlooked that the Commission report disproportionately focuses on militarism and nationalism, while ignoring what true national security could mean, such as healthcare for all, responding to climate change, and ending hunger and homelessness, *all of which could be done by reallocating just a fraction of the country's \$740 billion military budget*.

When asked about the Commission's recommendation that women be required to register for the draft, Panetta said, "I believe deeply that everyone ought to have the opportunity to serve this country, in the military or any other capacity, regardless of race or color or creed or gender, regardless of any kind of question with regards to who they are, I think they have the right to be able to serve." He very clearly doesn't understand the difference between the *opportunity to volunteer* vs. the government imposing requirements that *restrict*

opportunity. And what's particularly troubling is that this so-called 'opportunity' could require someone to violate their beliefs. This is not the American way. The right to live free of coercion to fight in war brought thousands of people of conscience to our shores since the 1630s, and if CCW's very busy year is any indication, conscientious objection to war is still alive and well in our country.

Panetta also strongly implied support for mandatory national service. Ambassador Susan Rice, another featured speaker at the culminating event, also very clearly advocated mandatory national service.

Among the Commission's other proposals of note was for Selective Service to hold regular 'mobilization exercises' to ensure the agency is prepared to actually implement a draft quickly. They also call on the President to review current exemptions and deferments, in light of their proposal to include women in the draft.

The Rights of Conscience

So we wonder, what are we to make of this? The Commission, after listening to our country's top military brass, affirmed that the Selective Service and its ability to draft large numbers of people must be maintained in the interest of 'national security.' They also identified many ways the federal government could encourage voluntary national service, but the government has never seriously considered funding or promoting these programs in the past. Plus, there was an abundance of positive talk about mandatory national service, and even though the public clearly objected, the Commission and its invited guests held on to the idea to the very end. Could this be evidence of what CCW (and NISBCO before it) has been saying for decades: that these proposals are really just ways to make a military draft more palatable?

continued on page 11



The Little Commission, continued from page 10

The Commission spent a lot of time, effort and millions of dollars studying this issue. If their recommendations increase civic education and participation and inspire and enable people to voluntarily serve, contributing to a wiser, more engaged, and more just country, it just might have been worthwhile.

But the fact that they leaned so heavily and uncritically on military-related sources and solutions, while muting or outright ignoring voices coming from a peace perspective, limits the value of their work and reinforces our belief that we must continue our efforts to faithfully defend and extend the rights of conscientious objectors to war, as we have done for 80 years.

Dramatic Court Developments, continued from page 6

Fifth Circuit court of appeals issued a short decision in *National Coalition for Men v. Selective Service System*, the Texas case, declaring that it (and by extension, any other court) remains bound by the 1981 Goldberg decision, simply because it is a U.S. Supreme Court precedent. Even if the facts that form the logical basis for the decision have changed, the court ruled, only the Supreme Court can overrule its own rulings.

As of this writing, the Fifth Circuit decision has not been appealed to the high court; the plaintiffs must first obtain a new lawyer. But it seems most likely that the case will now go to the Supreme Court, and in light of the basis given for that decision, it is more likely than it might otherwise have been that the Supreme Court will then agree to hear the case. If so, the survival of draft registration could be in doubt.

If the Court decides that the present law is unconstitutional by placing burdens on males but not females without a sufficiently logical and compelling justification under current military policy, the Court could follow either of two courses of action. The Court may determine that Congress, had it known in 1967 when the current Military Selective Service

Act was adopted that gender discrimination in this setting was forbidden, would not have passed the draft registration law at all, rather than do so without the word “male” inserted into the phrase “it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for ... registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration.” In that event, then the Court will strike down the law entirely. But if it determines that Congress, had it known, would have instead passed an ungendered draft law, then the Court will “sever” and delete (“excise”) the word “male” from the statute. This would leave the system in place, but with the requirement that young women, as well as men, must register.

In other words, if the Texas decision is appealed to the Supreme Court, and the Court takes the case, then there are three things that could happen, two of which leave draft registration operational: uphold the male-only draft; invalidate draft registration, as presently written, entirely; or extend draft registration to all by the legal device called “severance.”

CCW will continue to follow the progress of these legal challenges as they unfold.



Conscientious Objection and the Militarized Response to Protest

By Maria Santelli

Conscientious objectors of every generation have heard some version of this: “Your freedom to be a conscientious objector was won for you by the military you refuse to join and the wars you refuse to fight.” Yet, those same generations have seen the military used to suppress the very rights it claims to protect. This year, the military was being called to “patrol” demonstrations in support of Black lives that were happening all over the U.S. just one month after the 50th anniversary of the Ohio National Guard opening fire on student anti-war demonstrators at Kent State University on May 4, 1970. Though the country still has deep divisions today as it did then, the majority of Americans were united in their opposition to the use of the military to “police” their streets and communities this year.

Many military members themselves opposed being called to turn their training for war against their own neighbors. This year, the Center on Conscience & War counseled dozens of military members whose CO beliefs crystalized after being mobilized to the protests or seeing other soldiers being mobilized in that way. For these recent COs, their moral, ethical or religious beliefs grew and evolved, guiding them to not only oppose being called to take up arms against civilian protesters, but also to realize that they no longer could support the mission of the military in general, which is, of course, to fight wars. Under military regulations, which also apply to the National Guard, these conscientious objectors have the right to be honorably discharged or to be reassigned as noncombatants who do not bear arms.

It was not only part-time soldiers in the National Guard who were moved by the events of this summer to seek CO status. Even long-time members of the active duty military, including those who thought they would make a career out of military service, began to develop CO beliefs.

In his application for discharge, a navy officer wrote how his conscience was awakened, even after years of immersion in militarism: “I’d occasionally think to myself, ‘am I complicit in suffering? No. I’m not *personally* killing anyone. And surely I support the general concept of a nation having a military. Therefore, I am morally justified in continuing with my career.’ I attempted to shut the door to that kind of thinking, and I was successful until June 2020. A police officer kneeled on George Floyd’s neck for over 8 minutes, suffocating him to death, while another officer watched him do it, with his hands in his pockets. This certainly wasn’t the first time that police brutality happened to an unarmed Black man in America. It unfortunately probably won’t be the last time it happens. So what does this have to do with me? I’m the officer who has his hands in his pockets.”

We know that there are many more members of the military who feel this way, too. While deployments of the military in our communities seem to have wound down for the moment, history tells us we may not be done with calls for the military to suppress voices of dissent. When those calls wake the conscience of a soldier, CCW will be standing by.

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