

Formed: 1940

NISBCO

National Interreligious Service Board for Conscientious Objectors

APRIL 18, 1986
MR. PAUL MARTIN, ESQ.
U. S. SENTENCING COMMISSION
1331 PENNSYLVANIA AVE.
SUITE 1400
WASHINGTON, DC 20004

DEAR PAUL:

I HAVE ENCLOSED AN AMENDED SUBMISSION OF TESTIMONY. THE MATERIAL I GAVE YOU ON FRIDAY WAS LITERALLY A FIRST DRAFT. IT WAS HOT OFF MY WORD PROCESSOR AT HOME, AND MOSTLY OUT OF MY HEAD.

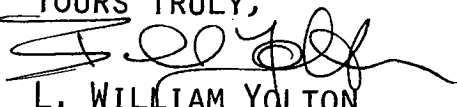
I HAVE ADDED SOME OF THE CONCLUSIONS I PRESENTED IN MY ORAL TESTIMONY, CORRECTED A WORD OR TWO, FILLED IN A SENTENCE IN WHICH THE MIDDLE HAD DROPPED OUT. I TRUST THAT THIS PROCEDURE IS ACCEPTABLE.

I WOULD LIKE TO DROP BY TO READ THE "BLACK BOOK." I WISH I HAD TIME TO DO SO BEFORE PREPARING THE TESTIMONY. I'M PLEASED THAT AS A LAY PRESENTER AMONG SO MANY LAWYERS I DID NOT LOOK SO BAD, BY COMPARISON.

WOULD IT HELP THE COMMISSION WERE THERE TO BE OTHER SUBMISSIONS FROM THOSE NOT QUITE SO ANTAGONISTIC TO THE WORK OF THE COMMISSION AS SOME OF THE GROUPS TESTIFYING OBVIOUSLY ARE?

THANK YOU AGAIN FOR THE OPPORTUNITY TO TESTIFY. ONE QUESTION THAT COULD NOT BE ANSWERED IN THE TIME AVAILABLE WAS "HOW MANY COs ARE THERE, OR WERE THERE?" I SAID WE DIDN'T KNOW. THERE ARE STATISTICS, BUT THEY ARE NEARLY MEANINGLESS. I'LL WRITE A CAREFUL LETTER TO EXPLAIN THE PROBLEM.

YOURS TRULY,


L. WILLIAM YOLTON

P.S.: PLEASE NOTIFY ME OF THE SCHEDULE OF ADDITIONAL HEARINGS, AND KEEP ME ON ANY MAILING LIST YOU MAINTAIN FOR INFORMATION...

Suite 600, 800 Eighteenth St., NW, Washington, DC 20006-3599 (202) 293-5962

REV. L. WILLIAM YOLTON
Executive Director

SHAWN PERRY
Associate Director for Program

CHARLES EPP
Assistant Director for Legislative Liaison

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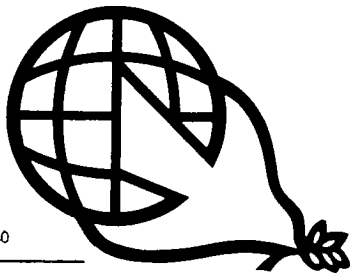
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TESTIMONY ON THE GRADING AND DURATION OF SENTENCES

before the
U. S. SENTENCING COMMISSION

on behalf of the
National Interreligious Service Board
For Conscientious Objectors

by Rev. L. William Yolton
Executive Director

April 15, 1986

Suite 600, 800 Eighteenth St., NW, Washington, DC 20006-3599 (202) 293-5962

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I am L. William Yolton, the Executive Director of the National Interreligious Service Board for Conscientious Objectors (NISBCO). I am a Presbyterian minister who has been a pastor, campus minister, church administrator, and a teacher in divinity school. During the Vietnam era when I was the denominational Secretary for Conscience and War, I was also the chair of the Interfaith Committee on Draft and Military Information, and the chair of Prisoner Visitation and Support. I am also on the board of the Central Committee for Conscientious Objectors.

NISBCO is a coalition of thirty-four religious bodies organized to defend and extend rights of conscientious objectors. The coalition includes the Synagogue Council of America, the U.S. Catholic Conference, most of the denominations in the National Council of Churches such as Presbyterians, Lutherans, and Methodists, and the historic peace churches usually identified as Mennonites, Brethren, and the Religious Societies of Friends. Such an unusually broad coalition is maintained in part by the narrow focus of concern, the support of conscience and opposition to war.

In addition to the primary activity of counseling and information, NISBCO also represents its constituents' interest to the government and monitors developments in conscientious objection and conscription. In the course of this activity NISBCO has become an expert in conscription law and on the situation of conscientious objectors in the armed forces. Since the second World War, NISBCO has organized and conducted visita-

tion among war objectors in prison, now accomplished through a similarly expanded coalition.

On behalf of NISBCO, I address the grading of offenses committed under the Military Selective Service Act and the related question of the duration of incarceration. Our sister organization, the Central Committee for Conscientious Objectors will be submitting written testimony. When the opportunity arises, I hope to talk to you on matters of alternatives to incarceration and on the characteristics of offenders.

I shall begin by sketching out a perspective on the draft system and its sentencing problems. It can be argued that violations of the Military Selective Service Act may be the most difficult to fit into a rational sentencing scheme. Since the initial determination of most of the cases that eventually come to trial is made by ill-trained or untrained lay boards operating with rules that are at points demonstrably illegal, or without due process guarantees, it is no surprise that the conviction rate in these cases is the lowest of all classes of crimes prosecuted by the Justice Department.¹ (By 1972 twelve percent of inductees were indicted. In 1967 three-fourths of defendants were convicted, but by 1975 only seventeen percent.)

It is also the most erratically enforced statute on the books even including that list of absurdities invoked as reasons

¹ Lawrence M. Baskir and William A. Strauss, Chance and Circumstance, the Draft, the War, and the Vietnam Generation. New York, Knopf, 1978. See the various charts such as Figure 1 on p. 5.

to revise the criminal code: interfering with a carrier pigeon, accosting a woman on a river boat, and so forth. The latter are just not enforced. Prosecution of MSSA infractions depends on the political climate, the whim of prosecutors as well as Justice's policy, the great variety of offenders, the politics of appointments of volunteers to Selective Service, the degree of sensitivity to issues of conscience and justice which the present military officers in command of the Selective Service System have developed, and on the vagaries of politics around hot and cold wars.

Offenses committed under the act vary widely according to the character and position of the offenders. The highly principled religious man may openly refuse induction for conscience sake; others expediently evaded the draft by falsifying medical records;; some did not appear for a physical examination because it wasn't convenient; many ignored with impunity the requirement to report their current address (my guess is that 20 percent of registrants are always in violation); and, the violations by Selective Service employed and volunteer personnel such as the local board clerk who boasted of never allowing a CO claim were not prosecuted. The Act, the Regulations and the accompanying administrative instructions did not help to make sense of a situation in which the penalty at section 12 punished everyone alike. The Report of the Committee on the Judiciary, U. S. Senate, to accompany S. 1437 aptly described the Military Selective Service Act:

50 U.S.C.App.462 is an awkwardly drafted provision. In addition to defining specific offenses, often in obscure language, it generally makes it a crime, punishable by imprisonment for up to five years, to violate any provision of the statute, or regulation or administrative order issued thereunder.

The principal offenses under section 462 involve failure to register, or to report for or submit to induction; failure to report for a physical examination; and failure to keep one's local selective service board advised of a change of address, or to carry one's selective service card on his person. Offenses can be committed by persons subject to the law (e.g., failure to register), officials of the Selective Service System, and other agencies (e.g., false examination reports), and "outsiders" (e.g., making false statements in behalf of registrant, or printing counterfeit selective service cards). The uniform felony classification has led to non-prosecution of many minor violations. Since the purpose of the statute is primarily to encourage men to serve in the armed forces (or alternative civilian work programs) rather than put them in jail, the policy of the Selective Service System and the Department of Justice with respect to registrants has been to punish principally persistent refusals to serve. The bulk of prosecutions have therefore been for disobeying orders of a selective service board to report for induction or civilian work. An exception has been the making of false statements, which is generally considered to warrant prosecution.²

Selective Service cases became the largest category of prosecutions initiated by Justice in 1971. For a while, educated and highly motivated young men were sent to prison. 3000 went to jail. Many more, 200,000, were charged. A conservative estimate of 250,000 non-registrants were never charged.

Norman Carlson, the Director of the Federal Bureau of Prisons, has been very supportive of a ministry to the war objectors in prison, and to the successor ministry that COs in

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prison helped generate, a ministry to all those who do not have other visitors. Still, he has had to deal with the organizing of the Federal Correctional Institutions by men who would not accept the conventional wisdom "to do your own time" but sought to improve the conditions of others. Danbury, for instance, was tied up in a strike organized by the war objectors around work conditions.³

Though there is no authority for inductions at this moment, prosecutions are proceeding sporadically against non-registrants. Justice has had over 200,000 cases turned over from Selective Service for investigation. As of the last accounting, 148 have been disposed of.

Of the twenty prosecutions there have been four dismissals, one of the prosecutions was against a Laotian immigrant who did not understand English, and when registration was finally explained to him he complied, but it counts as a conviction. The case of a conscientious objector was dismissed when it was shown that the government had all the information necessary to constructively register him without his signature on the card, which had been his position all along. The most recent prosecution is of a young man who tried unsuccessfully to enlist on six occasions, and had consistently failed the qualifying examination, and who has registered.⁴ Given the Solicitor General's account

³ Stephen M. Kohn, Jailed for Peace. Westport, Conn., Greenwood Press, 1986. p. 82-85.

⁴ The Reporter for Conscience'Sake, NISBCO, March, 1986.

of the "beg" policy in Selective Service prosecutions in his argument before the Supreme Court which was the basis for the determination that there is no policy of selective prosecution, either Wayte was decided on the basis of misrepresentation by the Government or this new defendant has an impeccable defense.

Despite the opportunity to select for prosecution the most winnable cases, convictions are well under the 95% rate for index crimes. Were all the outstanding cases to be decided for the government, the government would still be losing at a rate of four times the average.

I have attached a chart of the status of Selective Service cases as of the end of 1985. The chart shows the disposition for those convicted. There has been wide variation, some to probation, others to court ordered community service, another fined the maximum so that his trust fund for education would be depleted, another sentenced to four years, twice the sentence for a violator in the Soviet Union.

Since the introduction of S.1 in the 93rd Congress, I have followed the proposed legislation for the reform of the Federal Criminal Code. Making a coherent body of law out of two hundred years of piecemeal legislation has eluded Congress. It has been too big a job, and the reform is taking place piecemeal. The revision of the Military Selective Service Act and its homologization with other statutes is delayed. I understand that the Thurmond version (S.829) of the sequence of bills reforming the Federal Criminal Code took "the easy way out" for Congress,

were the largest category of crimes reported by the Justice Department. Since prosecutions dragged on until the Ford amnesty in 1984 and the inductions had ceased since 1972, the exemplary, or deterrent effect of the sentences became virtually meaningless.

Many of those convicted were victims of the failure of the Selective Service System to process claims properly. Sometimes the problem was in bias against conscientious objectors, sometimes the bias was racial. In the Cassius Clay case the local board clerk boasted that they had never allowed a conscientious objector claim. Arthur Burkhart Banks was convicted after his local Georgia draft board rejected his CO claim. Banks was well known in New York City for his off-Broadway portrayal of Frederick Webster Douglass; but that did not cut much ice in the heat of prejudice in Georgia.

It was the same in other parts of the country. Weldon Lodwick was convicted in Pittsburgh when his defense, a conscientious objection that was supported by the official teaching of the Presbyterian Church about justifiable war, was ruled as not qualifying under Section 6(j) of the Act. Had Lodwick been in Britain, Australia, or the Netherlands, or West Germany, his defense would have qualified. The judge acknowledged Lodwick's sincerity and conscientiousness, and sentenced him to probation for two years to continue teaching mathematics at Boggs Academy in Keysville, Georgia. The state then withdrew his teaching certificate because he was a felon, and withdrew accreditation

or to put it more favorably, the only feasible way to get agreement. It turned over the complex issue of grading offenses to the Sentencing Commission. And here you are.

Beginning with S. 1431 in the 95th Congress (1977) all proposed reforms of the U.S. Criminal Code undertook a reform of sentencing embodying a system of grading the offenses and correlating that grading to the sentencing provisions. With respect to Selective Service law violations, the offenses were graded Felony D, Felony E, and Misdemeanor A. The classification was differentiated according to whether or not the offense was committed in time of war or national defense emergency, during a peacetime draft, or at all other times. No differentiation has been made for the varieties of offenses that are committed under the Act. Many acts, such as failure to follow the regulations of the system, are punishable but usually not prosecuted, partly because the penalty is not discrete for these offenses, but certainly because the system has no incentive to report on itself.

The sentencing limit for offenses against the Selective Service act is now a maximum of five years imprisonment and/or \$250,000 fine, up from a maximum of \$10,000 since the Comprehensive Crime Control Act. This punishment is an improvement over the conditions of World War I, when seventeen objectors died in prison of abuse suffered under the hands of the military guards. We have become more enlightened.

In 1971, the violators of the Military Selective Service Act

from the school since its mathematics department was now headed by an uncertifiable teacher.

The Sentencing Commission should consider the grading of Military Selective Service offenses as a priority concern in reforming sentencing. The wide variation in sentences during the Vietnam era, from five years regularly given to black resisters, to one hour given to a group of Puerto Rican nationalists, promotes disrespect for the law.

The fact that the maximum sentences were given uniformly to those who contravened other informal norms in the society, e.g., organizing blacks for equal justice, or organizing anti-war activity shows that the availability of draconian penalties made it possible to use the draft law for other repressive purposes. In 1966, students at the University of Michigan were ordered to induction when they protested the war. Walter Collins, a graduate student and organizer for the Southern Conference Educational Fund, was denied his CO claim and sentenced to five years. While in prison he was not credited with good time, even though he tutored other prisoners and helped organize the library. Cleveland C. Sellers, a founder and national officer of the Student Nonviolent Coordinating Committee, was similarly indicted and sentenced to five years. When Martin Luther King, Jr., urged an end to the Vietnam war, he was attacked by both civil rights leaders and segregationists. Representative O. C. Fisher of Texas called for King's indictment under the

Selective Service Act.⁵

The widespread bias against those who were unconventional conscientious objectors, moral and ethical objectors, or just Roman Catholics or Presbyterians instead of Mennonites or Quakers, led to denials of claims, convictions and overly punitive sentences. David H. Mitchell, III, was sentenced to five years for ethical convictions that were eventually vindicated in Welsh, (1970). Jim Wilson, a Roman Catholic CO, was ridiculed by the trial judge for being "immature" and "arrogant." 72 percent of the convicted were either nonreligious or from a nonpacifist church. Seven percent were from pacifist churches reflecting the change in policy from insistence on cooperation with Selective Service by traditional peace churches to permission for active resistance (Young Friends national conference in 1968, Mennonite Central Committee in 1970). Twenty-one percent were Jehovah's Witnesses.

Successive decisions by the Supreme Court liberalized the interpretation of "religious training and belief" so that non-theists (Seeger, 1965) and moral and ethical conscientious objectors (Welsh, 1970) also qualified. It was not until Gutknecht (1970) that the practice of drafting protesters ahead of others was ruled unconstitutional. In the final year of inductions more CO claims were granted than men were inducted into the armed forces.

⁵ Kohn, op. cit., p.80.

I expect that the next draft will have just as many problems as the last. The most recent regulations published for comment (December 27, 1985) continue a trend to limit the rights of registrants, eliminating due process provisions, or ignoring the comments previously submitted which identified illegal or unworkable regulations.⁶ Every day NISBCO receives documentation from young people seeking to establish now their claims as conscientious objectors when inductions and classification resume.

The most recent regulations further militarized Selective Service so that we can expect thousands of peace church young people who would have cooperated with Selective Service will now become non-cooperators.⁷ The long-standing arrangements for religiously sponsored alternative service projects which were reaffirmed by Congress in 1971 have been eliminated by Selective Service.

The churches' strong opposition to government policy in Central America, coupled with the active cooperation of many congregations in the sanctuary movement, has alerted young people to issues they would have ignored. New positions on peacemaking and opposition to nuclear war are now part of the fabric of

⁶ See the official comments submitted by NISBCO on the Regulations of 12-27-85 and Form 22 pre-published 1-22-86. Obtainable from the General Counsel of Selective Service, National Headquarters, Washington, DC 20145. Or consult NISBCO at Suite 600, 800 18th St, NW, Washington, DC 20006.

⁷ See "Men and Women Who Dare to Say No," by Mark Becker. Unpublished manuscript. Becker describes the patterns of Mennonite Resistance to Draft Registration from 1980 to 1985.

religious life. The Roman Catholic Bishops Pastoral Letter on nuclear weapons is being taught in their schools. Despite the fact that those who face an almost certain resumption of conscription during the next decade have grown up since the Vietnam era, awareness of the issue of participation in war is the highest ever in peacetime. NISBCO's case load is now about one third Roman Catholic. At the beginning of the Vietnam era, they comprised less than one percent of those granted CO status.

The consideration of motivation should enter into the determination of duration. Those who oppose the conscription system on conscientious grounds and who will not register should be given some consideration as the courts already have by diversion.

Although NISBCO has no policy on sentencing Selective Service violators, since it opposes conscription in principle, I have some suggestions based on our experience. I can put myself into the secularized framework of public policy formation.

Certainly, five years is too long. Other countries have more liberal CO requirements, and incarceration much shorter. The two countries with comparable rates of incarceration to that of the United States are more liberal, despite the fact that they are now actively conscripting. In the Soviet Union the sentence only two years. South Africa, which only enacted a provision for narrowly defined conscientious objection in 1983, imprisons for up to six years; but, even there sentences have been one month

and for one year.⁸

Sentences during wartime should be no longer than the term of service of the conscript, two years. That will satisfy the purpose to punish and to deter others who would evade service. During a peacetime draft, when no risk of life is involved for the conscript, and enlistments are still advertised for their job and educational value, one year should be the maximum. When only registration is being conducted, as at the present time, the maximum duration should be four months, which is the present policy of the parole board.

One of the objectives of sentencing is incapacitation. It is hard to see how those who are willing to go to jail for their beliefs will be stopped from continuing their "crime" during the sentence. Both Arlo Tatum and Larry Gara served two prison sentences for their opposition to war and the draft.

When opportunity is provided, I will expand on the topic of alternatives to incarceration. I want now to anticipate that discussion because it has bearing on the duration of sentences for conscientious war objectors.

Those of us who have worked for years with conscientious objectors wonder what "rehabilitation" means for them. They want to continue as farmers in a simple life of non-resistance, or perhaps to continue their education to become doctors and

⁸ War and Conscience in South Africa, Catholic Institute for International Relations and Pax Christi. 22 Coleman Fields, London W11, UK. See also The Reporter for Conscience's Sake, February and April, 1986.

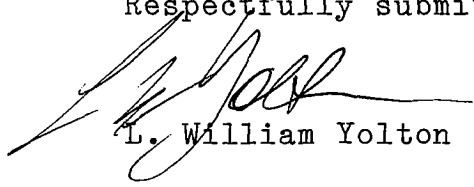
servants of the poor.⁹ Would rehabilitation mean that they are now, influenced by the violence of prison, ready to do violence to others, to kill on command?

While admiring the wit of the sentence for David Wayte who served almost six months under house arrest, instead of continuing his work in a home for the aging and in a soup kitchen, I do not think it accomplished its announced purpose of deterring other COs from resisting the draft. Depriving people of the opportunity to do good for others does punish the CO, but it certainly will not stop those others who have high motives of nonviolence and love for others from linking them to opposition to killing others in war. When Andy Mager was sentenced in 1985 for refusing to register for the draft, other young men, who had listened to his arguments at his trial, then announced their own public refusal to register for the draft.

My ideal in sentencing, would include a return to the provisions of the 1948 Universal Military Training and Service Act which provided an absolute exemption for conscientious objectors. Even Great Britain at the height of World War II was able to give exemptions to some COs and require alternative service of others, and had a much broader definition of conscientious objection, so as to include so called "selective objectors" and political objectors.

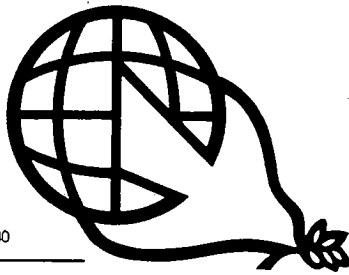
⁹ The Reporter, Dec. 1985 tells the story of David Fletcher, a military doctor who has been unable to get his conscientious objector claim processed by the army. Medical specialists have a disproportionate share of CO claims, in my experience. That fits the practice in the armed forces of reassigning those who have sought non-combatant service to the Medical Corps.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'L. Yolton', is written over the printed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

L. William Yolton

draft for submission in advance, April 11, 1986



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1st Draft

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Despite the opportunity to select for prosecution the most winnable cases, convictions are well under the 95% rate for index crimes. Were all the outstanding cases to be decided for the government, the government would still be losing at a rate of four times the average.

I have attached a chart of the status of Selective Service cases as of the end of 1985. The chart shows the disposition for those convicted. There has been wide variation, some to probation, others to court ordered community service, another fined the maximum so that his trust fund for education would be depleted, another sentenced to four years, twice the sentence for a violator in the Soviet Union.

Since the introduction of S.1 in the 93rd Congress, I have followed the proposed legislation for the reform of the Federal Criminal Code. Making a coherent body of law out of two hundred years of piecemeal legislation has eluded Congress. It has been too big a job, and the reform is taking place piecemeal. The revision of the Military Selective Service Act and its homologization with other statutes is delayed. I understand that the Thurmond version (S.829) of the sequence of bills reforming the Federal Criminal Code took "the easy way out" for Congress, or to put it more favorably, the only feasible way to get agreement. It turned over the complex issue of grading offenses to the Sentencing Commission. And here you are.

Beginning with S. 1431 in the 95th Congress (1977) all proposed reforms of the U.S. Criminal Code undertook a reform of sentencing embodying a system of grading the offenses and correlating that grading to the sentencing provisions. With respect to Selective Service law violations, the offenses were graded Felony D, Felony E, and Misdemeanor A. The classification was differentiated according to whether or not the offense was committed in time of war or national defense emergency, during a peacetime draft, or at all other times. No differentiation has been made for the varieties of offenses that are committed under the Act. Many acts, such as failure to follow the regulations of the system, are punishable but usually not prosecuted, partly because the penalty is not discrete for these offenses, but principally because the system has no incentive to report on itself.

The sentencing limit for offenses against the Selective Service act is now a maximum of five years imprisonment and/or \$250,000 fine, up from a maximum of \$10,000 since the Comprehensive Crime Control Act. This punishment is an improvement over the conditions of World War I, when seventeen objectors died in prison of abuse suffered under the hands of the military guards. We have become more enlightened.

In 1971, the violators of the Military Selective Service Act were the largest category of crimes reported by the Justice Department. Since prosecutions dragged on until the Ford amnesty in 1974 and the inductions had ceased since 1972, the exemplary,

or deterrent effect of the sentences became virtually meaningless.

Many of those convicted were victims of the failure of the Selective Service System to process claims properly. Sometimes the problem was in bias against conscientious objectors, sometimes the bias was racial. In the Cassius Clay case the local board clerk boasted that they had never allowed a conscientious objector claim. Arthur Burkhart Banks was convicted after his local Georgia draft board rejected his CO claim. Banks was well known in New York City for his off-Broadway portrayal of Frederick Webster Douglass; but that did not cut much ice in the heat of prejudice in Georgia.

It was the same in other parts of the country. Weldon Lodwick was convicted in Pittsburgh when his defense, a conscientious objection that was supported by the official teaching of the Presbyterian Church about justifiable war, was ruled as not qualifying under Section 6(j) of the Act. Had Lodwick been in Britain, Australia, or the Netherlands, or West Germany, his defense would have qualified. The judge acknowledged Lodwick's sincerity and conscientiousness, and sentenced him to probation for two years to continue teaching mathematics at Boggs Academy in Keysville, Georgia. The state then withdrew his teaching certificate because he was a felon, and withdrew accreditation from the school since its mathematics department was now headed by an uncertifiable teacher.

The Sentencing Commission should consider the grading of

Military Selective Service offenses as a priority concern in reforming sentencing. The wide variation in sentences during the Vietnam era, from five years regularly given to black resisters, to one hour given to a group of Puerto Rican nationalists, promotes disrespect for the law.

The fact that the maximum sentences were given uniformly to those who contravened other informal norms in the society, e.g., organizing blacks for equal justice, or organizing anti-war activity shows that the availability of draconian penalties made it possible to use the draft law for other repressive purposes. In 1966, students at the University of Michigan were ordered to induction when they protested the war. Walter Collins, a graduate student and organizer for the Southern Conference Educational Fund, was denied his CO claim and sentenced to five years. While in prison he was not credited with good time, even though he tutored other prisoners and helped organize the library. Cleveland C. Sellers, a founder and national officer of the Student Nonviolent Coordinating Committee, was similarly indicted and sentenced to five years. When Martin Luther King, Jr., urged an end to the Vietnam war, he was attacked by both civil rights leaders and segregationists. Representative O. C. Fisher of Texas called for King's indictment under the Selective Service Act.⁵

The widespread bias against those who were unconventional conscientious objectors, moral and ethical objectors, or just

⁵ Kohn, op. cit., p.80.

Roman Catholics or Presbyterians instead of Mennonites or Quakers, led to denials of claims, convictions and overly punitive sentences. David H. Mitchell, III, was sentenced to five years for ethical convictions that were eventually vindicated in Welsh, (1970). Jim Wilson, a Roman Catholic CO, was ridiculed by the trial judge for being "immature" and "arrogant." 72 percent of the convicted were either nonreligious or from a nonpacifist church. Seven percent were from pacifist churches reflecting the change in policy from insistence on cooperation with Selective Service by traditional peace churches to permission for active resistance (Young Friends national conference in 1968, Mennonite Central Committee in 1970). Twenty-one percent were Jehovah's Witnesses.

Successive decisions by the Supreme Court liberalized the interpretation of "religious training and belief" so that non-theists (Seeger, 1965) and moral and ethical conscientious objectors (Welsh, 1970) also qualified. It was not until Gutknecht (1970) that the practice of drafting protesters ahead of others was ruled unconstitutional. In the final year of inductions more CO claims were granted than men were inducted into the armed forces.

I expect that the next draft will have just as many problems as the last. The most recent regulations published for comment (December 27, 1985) continue a trend to limit the rights of registrants, eliminating due process provisions, or ignoring the comments previously submitted which identified illegal or

unworkable regulations.⁶ Every day NISBCO receives documentation from young people seeking to establish now their claims as conscientious objectors when inductions and classification resume.

The most recent regulations further militarized Selective Service so that we can expect thousands of peace church young people who would have cooperated with Selective Service will now become non-cooperators.⁷ The long-standing arrangements for religiously sponsored alternative service projects which were reaffirmed by Congress in 1971 have been eliminated by Selective Service.

The churches' strong opposition to government policy in Central America, coupled with the active cooperation of many congregations in the sanctuary movement, has alerted young people to issues they would have ignored. New positions on peacemaking and opposition to nuclear war are now part of the fabric of religious life. The Roman Catholic Bishops' Pastoral Letter on nuclear weapons is being taught in their schools. Despite the fact that those who face an almost certain resumption of conscription during the next decade have grown up since the Vietnam era, awareness of the issue of participation in war is the

⁶ See the official comments submitted by NISBCO on the Regulations of 12-27-85 and Form 22 pre-published 1-22-86. Obtainable from the General Counsel of Selective Service, National Headquarters, Washington, DC 20145. Or consult NISBCO at Suite 600, 800 18th St, NW, Washington, DC 20006.

⁷ See "Men and Women Who Dare to Say No," by Mark Becker. Unpublished manuscript. Becker describes the patterns of Mennonite Resistance to Draft Registration from 1980 to 1985.

highest ever in peacetime. NISBCO's case load is now about one third Roman Catholic. At the beginning of the Vietnam era, they comprised less than one percent of those granted CO status.

The consideration of motivation should enter into the determination of duration. Those who oppose the conscription system on conscientious grounds and who will not register should be given some consideration as the courts already have by diversion.

Although NISBCO has no policy on sentencing Selective Service violators, since it opposes conscription in principle, I have some suggestions based on our experience. I can put myself into the secularized framework of public policy formation.

Certainly, five years is too long. Other countries have more liberal CO requirements, and incarceration much shorter. The two countries with comparable rates of incarceration to that of the United States are more liberal, despite the fact that they are now actively conscripting. In the Soviet Union sentences are only two years (maximum of three). South Africa, which only enacted a provision for narrowly defined conscientious objection in 1983, imprisons for up to six years; but, even there sentences have been one month and for one year.⁸

Sentences during wartime should be no longer than the term of service of the conscript, two years. That will satisfy the purpose to punish and to deter others who would evade

⁸ War and Conscience in South Africa, Catholic Institute for International Relations and Pax Christi. 22 Coleman Fields, London W11, UK. See also The Reporter for Conscience's Sake, February and April, 1986.

service. During a peacetime draft, when no risk of life is involved for the conscript, and enlistments are still advertised for their job and educational value, one year should be the maximum. When only registration is being conducted, as at the present time, the maximum duration should be four months, which is the present policy of the parole board.

One of the objectives of sentencing is incapacitation. It is hard to see how those who are willing to go to jail for their beliefs will be stopped from continuing their "crime" during the sentence. Both Arlo Tatum and Larry Gara served two prison sentences for their opposition to war and the draft.

When opportunity is provided, I will expand on the topic of alternatives to incarceration. I want now to anticipate that discussion because it has bearing on the duration of sentences for conscientious war objectors.

Those of us who have worked for years with conscientious objectors wonder what "rehabilitation" means for them. They want to continue as farmers in a simple life of non-resistance, or perhaps to continue their education to become doctors and servants of the poor.⁹ Would rehabilitation mean that they are now, influenced by the violence of prison, ready to do violence to others, to kill on command?

While admiring the wit of the sentence for David Wayte who

⁹ The Reporter, Dec. 1985 tells the story of David Fletcher, a military doctor who has been unable to get his conscientious objector claim processed by the army. Medical specialists have a disproportionate share of CO claims, in my experience. That fits the practice in the armed forces of reassigning those who have sought non-combatant service to the Medical Corps.

served almost six months under house arrest, instead of continuing his work in a home for the aging and in a soup kitchen, I do not think it accomplished its announced purpose of deterring other COs from resisting the draft. Depriving people of the opportunity to do good for others does punish the CO, but it certainly will not stop those others who have high motives of nonviolence and love for others from linking them to opposition to killing others in war. When Andy Mager was sentenced in 1985 for refusing to register for the draft, other young men, who had listened to his arguments at his trial, then announced their own public refusal to register for the draft.

My ideal in sentencing, would include a return to the provisions of the 1948 Universal Military Training and Service Act which provided an absolute exemption for conscientious objectors. Even Great Britain at the height of World War II was able to give exemptions to some COs and require alternative service of others, and had a much broader definition of conscientious objection, so as to include so called "selective objectors" and political objectors.

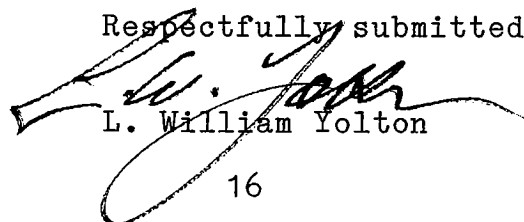
Absent a change in the law, the sentencing judge should determine sincerity (the trial would not have had a de novo review of the determination of Selective Service on the conscientious objection claim, or the defendant may have taken a position outside the narrow provisions of current Selective Service law). Then a probationary sentence, depending upon the grading of the offense correlated with whether the offense was committed in time

of war, during a peacetime draft or during a time of registration only, either suspended without supervision, or to court ordered community service arranged so that the service interest of the defendant is considered. (It should be noted that some COs have valid scruples against compelled service.) Depending on the circumstances and the times, such community service might be fulfilled in part-time or full-time arrangements. Churches and other community organizations regularly cooperate with the courts in finding suitable opportunities for service.

Sentences should not be imposed to punish the exercise of first amendment rights of expression, nor should sentences require war objectors to refrain from public speech. Ample provision is available to prosecute for "aiding and abetting."

Where the violator was determined to have acted for primarily selfish reasons, alternatives to incarceration should still be followed, though sanctions such as fines may be imposed. Most offenses will have been committed when the violator was nineteen or twenty years of age, which is the age of the first priority selection group in the order of call. The first failure to register would have occurred at age eighteen, and the principles of youthful offender treatment should be observed. Only in cases of aggravating factors such as deceit and personal gain should the sanctions include significant loss of personal liberty.

Respectfully submitted,



L. William Yolton

Nonregistrants Given Widely Varying Sentences

NONREGISTRANT	DATE OF INDICTMENT	LOCATION	SENTENCE	CURRENT STATUS
Gary Eklund	9/1/82	Iowa	2 yrs. in prison	released after 4½ months
Enten Eller	7/1/82	Virginia	2 yrs. community service	completed sentence
Charles Epp	9/22/83	Kansas	none	charges dropped, CO acknowledged
Russ Ford	7/30/82	Conn.	30 days jail (time served while awaiting trial)	completed sentence
Jon Harshbarger *	arraigned 9/30/85	Indiana	2 yrs community service, \$1,500 fine	plead guilty before indictment, serving sentence
Ed Hasbrouck	10/6/82	Mass.	6 months prison	released after 4½ months
Paul Jacob	9/23/82	Arkansas	6 mo. prison, 4½ years suspended	released after 5 months
Gillam Kerley	9/9/82	Wisconsin		gov't. is appealing district judge's dismissal of case
Andy Mager	8/22/84	New York	6 months prison, 2½ years suspended	completed sentence
Phetsamay Maokham Phio	12/13/84	Louisiana	none	registered, charges dropped
Rusty Martin	10/5/82	Iowa	\$10,000 Fine, attend 2 naturalization ceremonies, register	completing sentence
Sam Matthews	3/10/83	Indiana	1 year and 1 day	released after 2 mo.
Michael McMillan	9/1/82	Wisconsin	none	registered, charges dropped
Dan Rutt	1/20/83	Michigan		judge waiting result of <i>Schmucker</i>
Ben Sasway	6/30/82	Calif.	2½ years prison	released after 4½ months
Steve Schlossberg	10/3/83	none	registered, SSS acknowledged CO claim, charges dropped	
Mark Schmucker	7/22/82	Ohio	3 years probation, including 2 yrs. community service and \$4,000 fine	served part of sentence; District Court hearing arguments on selective prosecution
Kendall Warkentine	9/22/82	Kansas	2 yrs unsupervised probation	registered as CO
David Wayte	7/22/82	Calif.	6 mo. house arrest barred from community service in those 6 months	serving sentence
The sentencing of David Wayte highlighted the wide variety of sentences that have been given to convicted nonregistrants. We thought REPORTER readers might like to have an overview of the current status of indicted nonregistrants. This is a chart that was developed by Ann Clark and updated by Chuck Epp. * Information was current as of December 10, 1985.				