

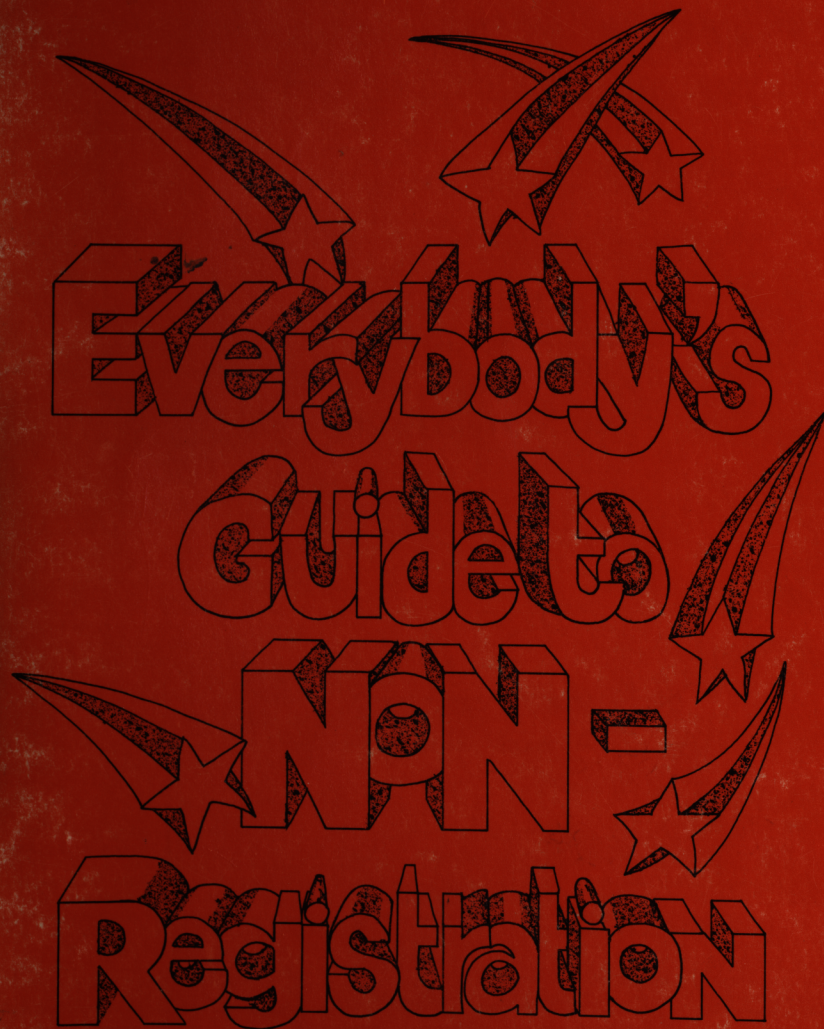
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Everybody's
Guide to
NON-
Registration

BROUGHT TO YOU BY
CAROL DELTON &
ANDREW MAZER

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CAMBRIDGE, MA, 02139

**EVERYBODY'S
GUIDE
TO
NON-REGISTRATION**

**Carol Leah Delton
Andrew Mazer**

November, 1980

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I. INTRODUCTION:

The Option of Non-Registration

We wrote this book for everybody who is concerned with the issue of registration with the Selective Service System (SS) but most especially for the men born during the early 1960s who are now facing the decision of whether or not to register, and for draft counselors who work with those men.¹ We say "men" because the present Selective Service registration only includes men: but that, like other aspects of the law, may change in the near future. Then, women of the same age will have to face similar choices.

There is no easy way out. The non-registrant faces the possibility of prosecution, perhaps even imprisonment--and the registrant faces the possibility of induction, and perhaps going to war. At the present time, nobody knows what he's registering for.

This book does not give political arguments for or against registration. Rather, it contains the information that we thought should be considered by anybody who is making the decision whether or not to register--at least as much of that information as we could put together by mid-November, 1980, when we went to press. The legal and other information contained in *Everybody's Guide to Non-Registration* is as accurate as we could make it by that time, but everybody should be aware that, as the SS is taken out of deep standby, new laws and policies go into effect every few weeks, and a whole new bureaucracy is being created.

¹ All male citizens, and those aliens in the U.S. other than aliens lawfully admitted for a temporary stay, born in 1960 and '61 were required to register during the summer of 1980. Those born in 1962 will be required to register between January 5th and 11th, 1981. Those born in 1963 and thereafter must register within 30 days of their 18th birthday. Pres. Proc. 4771, 7/2/80, published in the Federal Register, Vol. 45, #130, 6/30/80 at page 45247.

The penalty for a knowing failure to register as required is the same as for other violations of the Selective Service Act: up to 5 years imprisonment, a \$10,000 fine, or both. This penalty is in Section 12(a), which can be found along with the rest of the Act in the Appendix to Volume 50 of the United States Code, abbreviated 50 U.S.C. App 462(a).

Non-registrants have many different reasons for their choice. Some may have an obviously available exemption, but choose non-registration as a means of showing opposition to the greater evils of the system. Others may have explored the exemption possibilities and, deciding that they are unlikely to qualify, use non-registration as a means of personal draft avoidance. Others may be motivated to resist registration for the same reasons that would qualify them as a conscientious objector (CO) if they did decide to cooperate.

One of the chapters is called "Self-Evaluation." That chapter contains statements of people who have considered the question of non-registration, statements for you to think about, yourself, and further questions to ask yourself in evaluating your choice. But this whole book is meant to be a tool for self-evaluation: all of the information we present, including statistics on prosecution, possibilities of detection, building support, and the law and legal system—should be taken into account in deciding what you can live with.

The Statistics:

**DURING THE VIETNAM ERA,
ABOUT 250,000 MEN
REFUSED TO REGISTER**

ONLY 250 WERE CONVICTED.²

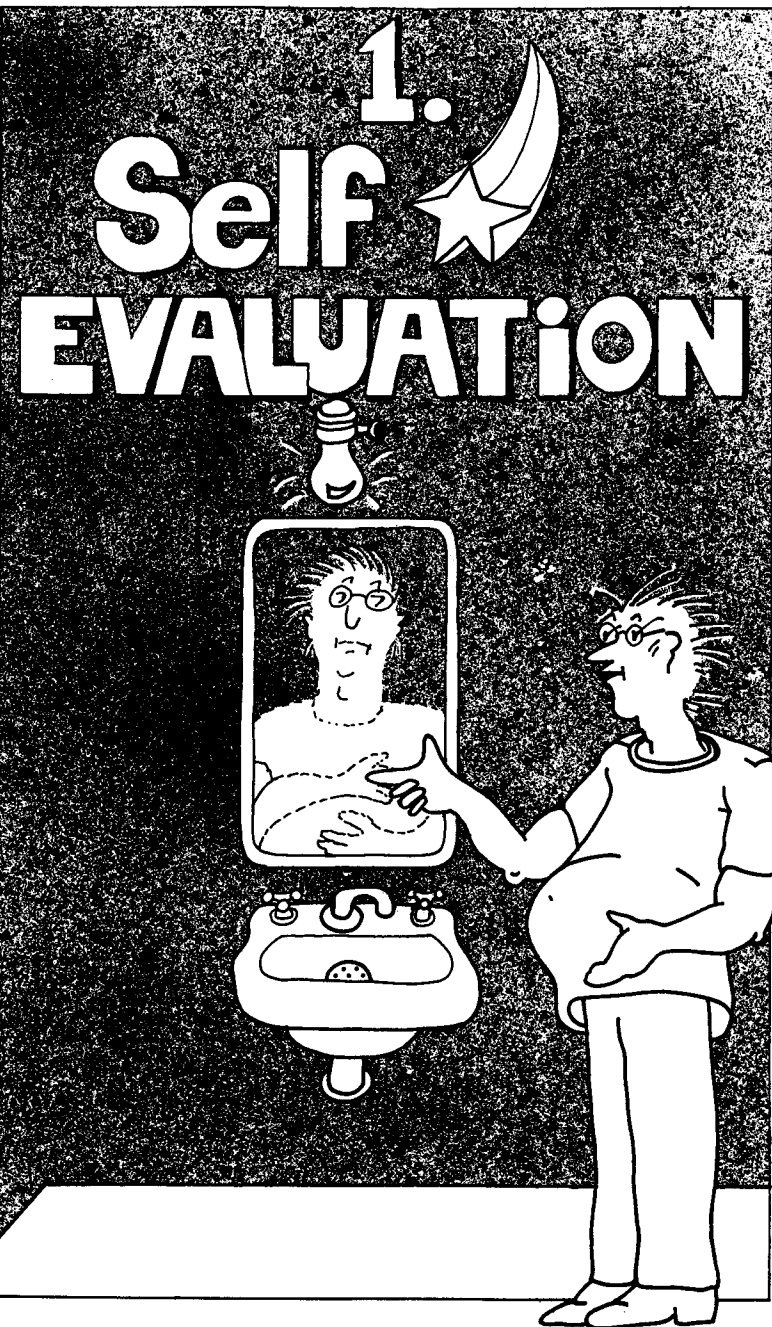
It is clear that even by the most conservative estimate, there were more refusals to comply with the 1980 SS registration than there were between 1964 and 1973. If the SS's low 7% estimate is correct, there were about 300,000 non-registrants. Almost everybody thinks there were many more.

²Other estimates of non-registration during Vietnam go as high as 1,500,000. The 250,000 figure comes from *Chance and Circumstance* by Lawrence M. Baskir and William A. Strauss (New York: Random House, 1978). It does not include anybody who initially decided not to register but later changed his mind, perhaps at the time of detection, or after figuring out a way to register but avoid being drafted.

During the Vietnam War, most draft counselors came to take the position—as many still do—that everybody should comply with the system to the greatest extent possible, seeking any available deferment or exemption, and using the complexities and errors of the system to legally avoid military service. The counselors viewed this strategy as practical because the SS was so complex that it could barely function without making mistakes. The white middle class men who were the majority of those counseled also feared a high possibility of detection. Registrants were then required to have a draft card in their possession. There was ongoing induction. Draft boards might take it upon themselves to read through high school yearbooks and contact men who didn't look familiar.

But the SS has undergone many changes. Student and occupational deferments are, for the greatest part, unavailable. There is no pre-induction physical exam. There are fewer opportunities to shop for a more favorable draft board or medical examiner, or to make successive requests for different exemptions/deferments. The greater numbers of non-registrants will make each individual that much harder to find. For anybody who has made a firm commitment not to serve in the military, the old strategy may simply not be practical. Once you register for the draft, they are more likely to be able to find you if you decide not to cooperate at a later stage.

Readers should be aware that this book does not contain complete information on any of the subjects we talk about. But this may be the only place you'll see these subjects talked about together. For further reading, please see our Bibliography. This book is, particularly, an addition to, and not a substitute for, individual draft counseling and legal advice. Everybody should probably take into account the concerns raised in this book before making a decision. But everybody has to realize that the final decision is their own, and that nobody else can make it for you.



II. SELF-EVALUATION

We thought it was important to include a chapter on self-evaluation because the choice you make now—to register or not to register—will effect the rest of your life. These are excerpts from seven interviews . . . following the interviews are questions for you to ask yourself in reflecting upon your decision.

— 1 —

When Jimmie Carter announced that the draft would be reinstated, or at least the registration, I was, let's say, shocked into some new framework, some new reality that said that something is happening with your world, and with your society that demands some immediate attention that no longer are things just going fine. On a national plane and even for my own self. I saw that all of a sudden things were beginning to shake up what I had made, my own little world where I lived day to day very comfortably. And I decided that it was time to start thinking hard, and to start doing things because I felt that if and when the draft occurred it would be perhaps one of the most serious things to go wrong with this country.

I thought about the reasons I was so against the draft and it led me to question my values about war, my values about non-violence, my values about other issues such as justice, rights, liberty. And after searching out all these things I decided that, one, I was against registration not only for myself but against registration for all people. That's when I became more active. And, two, that not only was I going to say these things, but I was going to put what I felt into concrete actions. So, I started getting involved with political groups—around this issue.

I began to ask questions like "Why are wars fought?" And "Whose interest is the draft in?" And "Why a draft at this time?" I think these political questions, combined with my own values concretized my views to the point where I felt very, very confident in my view of the draft, and I felt very self-confident that what I was doing was not only right but necessary. I felt very good about myself. I was being very honest with myself and doing things that I believed in, not what people told me to do. I felt that for the first time in let's say my life I had a bit of integrity, that I could do things that I really believed in even though I realized what the

consequences were. But, the consequences for me became more than what I expected when I originally weighed them up.

The consequences I saw were let's say an inevitable tangle with the law, a possible jail term, possible conflicts with friends, family, but when I went home, my parents were not only shocked by the way I had felt, but were unaccepting to the point where they would not tolerate my beliefs. My beliefs were not within the range that they had set up for me and therefore if I failed to live up to what they expected of me which included registering for the draft and even going into the army if that was what my country called for me—then they would not only stop supporting me and stop giving me what I needed to go to college and to live—they were going to the point of being willing to cut me off from the rest of the family.

I told my parents after they laid out this ultimatum, I would weigh up the different things and get back to them. I had on one hand, my convictions: my belief that sometimes you had to stand alone, sometimes you had to do whatever you believed in whatever the consequences. But on the other hand I had deep rooted family obligations, family ties that were for me, perhaps even deeper because they were longer standing, they had been with me my whole life, I sort of resented my parents for giving me this choice. I always wished that somewhere along the line they would become supportive of my views and would perhaps not only tolerate it, but encourage me to seek out new roots that I was finding. Instead they put a stop, a big red flag in front of what I was doing and said: you can believe that, but not only will we not believe that with you, but we won't tolerate you any more. And I guess at that time I was in a period of shock.

That was about a week before the summer registration and I seriously weighed up the different questions: can I live with my beliefs and perhaps carry them to their fullest meaning, but still live with myself, after having cut myself off from my family? Could I live with my beliefs but yet compromise them to please someone else? And last, I asked myself was there some sort of middle road—some way that perhaps for the time being I could reach some sort of compromise, and perhaps later I will have to settle this whole issue, perhaps when the draft is reinstated in its completeness and perhaps when I'm more stable as a person, an individual, when I don't need family and family support. But at this time I decided that my family did mean a lot to me and that it was something that I wasn't willing to give up even to the point of compromising deep beliefs and I don't think it means that I believe these things any less, it just means that dealing with the realities that I was given, I had to channel them in different directions.

FATHER: My son is not a particularly political person—like many 18-year-old persons he is not sure exactly what he wants to do with his life and is in kind of a dispirited state right now not knowing where the world is going or where he is going or what he really wants to do about it. And aside from not identifying from either the aspirations of the U.S. power machinery nor with any particular other political stance I mean he is not a Marxist—he is just sort of at sea—and when he said he might not want to register I just wanted to make him aware of the possible consequences of that and we talked about that and this was something that might require a larger commitment later on and might get pulled in that direction and he could see that it was possible—at that point I was comfortable with his deciding not to do that realizing that he might really get involved and if he does I would really feel like backing him even though I might not completely agree with whatever political stance he had taken, but my personal feeling is that it is very important that there are people that get behind various programs or lines of action that question things that authorities or structures are doing.

Have you thought about the possible consequence that he might go to jail?

FATHER: I have thought about this—I would certainly feel very sorry for him but I think that it is important for somebody to believe strongly enough to be willing to do that and if he got to the point where that was the choice he made he was to go to jail because of the stance he made I would give him all of the support and comfort I could in that situation. I wouldn't feel personally ashamed because my son was in jail—in fact I would be very proud of him to have done something—I mean a lot of the greatest people in history have gone to jail for things they have believed in. I wouldn't feel that he was a criminal. quite the opposite I'd feel he was doing a very valuable social service.

MOTHER: I'm convinced that appeasement doesn't work in a case like this and I have seen it politically.

Do you both consider yourselves patriotic?

MOTHER: Yes, I do perhaps more than many of my friends—I have lived in many places throughout the world and I do think this is the best place to live.

FATHER: On one hand many people think it is an obligation to go to war—into the military.

MOTHER: It seems to me that if one is really patriotic than it is their obligation not to go to war. Not to destroy one's country.

FATHER: It seems to me if one loves their country they have to do what is best for it. And to assume that selflessly allowing yourself to get involved in what somebody's defined as best interest as preserving its capitalistic or militaristic structure is not what is best for it. It is not just personally saving your own skin—it's a matter of defining your vision of America.

MOTHER: I think there's something stronger—I think it's curious that it's always older men who send the young men into war.

FATHER: But there are a lot of men who love to go to war and kill people and get killed and then define meaning in their life this way.

Is there a certain religious orientation that you raised your son with that led him to come to this decision?

MOTHER: His religious outlook is lacking—he was brought up without religious talk—the first time he came in contact with the Bible was in High School and that was in his literature class—and I really never talked to him about my own personal views.

FATHER: He will probably become a "born-again Christian" out of his own confusion. He's very decent—can't stand injustice—and he can't stand authoritarian behavior—and that is not only because my son is nineteen—he never could stand it when people would try to push other people around.

What questions would you ask non-registrants or those who are considering non-registering?

FATHER: I think they should ask themselves what kind of world they want to live in and what they would like to be doing in that world. My feeling is that the sort of plans people were able to make thirty or forty years ago don't make much sense that our civilization is in some way coming to an end and we have got to learn to travel light in some way and to just get into a job because it is in a growth industry like silicon chips manufacture may not give the same kind of stability one was given before

and seems to commit oneself to the machinery of industrial civilization as we have known it is a delusion and one ought to plow it into one's thinking some way.

MOTHER: I would want someone to imagine what it would be like to kill, and the blood and gore, and all the mess—even though people see killing on television there still is a completely different experience, the—what it means to commit murder?

— 3 —

I've been a pacifist quite a while—4 or 5 years definitely. I just couldn't bring myself to support what I feel is evil in war and killing. I felt I could not bring myself to do something I just felt to be so abhorrent and the reason I didn't go public is because I'm not ready right now to go to prison—to make what I feel would be a martyr out of myself. I'm willing to take the risk of not-registering, but not of really making myself a target.

I consider myself patriotic in the way of doing what I think is really right for my country and doing what I think is the only thing that is right for it. I feel that people who are out there promoting the military are leading us to destruction and therefore they're unpatriotic.

For a while I felt like a state of siege inside. I felt like an outlaw: and like I'd be followed around and things. I started worrying about things like that. Now I just forget about it most of the time, I don't think about it. But when I do think about it it makes me feel frightened and really frustrated that I have to deal with this. I'm especially worried that come January I might have to go underground.

I'm afraid, one, of being arrested and prosecuted—just of all the whole mess of dealing with that and how much it would affect my life and keep me tied down. I'm even more afraid of having to go to prison, having to deal with that. The belief that sent me there couldn't hold up in prison or I'd probably be given another sentence for doing something else wrong.

My mother really supports me and my father really supports me. They both feel strongly the way I feel politically and religiously. But my father's a little concerned. He doesn't want me to take too many risks. He says: do what you have to do but he'd rather I register and try to get a CO because he's worried that I might go to prison.

Right now I don't have a permanent place where I'm living. When I do find a place, I'm not going to tell everyone where I live and I'm maybe going to have a post office box or have someone else get my mail. And just not put my name around a lot of places.

In some ways I'm hoping that it will fall through and they won't be able to pull it off. But if they do pull it off, it's going to be very scary. If they start drafting people and they keep on looking for people, I would get very, very uptight. And I feel a little afraid of it now.

I have a little trouble with—I know a lot of young friends, Quakers, who are pacifists and almost all of them my age did not register, there's a lot of peer pressure not to. That's one thing I have to deal with: all these people who commend me for not registering and I don't want to let them down. That's part of it. Most of it is really just inside—I just couldn't bring myself to do it.

I consider myself innocent. I've done what I feel is right. I acted by my inner laws rather than by the arbitrary laws of the government.

— 4 —

I know that if I did not want to register I wouldn't and not feel it as my duty to register but looking at the situation of the world today I think it is necessary for the U.S. to maintain a strong Army and I feel that that includes registration and the draft.

What factors in your life led you to come to the decision to be in the ROTC now and register when you turn eighteen?

Well, I love the army, not the U.S. Army but I love the concept of the army and I have always been fascinated by what makes an army work and why some don't. And so I want to be a part of one. I don't like the idea of killing—it's the one thing that bothers me about the military and war but other than that I think it's the most challenging thing you could possibly do.

Do you consider yourself patriotic to this country—I ask this question because you said previously that it did not matter if you joined the U.S. Army?

It does matter whose army but it doesn't have to be the U.S. Army—I am a patriot and would never fight against the U.S.

But there is no reason I wouldn't fight with another Army that was friendly to the U.S. as long as it wasn't in my opinion oppressing the people it was supposed to be protecting.

If you wanted to convince a person to register what questions would you raise?

It would depend on the reasons they would not register. If they were pacifist there is not much I could say. A lot of people I talk to say they do not want to go in until there is a reason. When the U.S. in their opinion is definitely threatened, they will go in and what I think is needed to be pointed out is in that situation you'd be going to seven weeks of boot camp—up to twelve weeks of training in the field that you chose and then you are sent into combat and with that kind of training you are going to be killed. That's all there is to it! If we had as France does, when everyone goes into the military after they graduate from high school, at the age of eighteen, two or three years then comes out and goes onto reserve status you would have had two full years of training. Then in time of war, that seven weeks would bring you up to date with new military equipment. You would go into combat and experience soldierhood with at least a chance of surviving.

A claim is being made by many people that the interests of the "people" are not being protected but the interests of one group those who control the corporations, energy and power. How do you feel about that?

I'm right in the middle of a U.S. Government class, a required class in high school. It really kind of opens your ideas as to what kind of country America really is. We are not a democracy—the Constitution and Declaration of Independence were both written by people who were just the top of the upper class—they openly did not trust the lower classes—they wanted to form a government where the rich and influential would "represent" the people. I don't think it's right but that is the kind of government we have and the minute it is changed our whole nation, the way we do things can be changed. But government is now controlled by the rich and powerful—ABSCAM can still happen is an example—handgun laws are blocked by gun lobbies.

Given that our country is controlled by big corporations would that not mean that our Armies are also controlled by the corporations and that those soldiers are fighting for the interests of the big corporations—a major complaint of Vietnam Veterans?

That is the way our country is. The point is the U.S. has to win. We cannot come out on the bottom. I do not see Vietnam as a good reason for this. We had no reason to enter or any great need to win, but as far as any

threat to our oil or anything else, not a threat on one of our supposed allies but a direct threat to us, we have to win that. And if we say well this war is being fought for our oil companies so I'm not going to fight it and then we lose—and say it escalates and we end up losing our whole country, we've lost everything. If we fight now, no matter who we are fighting for, save our interests, secure our country, than change the country so that maybe next time we won't be fighting for the oil companies.

I think that the situation today demands aggressive acts and offensive acts. The idea that you can win a war or any conflict completely by defensive means is completely unrealistic. Sometimes you have to second guess your enemy and hope that what you're doing won't be found to be wrong. Take the first steps to maybe win a war even though history may record that you started it at the time. It just looks like you have got to do something even when war has not been declared or even when there appears to be peace—you have got to do it to protect yourself and the interests of the country.

How do your Mother and Father feel about your decision to want to join the Army?

They both want me to do what I feel like doing—of course they are both bothered by the danger involved; other than that they haven't said much.

Is there a spiritual or religious belief that motivates you to want to register and enter the military?

Well, I guess I consider myself a Christian and therefore joining the Army and fighting goes against that but I also consider myself a realist and for that reason I think I have to. If the world was made up of all perfect Christians there would be no reason to go to war but I don't think there has been or will be a perfect Christian. Christianity, like all other religions has been used as an excuse to go to war—just as stupid as that might apply I think using Christianity to not go to war is just as foolhearty. We saw it happen to the Jews who refused to fight and a lot of them got killed. Now we are seeing a great many fighting wars and doing things that really go against their religion. They have got their Nation and their people are safer than they were. I think there are things I would not do in a war—I don't think I could kill without knowing why in every situation—probably if some officer said do this—blow this up—destroy that—I would do it because that is the way the Army works and once you start questioning

orders it's all over. But if at any time I felt that something that I was ordered wasn't necessary to win the war I wouldn't do it no matter what that order was.

How do you feel about people considering going to jail or leaving the country prior to a draft?

I believe leaving the country is cowardly. I think if you're afraid to fight and afraid to die that's fine but I think if you really believe a draft is wrong you should stick around and fight for that. If you can get all the people to agree with you you will be right but leaving the country will not solve anybody's problems but your own. I think going to jail is really effective. If I chose to not register I would probably want to go to jail because if I felt strongly about something to break the law I would feel strongly enough to go to jail and stick around in the country to talk with other Americans to try to persuade them that what I was doing was right.

— 5 —

Just generally what factors led you to not register?

As a kid I saw the Vietnam war on television and saw all the protests. My mother and father were liberal politically and opposed war. I've seen a lot of films on the Vietnam war that have really disturbed me. That's the main reason and the fact that I just don't want to get involved militarily. I don't believe in war and I don't want to support the country's greed for taking over land in another country and messing in other people's affairs. I believe that if we fight a war it should be our own war and not other people's war, and I don't believe that it should have to come to war. We should be able to solve it through diplomatic channels. And a third reason is I don't want to get killed. That's also a big reason.

Do you consider yourself a pacifist?

Yes, I do.

If there was a war with the invasion of American soil would you fight or do you consider yourself a pacifist?

I wouldn't want to get involved in any way.

How'd your family feel about your decision?

My mother, she's scared for me and she sort of has some worried feelings about my decision to resist the draft but she supports me, and she says she will support any decision I make. She's always been liberal in her thinking and my father, who's divorced from my mother, is a veteran of WW II. He served in the Air Force and he would prefer that I get into some branch of the military to avoid the hassle. But he doesn't believe in war and he wouldn't be against me. He supports me in whatever decision I have to make.

Do you talk to other people about this?

Yes, some friends of my mother's and father's are very into the anti-war movement and support my decision. My brother doesn't feel so great about it. He says that the best thing to do would be to join up, avoid all the hassle of registering as a C.O.

Are you able to plan your future—school, career goals—at this stage, since you've made this decision?

Right now I don't really know what I want to do. I'm going to college. I just got a job. But I don't really know what I want to do with my life at this point. All I know is I want to get an education.

Will this decision not to register affect that?

It might if I'm prosecuted. You know—because they could just take me right out of school you know—and I'm kind of scared about that.

What are your fears?

If I'm detected, I don't really know what I would do. My Mom has said some things like "isn't the army better than jail?" and I don't know. I've seen a lot of films on prison, documentaries and otherwise, talked to people that have been in prison just to see if I did go to jail what it would be like. Just so I have enough information on it.

What do you think is the strongest factor in your decision?

The possibility of war and what war is like is too disturbing for me. The strain of seeing people killed and having to kill—even if I wasn't harmed myself—I know that mentally I would be totally screwed up when I came back. That's the main reason. And also the fear I have of getting killed myself, or maimed in some way.

What questions do you think draft age people should ask themselves when they make the decision whether or not to register?

Whether it's worth it going to war. Is it worth it to fight for your country, to be patriotic, to see all the killing and to have to be trained to kill and to have these guys yelling at you "KILL, KILL, KILL" in your training, to have that kind of mentality because it will totally change you as a person. That's what a lot of these people don't realize when they go in there—that they're going to be a totally different person when they get out. Even if they're not hurt physically or killed, they will have that permanent mental damage. I think that's what they should think over.

— 6 —

Everyone has said that I have been a certified queer since 16—I can go to my kindergarten teachers and all this shit to tell them you're gay—that will get you out—but since then there's been all kinds of little rulings that place gay people in the army or the air force which has really freaked me out. It's like they're getting ready to say, "let's get the queers." And I thought that was going to keep them from getting me but now I know if they want me they can get me.

I have this nightmare of presenting this wonderful case—you know I could never shoot a gun—the nightmares I have are that I would prove this perfectly and they would say fuck you you are going. We don't care we're equal opportunity employers.

The military is so straight—it's "let's get butch"—the whole American Military is lets go beat up on those people over there—because they won't give us won't they want.

My first reaction when I found out that there was going to be a registration again was that I would organize a group at State College. Other people were not worried about anything and I decided to fuck it because I had other things to do. Then I was really worried when the registration came because I would like to have a future in politics—I would not like to have this interfere with—not at that time I would gallantly fight it—the duty of my people—no matter what I would leave the country—then I got really really scared about the possibility of going to prison the fact that I'm gay and have been gay since I was 16—I don't know how to be straight—play straight and I know that if I go to prison it would be hell for me—things died down—people stopped paying attention—house was beginning to make appropriations—I thought that I should possibly register then worry when the time would come to be drafted—then the time came to

register at the Post Office and any thought of registering went out of my mind—I can remember the last day of registration—I turned to my boyfriend who was an illegal alien—now we are both criminals—decided not to worry about it any more because there is nothing else I can do now.

That particular boyfriend who was an illegal alien was very worried because of what I did because he always feared being arrested and telling him that I wasn't registering totally freaked him out and aided him in a decision to break up. Most of my friends are supportive, I wouldn't mention it to someone if they weren't. I know I have mentioned it to some people and have received lectures concerning the threat of national security and all that bullshit. When I have gotten real freaked out—because there have been times when I feel they are going to take me away—my friends have been real helpful—one was a draft dodger in Vietnam—my roommate also has been very helpful even though he was not a resister himself.

My mother has been wonderful—when it all started she was supporting my leaving the country to Mexico—she is from the U.S. but has contacts in Mexico—and one of my aunts called me at the time and said she would go with me—the two aunts my age would support me and my brother would go if called by the Army. But he supports my deciding not to go. I went home last weekend and my grandfather and everyone else were watching TV and my grandfather turned to me and said "Where did you register at?" and I just said, "What?" and then replied I didn't—he has problems hearing and asked, "What?" and I said I didn't dad—I said I thought they were planning to have a war in which I cannot support and want nothing to do with it from the beginning. He looked real puzzled but would not look at me anymore and said, "well you know they're getting ready to arrest a bunch of people here in San Diego?" I wasn't sure I knew what he was talking about—draft resisters, or illegal aliens or what, but he started talking about his concern about my going to prison—there wasn't a strong chance of my going to prison—he was totally shocked and could not accept this in any way—my grandmother called me the following day and expressed to me why I didn't register—I explained to her that I felt a war was coming and didn't want to be any part of it—she asked if I might be arrested and she too said something that they are getting ready to arrest people in San Diego—but I still do not know what she was referring to.

I have no interest in protecting white people's world—I mean it's certainly not doing any good for me—one of my favorite things I ever heard was when an Indian man said that Indians should not have to register be-

cause they are an endangered species. Which I thought was really true. Basically, what are we protecting—this was our land to begin with, it's all been taken away from us—why should I support my masters?

Let's talk about the fear of FBI agents lurking around the corner and talking with people—are there methods that you would suggest to avoid becoming detected?

I changed the spelling of my last name—I didn't consciously do it so they wouldn't catch me—keeping a low profile about my age—it's hard to do because I do a lot of gay youth work—and I'm well known for that—at the same time I have never been checked in bars for I.D.—I don't carry I.D. when I walk around the neighborhood and not going too far—just cause I don't see—if someone stops me—I've been stopped by cops before in San Diego—asking for I.D.—I won't have any and walk into the store and if I speak good English they just let me go—basically if you be nice to the cop they just let you go about your business without requiring an I.D. check.

It's scary—basically I cannot make any plans I don't know if I will be here within a year—fortunately I have had experience running a printing press so if worse comes to worse I can always run a press in a sleazy print shop get paid under the table—whatever—but right now I have no idea if I'll have a serious career because basically my career would be social work or politics and if I ever wanted to run for office God knows what effect this decision would have and if I have to leave the country—my whole life is here—I've done so much work in S.F. and I'm terrified of having to leave and just wasting all that time. You know I have started a lot of things and I'm known and have a good reputation for the political work that I have done—I don't want to start all over—and I don't want to be stuck in a print shop for the rest of my life—it would drive me crazy.

I see it as a more difficult decision because I think if I were straight it would be less having to make a decision—being a straight man you're tied into being butch and aggressive wanting to take over people to fuck people over. Straight men in general would not have any type of analysis of the military like that—you know that is their kind of people—that is the people I have always hated is the people who wanted to beat me up—as a gay man I could never survive in the military—first of all I would be raped for sure—I would never be tolerated by anyone else in the group—I don't know how to make friends with butch men—you know with men in uniform and doing all of those exercises—I don't think I would be able to relate to them at all.

I think you should think of whether or not you could deal with living in another country—if you could deal with the differences in culture—if you think that you could ever handle being in prison—and if you don't live in a big city how are you going to keep this a secret.

— 7 —

The first point would be the question of fear—the way for me to overcome my own fear was to be open about refusing to register—to seek support in the community—which there was a lot—and I was glad for that—and to solidify my own position: to talk about it makes you stronger in your beliefs.

It was a very intensive and a very trying experience reaching that decision. Even now there are many things I am not sure of—but most basically I have decided that there is no neutral position with registration—I decided that if I were to register then I would take it for granted that I was supporting the war system generally. Registration in itself has to be considered an act of war preparation. I think it's that by definition and has much larger ramifications on foreign policy and on the psyche of especially the young men required to register around the country generally. And if I were not to register it would require that I go into some very difficult questions about war and how one deals with evil in the world, and totalitarian power that might wish to deprive us of our freedom.

I was a leafletter at the post office and talked to hundreds of 19- and 20-year-olds and got the impression that none of them wanted to register. Only about two percent indicated supported and a desire to register. The rest were deeply afraid that there might be a war soon, that they might have to fight, that they could be killed.

It's difficult for anybody to come to a rational decision, it goes along with that fear that we're preparing for war or other fears that the government is gearing up its propaganda machinery—its enforcement of draft laws and general sense of increased repression in this country and you're seeing that happen in congress to some extent.

I try to reach out to other 19- and 20-year-olds who have been faced with registration and decided not to register because I think that support is a vital thing, and what I find is that most 19- and 20-year-olds don't have coherent views on it. They are afraid and they do not know who to turn to for help, so they are doing nothing to alleviate that fear.

I have been in contact with the various peace groups around San Francisco and met many people who resisted the draft in the Vietnam era and before. Meeting people that have undergone the same experience that I am undergoing now is very meaningful. One comes to understand that this is a problem that all humanity has faced.

My family is 3000 miles away—so this is not a great factor for me as it is for many others. I come from the working class, descended from Russian peasants. They understand that I have principles that I cannot abrogate, and they support me in that. I get support from my father and a few others in my family and that does matter to me. It does make a difference as a resister because there are not many 19- and 20-year-olds willing to resist publicly. If people are out there supporting you: your family, friends in the community where you live, it helps to alleviate it quite a bit.

The person that I feel is in the most difficult position is one who decides that they're going to resist the war system and doesn't seek any support. They attempt to be quiet. They don't talk to people about what they're doing; they don't share their fears with anyone. That's very terrifying because one is alone and in danger of going to jail and being penalized in one way or another for their convictions.

I have read of the Quakers that have resisted war 200 ago, and of course there were the Early Christians refusing war 2000 years ago, and that deeply moved and inspired me and made me aware of beliefs that I might not have been aware of had they not acted as they did and acted openly and courageously.

It's hard to plan now because I simply do not know if in six months from now I will be in jail or for how long that will be. This is on my mind and it is a great difficulty. I don't know if I should commit myself to a full-time job. I'm afraid to take on any long term obligations because I simply don't know what my immediate future will be.

I have somewhat more freedom I believe than most people. I do not go to school and am not committed to career objectives at this point, or at least traditional ones. I do have a vocation, nevertheless. I write poetry and I study on my own and these are things I'm quite serious about. Whether or not I'll be able to pursue these interests of mine in prison I don't know at this point.

On a more personal level I think anyone who registers deals with as much if not more fear than one who resists and seeks support, within the community and within their family—a support structure generally. There is the very real problem which seems a great possibility now that if you register you may have to go to war and possibly die.

Personal fears about going to jail I cannot answer to completely, because people I know who have gone to jail have all had different experiences. I think that I am less afraid than some because in my life I have encountered many different types of people. I understand quite well prison dehumanizes people and encourages certain forms of brutality but I don't think it is any power that will destroy the human spirit and I think anyone in prison can reach that in people.

It seems extremely foolish—irrational, idiotic for the government to put somebody of my disposition in jail in peacetime and that annoys me intensely. I object strongly to having my freedom removed from me as I say for something the government has not right to remove my freedom for. I certainly have better things to do than to spend my youth in jail.

I expect to be arrested. I don't know if I'll go to prison. It's quite likely that in peacetime probation sentences will be far more common than prison. It will depend on who is the Chief Executive and what his policies are, and developments in foreign affairs, as to whether or not people will be going to prison in droves. I understand from statistics that I've read that a very minute number of people who resisted the draft in some way in the past went to jail. Most of these people who were not caught did not go to jail or won in court. They were not politically inclined. This makes a difference in my case. And they were not non-registrants. But the chances of winning in court still seem good to me and the chance of getting probation.

I certainly have grown quite attached to this city. I live here and I'm not anxious to leave it, for any purpose, particularly for going to jail. Of course it means being away from the people that you care about and being away from the things that you love and the place that you live. But these things are not permanent and I think that one who goes to jail is in some way affected for the rest of their lives, at least that is what I gather from talking to those who have gone to jail for draft resistance. But two years is the most likely sentence, if sentences are stringent, and it could be considerably less. It's not too much—to put it one way—to give for something that I believe in, with all my life and with every passion that I possess.

I smoke now and I drink, not to excess but sometimes I feel I actually need a drink. It's not from fear of going to jail, or facing people unsympathetic to my views in the courts, FBI agents. That has its part but it's more because I am day to day in my position as a public resister dealing the the issues that surround registration: approach of war and that this planet is not healthy. And it seems to me that we are moving towards war, and it

does seem to me that it will be a very terrible war if it happens—and these are very terrifying things to deal with.

To begin with you have to ask yourself "Can I support the war system?" and when you ask yourself that question you have to fairly completely understand what the war system is and particularly modern warfare. I've thought much about nuclear weapons, about germ warfare, about nerve gas, about all the advances which we have made in the art and state of war in our time and how this affects our concept of war. What I arrive at from that is that there can no longer be a war waged only between belligerents. Any war destroys the lives of people who have no issue in this war, in any war, who cannot or will not fight—children and women and people who are completely defenseless. It burns non-belligerent villages, it destroys cities for no purpose other than to fill the enemy with terror. We have reached a point where any war that is fought now will affect people maybe for centuries to come. So, the nature of war in our own time has profoundly changed from the past and it makes the question of war a much more difficult or perhaps a much easier one depending on how you look at it.

I think of myself as being realistic and I've tried to determine how if not through registration and if not through war, how do we deal with the problems that we face?

I'm certainly attached to the ways and culture of this nation, but I believe in the international community. I think that this is something that must grow if we're going to eliminate many of the evils which plague humankind such as war. Also there are so many dangers to our survival that we as an entire human race and that in the near future, hunger, the lessening of mineral resources, pollution, radiation exposure, many other things apart from war—and if we don't begin to think of ourselves as an entire human community, sharing the same planet those problems are going to destroy us. I get a very strong sense that nationalists and so called patriots have no sense of the danger that the human race is in now with these very grave problems. I do not have the time or the energy or the desire to concern myself with the health of my nation in particular when the whole world is suffering.

The arms race, I understand is costing the world a million dollars a minute. I spoke about the very grave problems that we as a human family face in the very near future, and now we are putting all our energies into building weapons of destruction, and ignoring those great problems. So, whether you consider war valid from a philosophical or moral point of view, you can look at it from a point of view: is war costing too much, and

do we have to abolish war simply because it is so technological and so destructive that it destroys economic systems and it channels our energies away from far more important concerns?

Is registration as the Administration claims a prudent way to deal with the Afgani invasion by the Soviets? Is what the Administration is telling us about the world situation accurate? Are the 19- and 20-year-olds of this country paying for the foreign diplomacy mistakes of our leaders? This may or may not be so—but it's a question we have to ask ourselves.

You have to look at registration in the context of our system of laws: our founding fathers did not consider conscription or for that matter standing armies proper in a democratic society. They considered these things an extreme threat to our civil liberties. Ask yourself if this view is still valid and if it is, is registration leading to a more totalitarian society?

I think you have to look at the all volunteer armed forces and see if they are in fact functioning efficiently which would preclude the whole question of registration if they were. And if they are not operating sufficiently to defend our nation, then could they be made to operate efficiently? And if you answer those questions in the negative, I think you would arrive at a position which says that registration is unnecessary.

Next you have to look beyond that and see if it presents any real danger and see if it will incur suffering, to those affected by it and to the population generally. Of course, one looks at how registration has affected one's self, and I believe as I stated before that draft-age men have been put in a state of extreme fear, with this registration program which may or may not be rational. If you are refusing to register you have to ask yourself questions like what going to jail might mean, what your family feels about what you are doing, how this is going to affect you emotionally and in various other ways, what kind of support you can expect from people—but I think it should be borne in mind that you may encounter these very same problems if you do register even though many people who have registered have considered it a neutral position and one in which they will have no problems to deal with whatsoever.

Justice Brennan when he overruled the stay of registration said that registration did not constitute an irreparable burden upon 19- and 20-year-olds: and anyone who knows a 19- or 20-year-old could not in honesty say that.

QUESTIONS TO ASK YOURSELF ABOUT NON-REGISTRATION

RELATIONSHIPS: FAMILY AND FRIENDS

How do your parents (and other members of your family) feel about your not registering?

How dependent on your family are you for support? Emotionally? Financially?

Are you prepared for the possibility that your family might reject you for your decision? For the possibility that it might cause controversies among different members of your family?

Are there other people you can depend on for support? Friends your own age? Teachers? Clergy? Doctor? Organizations in your community?

Have you considered how your decision might affect your relationships with your friends?

IF YOU CHOOSE TO KEEP YOUR NON-REGISTRATION PRIVATE:

Are you prepared to use discretion as to whom you tell? Among people you don't know? Among your friends? Among your family? If you think your parents might not be as discrete as you would like, are you prepared not to share your decision with them?

Have you considered that by confiding in your parents and friends, you may be increasing your risk of detection? Making those people liable to be questioned by the government?

If you are feeling stress, do you remain conscious of how much you are communicating to other people? Do you find that you need to talk out your conflicts? Do you have other ways of working them out? Ways that do not involve confiding in others? Would it be a hardship on you to need to refrain from talking about yourself?

Have you thought about ways to express your (political) position on Selective Service registration without referring to your personal situation? What about being confronted with the direct question: "Did you register?" Are you prepared to draw a line between people you trust enough to confide in—and people you do not?

GOALS: CAREER/EDUCATION

Do you have a career or an education goal. If so, is your decision of non-registration going to delay your pursuit of it? Are there ways that non-registration could interfere with a specific goal—such as a government job, or one for which you need a license?

If you don't have a goal, have you considered how your decision could affect your future?

Are you allowing imaginary fears to get in the way of developing your plans?

EMOTIONAL/PHYSICAL HEALTH

Are you aware of your physical needs during this time of additional stress?

Are you smoking? Drinking?

Are you getting enough sleep? Enough exercise? Eating well?

Have you been experiencing mood changes that make it difficult for you to be at peace with yourself? To deal with other situations that arise in your life—such as personal relationships, work, school?

Have you allowed the Selective Service and other government agencies to brainwash you into exaggerating your fears and fantasies?

Are you giving yourself credit for making such a strong decision at this time in your life?

LEGALITIES:

Do you know that you are likely to be given another chance to register prior to a prosecution?

Have you thought about the possibility of experiencing a criminal trial? Of a potential prison sentence?

Are you aware that you could be acquitted after trial?

POLITICAL/PHILOSOPHICAL/SPIRITUAL BASES FOR YOUR DECISION:

Can you trace your ideas to a specific source? Spiritual? Political? Philosophical? For example, is registration repulsive to you because it might lead to your being asked to kill? Does your resistance come out of a refusal to be pushed around by President Raygun?

Is registration leading to a draft, to a war? Is it a citizen's duty to have nothing to do with the war effort by not taking a single step to participate in anything that has to do with war?

Is the U.S. Government's tie with big business a coincidence? Would you like to be able to tell our grandchildren that you stayed away from the United States quest for oil?

Why does the U.S. interfere with the affairs of other nations?

How can the U.S. resolve disputes with other countries and avoid bloodshed?

What is the Selective Service System's interest in playing the classification game? To keep troublemakers out of the Army? Is the SS free of racial prejudice? Why did they refuse a C.O. to Muhammed Ali when people less committed to peace got one? Is it fair to push men around and not women? Do C.O.s who work hard for two years receive G.I. benefits, home loans, support? Is the military going to teach you a skill or merely use you to prove a political point?

Have you read at least one book that defends civil disobedience as a meaningful political tactic? Do decisions of conscience lead to happier life choices?

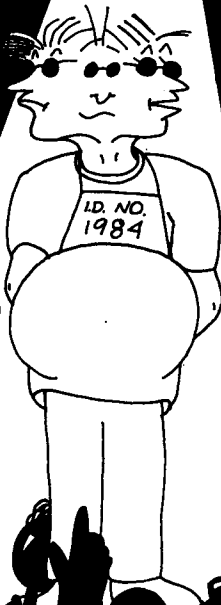
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Avoiding DETECTION

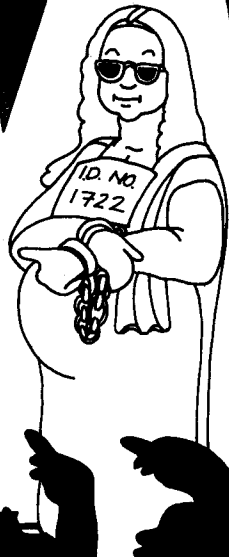
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III. LIVING WITH YOUR DECISION NOT TO REGISTER

DETECTION: LOOKING AT THE ODDS

Some non-registrants seem to live in constant fear that they are being followed by FBI agents, that their phones are being tapped and their mail is being opened, that every room they walk into is bugged and that all their friends are government informers. Obviously, such fears are exaggerated. During the Vietnam era, very, very few non-registrants were ever detected, much less prosecuted.

Everybody has some degree of vulnerability to detection—and everybody is also insulated from detection to some degree. The balance depends on many factors in a person's life and these factors can be controlled to some extent. It is really pretty frightening to realize the enormous power that the government has to intrude into anybody's life. In theory they have the technology to track you down and ferret you out; if they really want to and if they operate at their peak of efficiency. But what will make them want to? And how often do they operate at that level of efficiency?

Our review of the available information on government surveillance during Vietnam indicates that most of the detection and disruption effort was focused on political groups and their activities. The non-registrants most likely to be affected by this kind of surveillance are the public resisters—and mainly because of the political implications of their resistance, rather than because of the criminal ones. The government's theory is that allowing a public resister to get away with openly flaunting a violation of the criminal law will encourage other people to break the law. Another factor here is that it will cost the government very little to find the public non-registrant: he's already told them where he is.

Law enforcement is an expensive business. All of the law enforcers—from the local police to the Federal Bureau of Investigation to the U.S. Attorneys to the Courts—are part of a massive government bureaucracy. They are generally required to account for the time and money they spend in order to justify their continued receipt of funding. Some members of these agencies will feel that non-registrants present a terrible danger to the established order. Others take the view that non-registration as, after all, a victimless crime, committed by an individual does not deserve very much attention—when compared to the bank robberies and narcotics conspiracies that are supposed to take up most of the "domestic intelligence" time.

HOW WILL THEY KNOW WHO YOU ARE?

During the Vietnam era, the Selective Service had no organized way of going out and finding non-registrants. Some local boards did get into the action by sifting through high school yearbooks, and many schools were happy to supply the Selective Service and military recruiters with a list of their graduating men. But the government just didn't have the people power to follow up on most of those cases. And now, despite advances in computer technology, they still don't have that power. Especially without the enthusiastic local boards.

Most non-registrants who have been prosecuted came to the attention of the government directly. In the case of private non-registrants, this means that someone turned them in. Occasionally this direct attention came out of a bust for something else: drugs, hitchhiking, a speeding ticket. But the local authorities often did not care about Selective Service violations—sometimes for personal or political reasons and sometimes because they figured it was just not their job to take care of the Federal Government's problems.

COMPUTERIZED DATA BASES

During the early 1970s a Federal Agency came on the scene to help local police forces "modernize" their practices and "coordinate" their efforts. While other federal agencies have had problems keeping their funding the Law Enforcement Administration Agency (LEAA) had plenty of money to spend: much of it for increasing the electronic surveillance capacity of local law enforcers and for developing computer banks of information on criminals and criminal suspects. Arrest, warrant, and conviction records are now often available as part of a computerized network that extends across state lines. Experiences with cross checks of these records vary a great deal. Some arrestees have been surprised when an arrest for something very different, many years back, in another state is mentioned to them when they are picked up. Others are surprised by how little the cops know or care about their records. The cross referencing capacity of local police varies a great deal from state to state. It might be a good idea to find out what is the case in our area. Local criminal attorneys and groups that advocate prisoners' rights are likely sources for this information.

BUT HAVE THEY GOT YOU ON THEIR LIST?

In order for the Selective Service, the FBI, or anyone else to identify you as a non-registrant, there are a few things they have to know. First, they will have to find that you are *not* on their list of people who regis-

tered. The list is kept by the Selective Service on computer tape and contains the information provided to the SS on Registration Forms. The forms are destroyed after being microfilmed, and the SS is supposed to keep the computer tape and the microfilm until the registrant is 85 years old.¹

To figure out who didn't register, the Selective Service will supposedly compare this list of who did register to other lists of registration age men: high school graduation lists, voter registration rosters, drivers license indexes, commercial mailing lists. Selective Service officials have stated that by early December, 1980, they will begin sending out letters to registration age men who aren't on the registration list, and from whom the SS hasn't received an inquiry about confirmation of registration.² It is not at all clear what action, if any, will be taken after the letters. In theory, people who don't respond will be referred to the U.S. Attorney for prosecution. The U.S. Attorney could then refer the case to the FBI for investigation.

We know that the list of registrants is inaccurate to the extent that eligible men failed to register, that joke names were registered, that cards were lost in the shuffle. The list was made even harder to use by men who refused to put down their social security numbers.

How accurate is other information available to the government? We can get some idea of the limit on the government's knowledge from discussions that occurred around the time they first thought about reinstating draft registration. The government rejected "automatic" registration at least partly because they wouldn't have been able to figure out whom to register.

HISTORY AND DEVELOPMENT OF THE SELECTIVE SERVICE COMPUTER SYSTEM

Since 1973, the Selective Service has been in "deep standby" for a future draft registration. It seems that they used much of this time to plan their means of data collection for increased accuracy. In 1976, the SS replaced their "first generation" computer equipment—which had rejected much of the information fed into it—with later models capable of scanning

¹41 Fed Reg 53692, information reprinted in the CCCO Draft Counselors Newsletter (6/12/80). As of September, 1980, the SS had trained its own keypunch operators and was looking toward building a computer center in the midwest, but no programs for matching data had yet been developed.

²Under current regulations, anybody who had the legal duty to register and who has not received a confirmation of registration from the SS within 90 days of his registration date, is supposed to write to the SS and ask why he hasn't heard from them. 32 CFR 1615.1.

handprinted documents to some degree. The SS also cultivated its relationship with other government agencies, both state and federal, with an eye toward resource sharing.³

The SS also explored various means of accomplishing an emergency registration on very short notice. The Postal Service was determined to be the most desirable agency to enlist, although Postal Service officials were not originally cooperative. State election structures were seen as a distant second in desirability.⁴

The SS has used its work toward preparing for a possible emergency registration, as well as the automation of its personnel systems to develop approaches for keeping records on registrants and non-registrants. By 1979, facsimile machines were installed in the National Headquarters and Regional Offices of the Selective Service. These machines allow "instant communication" between those who operate them. A message typed in at one terminal is transmitted to all others hooked into the system. In this case, that includes a number of agencies aside from the Selective Service. The SS has also developed an update system for its personnel data.⁵ Both of these systems may be adapted for use in processing registrants—and non-registrants.

Between January and May, 1979, the SS did a dry run of simulated registration input, using remote terminals. Input from regional offices was transmitted electronically to National Headquarters. The test was regarded as a success.⁶

In July, 1979, the Selective Service discussed a further technological advance: automatic registration of all those men in the applicable age group, using the data base developed by the Social Security Administration and the Department of Defense.⁷ However, they estimated that this would not be desirable because, even with all the data, 15 to 20% of those eligible to be registered would not be registered. The February, 1980, Report on Selective Service Reform mentions the Social Security Administration (SSA) as having the most accurate list of registration-age persons, with the Internal Revenue Service (IRS) as having the most accurate list of

³ Selective Service System, Semi-Annual Report 7/1/76-12/31/76, p. 4.

⁴ Selective Service System, Semi-Annual Report, 4/1/79-9/30/79, pp. 2-3.

⁵ *Ibid.*, p. 3. The SS has developed a "real-time" system for its records. The system is given the name because it has an effect on the "real world" outside of the data bank: effectively rewriting history as information changes are plugged into it.

⁶ *Ibid.*, p. 4.

⁷ U.S. Congressional Record at S9818, July 18, 1979.

addresses, based on the assumption that 85% of registration age men work at some point during the year and therefore file income tax returns. However, due to the high mobility of this age-group, the accuracy of these combined lists could be as low as 60%. Besides, that use of SSA and IRS information for Selective Service Registration purposes is presently illegal. And the IRS is particularly not anxious to encourage draft protestors to become tax protestors.⁸

WHAT ABOUT THOSE OTHER LISTS?

Almost everybody has had the experience of getting junk mail: and some of it isn't just addressed to "occupant." Big business puts a lot of time and money into finding out your name, age, sex and other characteristics that may make you a likely target for their advertising campaigns. Companies develop mailing lists which they trade with each other for a price. The Selective Service can pay the same price to acquire those lists. But almost everybody has also had the experience of receiving lots of this "personalized" correspondence for people who have long since moved away, not to mention similar mail addressed to you but long out of date, such as information about high school rings when you graduated from high school three years ago.

The information on which these lists are based comes from many sources, but most of it originally came from you, yourself: when, for example, you filled out an entrance form for a "free" prize, when you took the SAT (Scholastic Aptitude Test) and checked off the box that allowed the Educational Testing Service to send your scores to interested colleges, when you ordered something through the mail. In other cases, a friend may have listed you as a person likely to be interested in some magazine subscription or your high school may have given your name to military recruiters. The Selective Service can buy all of this information. But if they use these lists they are bound to send some letters to people who were never obligated to register in the first place.

Giving information in less commercial contexts may also make your name available to the Selective Service. For example, state voter registration lists and driver's license rosters are available for a price, too—unless

⁸ HD 96-265: Message from the President of the United States transmitting his proposal for Selective Service Reform, pp. 18-20 (2/11/80).

The use of Social Security Administration information for this purpose is forbidden by the Privacy Act of 1974. Based on this same statute, many registrants have refused to state their social security number when filling out their registration form at the post office. The IRS is restricted in its use of information by Title 26 of the U.S. Code.

that particular state has its own *State Privacy Act* which specifically protects that information. Similarly, banks and loan institutions have different rules about sharing information about their customers. It would not be a bad idea to find out what the rules are *before* you give your name.

One non-registrant who turned eighteen in 1969 developed a strategy to deal with the requests for his name and identification. The strategy was just to think twice before giving anyone that information, to remember to evaluate each situation for the possibility that giving the information might lead to his detection. This resulted in his decision not to register to vote, to get a driver's license or to apply for any job that required him to give his draft status. He remembers going to the telephone company for an interview: they handed him some forms to fill out and the forms asked for his draft status. He split. He didn't care what they thought.

This man became a non-registrant because he knew he couldn't go to war, and he also didn't think that he'd be able to qualify for any kind of exemption. He was in good health, and he knew he wasn't going to college. He was pretty sure he wouldn't be able to state a C.O. claim in an acceptable way. He had already left home when he was seventeen, about six months before he was required to register, and he continued to move frequently during the next several years. He changed jobs a lot, too. Most of the jobs he took were low paying and fairly menial. He figured that was all he could get anyway, with only a high school education. He never became part of a resistance underground—in fact, he didn't know any other non-registrants. Eventually, he settled down in one place, went to college, began doing more highly skilled work. He shrugs off much of his experience of non-registration.

Most private non-registrants—most of whom were not caught—did not restrict themselves this much. The advice they give is for everybody just to go on with their own lives, and not to accept the Selective Service's exaggerated propaganda about detection. If there are only about 40,000 Federal criminal prosecutions for *all* crimes each year, how do they have time to spend on hundreds of thousands of non-registrants? There is a point at which they will not be willing to put more effort into your case, and you can do a number of things to raise this "threshold" point.

—If your high school or college shares information about you with other institutions, try to have that policy changed, if it is not going to be easy to change it overall, you may still be able to have *your* name excluded from the lists. The increase in intrusion into personal privacy is an issue with which people from different political perspectives have a great deal of sympathy.

—Have other members of your household return junk mail addressed to you with the notations: "Not here—return to sender" or "Obscene: we refuse to accept unsolicited advertising." They can also complain to the Postal Service, about receiving unsolicited mail.

THE OTHER MACHINES: THINGS THAT GO BEEP IN THE NIGHT?

Along with advances in computer technology, the sophistication of electronic surveillance (elsur) technology has increased greatly since the early 1970s. Along with tapping your phone, the friendly government can now listen to you by bouncing laser beams off your windows, listen in only when certain words are mentioned, keep television tapes of your walking down the street. On the other hand, all of this is very expensive—and in many cases evidence obtained by electronic surveillance may not be used in court. There are very strict requirements for a legal wiretap.⁹

This is not to say that unauthorized elsur doesn't happen—during the 1960s and early 1970s the FBI conducted a massive intelligence program directed at leftist political groups (COINTELPRO).¹⁰ Interestingly, only a very few FBI investigations led to prosecutions, but many more led to government disruptions of political activities: phone lines going out just before a major event, forged letters designed to cause splits between organizations, employers being informed of a person's political activities by an anonymous tip. Also, when a new piece of equipment is developed the law doesn't always specifically restrict its use. The FBI and other intelligence agencies may decide to try to get away with using it to gather information until that use is outlawed.

⁹Wiretapping or other electronic surveillance which violates your reasonable expectation of privacy may be excluded from use as evidence in court because it would amount to a "seizure" of your conversation under the Fourth Amendment.

As elsur has become more available to law enforcement agencies, guidelines have been developed for its legal authorization in some cases. The guidelines are quite strict. A federal magistrate must approve a warrant for: the particular crime sought to be proved, the probable cause for thinking that crime has been committed, the people who will be listened to, and the particular conversation that will ideally be discovered. The elsur is authorized for only a limited period of time, and when it terminates the court must receive a report of exactly what conversations were listened to.

¹⁰The domestic political intelligence apparatus mainly consists of three interrelated networks: local police, the FBI, and military intelligence. Local police departments have police intelligence units, which are loosely affiliated in a national organization, the Law Enforcement Intelligence Unit (LEIU). Most of the units are attached to city police departments, and others to the state police and to local district attorneys' offices.

The FBI devotes a lot of the time of its special agents to political surveillance. Some offices contain special squads that do only political work (called security work), but all agents are somewhat involved.

There are also some limits on what the courts consider to be intrusions into your reasonable expectation of privacy. You may not feel it's reasonable to expect someone you talk to to be carrying a concealed tape recorder, but the courts do—on the theory that you would reveal the information to that person anyway. Similarly, if one party to a telephone conversation allows the police to listen in, or if your activities in a public place are filmed, the product will probably be admissible in court. This points toward your developing discretion in your actions.

The Army operates the U.S. Army Intelligence Command (USAINTC). During its heyday (1968-69), many of its then 1200 agents spent part of their time watching anti-war and black activists. At the time, a crude estimate would put the collective strength of these agencies at a force of 8500 operatives employed on a full-time basis.

Some other agencies that employ investigative personnel are the IRS, the Navy, the Air Force, the Coast Guard, Customs, the Civil Service Commission, and Postal Service.

USAINTC, organized in 1965 and headquartered at Fort Holabird, Maryland, served as the principal instrument of Continental United States Intelligence or CONUS. By the late sixties it boasted a nationwide network of some 1500 agents, scattered throughout the country and organized into seven Military Intelligence Groups (MIGS), with regional field and resident offices.

The number one target of military surveillance was the university campus. Every intelligence unit in the country monitored college-level institutions in its area, and in some cases even high schools. The extensive coverage reflected the role of the campus in the anti-war movement, as well as in draft resistance; the coverage was so extensive because of the ease with which young operatives could pose as students and the readiness of most college administrators to cooperate with field offices.

In addition to monitoring local branches of national groups—such as the Black Panthers, the SDS, the Friends, the Women's Strike For Peace—the regional and field offices spied on local ad hoc groups, meetings, and demonstrations. Agents monitored or infiltrated such targets as anti-war vigils, church meetings, and halloween parties.

The MIG regions were equipped with high-grade surveillance gear: communications equipment, tape recorders, cameras with a variety of lenses, binoculars, lock-picking kits and lie detectors. Agents were issued "Leroy kits," which enabled them to forge driver's licenses and registration certificates. The most common kind of deception was of a shallow variety, such as posing as a peace protester with a hidden transmitter or a camera. Agents frequently used a media cover, equipped with bogus credentials as reporters or photographers.

If history is a guide, copies of the Army collections have been secretly retained by intelligence agents and added to other file holdings on federal, state, and local levels. In addition, again judging from the past, the Army files have surely been acquired by private agencies to augment collections, originally built through the process of clandestine acquisition.

The likelihood of such activities continuing in the future is strengthened by the obvious political and military direction in which our nation is moving.

FRIENDS—TRUE OR FALSE?

Far more than elsur, the Intelligence community's favorite way of gathering information during the 1960s and early 1970s was through the use of informants. These could be professional agents, but more often they were people who volunteered their services out of patriotism or who were coerced into serving as agents when they ran into trouble with the law themselves. These informers were usually paid for the information they gave the government. Sometimes they were part of the administration on college campuses; sometimes they took an active, even a leadership, role in political organizations. As we mentioned before, the information they gathered was less often used to start prosecutions than it was to harass the political activists and to intimidate people in general from exercising their First Amendment right to dissent. The government likes to create a myth that there is an agent lurking behind every door, on the theory that they can control people by manipulating their fears, and that by knowing more about you than you know about them they have some kind of power over you, at least psychologically.

The role of the non-professional informer in intelligence activities has, if anything, increased. "Good citizens" are encouraged to report those they suspect as criminals, and they are not limited as are public entities by the Fourth Amendment. The government will often reward these people for information which leads to a successful prosecution—but they are not categorized as part of the machine. So, if you've decided to be a private non-registrant, be aware of what you are saying. Be prepared *not* to confide in everyone. This does not mean you cannot be involved in political activity: many of those who violated the draft laws during the 1960s were able to keep it to themselves and avoided detection even though they remained active.

WHAT IF THE FBI DOES COME TO YOUR DOOR?

DON'T TALK. If you *do* talk, anything you say may be used against you—and that means *anything*. You can be polite and say:

"I'm sorry but it's not my policy to talk to FBI agents."

or

"I don't talk to law enforcement officials without consulting my attorney."

You don't have to let them inside the door—and if you realize who they are, you may want to step outside so they can't see into your home. You shouldn't even assume that what they are looking for has anything to do

with the draft: the FBI is known to go on fishing expeditions, and you never know who or what it is they're after.

The chances of your actually being arrested by the FBI are really quite small. During the Vietnam era, FBI agents tried to offer late registration to just about everybody they talked to. Most indicted non-registrants—including many public non-registrants—were never arrested at all, but allowed to present themselves for arraignment. Like other law enforcers, the FBI needs a warrant before they can arrest anybody: unless that person can be characterized as fugitive, or as too dangerous to be left free. These categories will not apply to most non-registrants.

AND IF YOU'RE ARRESTED FOR SOMETHING ELSE

This time around, there are no draft cards to carry, and if you are a U.S. citizen, you are not required to carry any kind of identification on you but, in general, carrying identification will help you avoid complications if you are arrested.¹¹ Presenting your identification to the police without hesitation can reassure them that you are not likely to be someone with a long criminal record. Even if it does not result in a quick release—perhaps after a computerized warrant check—it generally leads to fewer complications in the tedious booking process.

On the other hand, providing the local authorities with your identifying information may lead to a higher risk of detection as a non-registrant. You will have to weigh all the factors carefully before making a decision about what to say. In any arrest situation, you have the right to remain silent—about everything—and to talk to a lawyer. But in some circumstances using this right could make you appear to be a more suspicious character to the police. Some states have laws which specifically authorizes a holding time of several hours for someone who does not identify him or herself. Furthermore, police do not always follow the procedures they are supposed to. For example, even though local authorities were not supposed to keep people locked up for failure to possess their draft cards during the Vietnam era, they did do so. Sometimes non-registrants were pressured to register, and even to enlist in the armed forces when they were busted for other things, usually for drugs.

In any case, you should remember that, unless you have been indicted but have not yet been arraigned, there is almost no chance that there is an outstanding warrant for your arrest on the charge of non-registration. Therefore, your name will probably not be on any list to which the police might have access, regardless of the quality of their computer.

ABOUT LEAVING THE COUNTRY

It seems that many non-registrants, today and from the past, look at their decision as implying that they will either go to jail or have to leave the country. With the high possibility of avoiding detection and prosecution altogether, this is probably not a realistic attitude. Leaving the U.S. is a drastic decision in many ways.

During the Vietnam era Canada and Sweden were best known as potential havens for draft resisters. But even if conditions in the new country were good, the move meant adopting a new culture and often permanent separation from family and old friends. The option largely existed as a result of world opinion that was hostile to U.S. involvement in Vietnam, and not because most Canadians or Swedes opposed conscription generally. In fact, both of these countries have compulsory military service, and they are now likely to maintain a policy of not being particularly friendly toward draft resisters—in order to maintain their own good relations with the U.S. government.

If you are thinking of leaving the country, there are several legal points to consider: First, think in terms of the immigration law of the country you want to go to: will you qualify for a permanent visa or any kind of working visa? Like the United States, most countries screen those who want to immigrate. Even the less rigid screening systems give preference to relatives of citizens and people who have needed skills or money to invest. You can find out about the requirements from that country's embassy in the U.S. Second, especially if you leave the United States after you turn 18, you will risk prosecution if you should re-enter the U.S. at any time. The statute of limitations does not run out for you at age 31, because you are considered a "fugitive" for the entire time you are outside the U.S. The Customs and Immigration Authorities keep a "lookout" for people who the FBI believes to be fugitives from "justice." But what would actually happen when you re-entered the country depends largely on political developments. Will the U.S. be involved in a war? Will the people of the U.S. support that war? Will there be a draft, even without a war? And will they be efficient enough to know you were supposed to register?

¹¹ U.S. Permanent residents are required to carry their "green cards" with them, in order to show proof of residency, and other aliens may be asked by the Immigration authorities for proof of their right to be in the country at any time.

At present, a lot of discussion about a national identification card is going on in the government. Many proposals for a universally required work permit have been brought to the Senate Select Commission on Immigration and Refugee Policy as part of a program to reduce the number of undocumented workers. Such a requirement would obviously affect the privacy and freedom of both citizens and non-citizens.

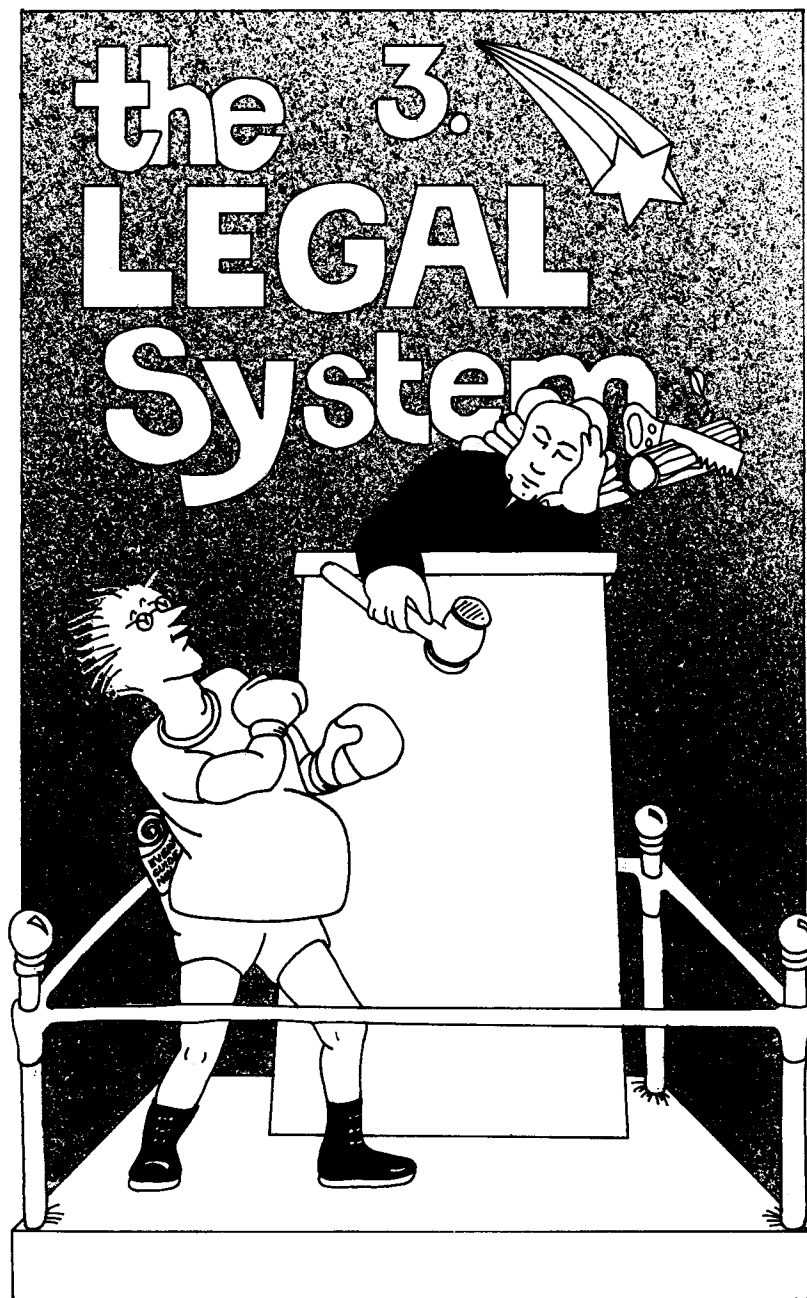
Finally, if you are a citizen of the United States, you cannot lose your citizenship by staying outside of the U.S. for any period of time. However, if you are a permanent resident, you can lose your residency by staying out of the country for too long. This is only one of the additional factors which should be considered by non-citizens who must make the choice about registration.¹²

BUILDING SUPPORT

For the public non-registrant, the issue is not whether he will be discovered by the government, but how much support he can build for his actions. Seeking support from friends and family, and from organizations which are committed to resisting war, can be helpful. The trial of a non-registrant can be used as a rallying point for peace activities, and the visibility of support for the non-registrant may well be reflected in terms of the treatment he'll receive if he is convicted. A letter writing campaign, telling the government not to waste taxpayers' money on the prosecuting of a peaceful person when there are so many violent criminals around is another tactic for drawing attention to the case. Making news is one way to increase the extent to which the government will have to account for its actions in putting a non-registrant on trial—and maybe for having a registration in the first place.

Private non-registrants can build support for themselves, too, by seeking out people they can trust, who will be there to help them if the need arises. Private non-registrants can also meet other private non-registrants through organizations such as the National Resistance Committee and the War Resisters League and through other organizations involved in the movement. You are not alone. There are 300,000 and more of you. And there are many more people who believe in the choice you have made.

¹² For non-citizens, the immigration consequences of compliance or non-compliance with the registration program can be worse than the criminal consequences. For example, a permanent resident could, by refusing to register, lose his eligibility for naturalization, and subsequently be found excludable from the U.S. On the other hand, an undocumented person who did register increases his chances of detection by the Immigration and Naturalization Service (INS) without gaining any kind of immigration benefit. Anybody who is not a U.S. citizen should find out about the potential immigration consequences of his actions before making a decision about registration.



IV. THE LEGAL SYSTEM

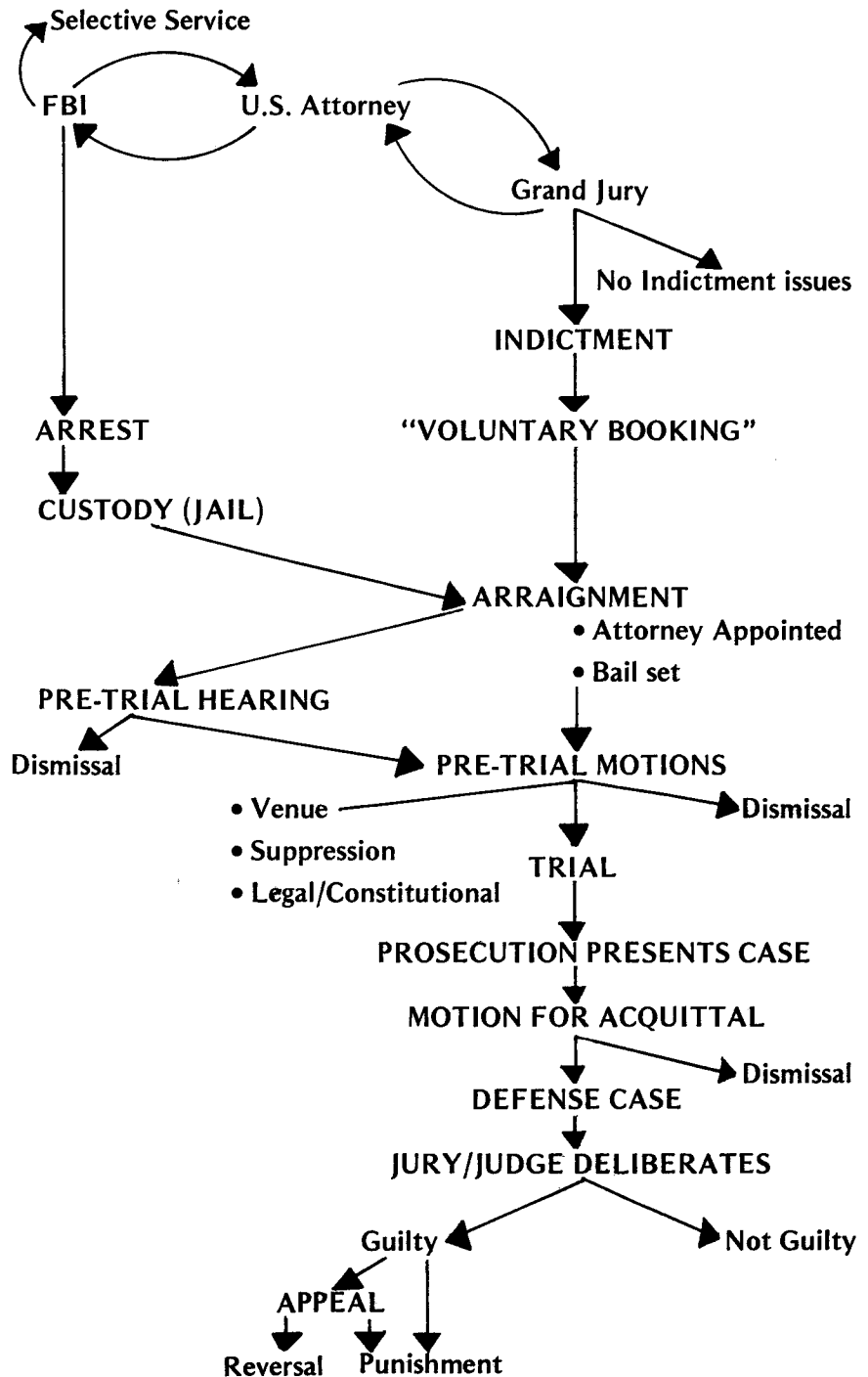
A decision not to register with the Selective Service may avoid involvement with that particular government agency, but one possible consequence is that you may become involved with the judicial system, the courts, as a criminal defendant. To an even greater degree than other parts of the government, the courts operate in complex, technical ways that do not seem logical—or practical—to most people. This chapter is designed as an introduction to the way the judicial system operates, and to the techniques and arguments that may get a non-registration defendant out of the system. It is not a substitute for legal advice, and it is not an up-to-date report on the state of the law regarding non-registrants—or on the procedures by which the judicial system handles non-registration cases: these are changing day to day.

AN OVERVIEW OF THE SYSTEM:

The chart on the opposite page indicates the general stages that a non-registration case will go through. First of all, the court system which the non-registrant is entering is the Federal Court System. The prosecutor, the attorney for the government, is from the office of the U.S. Attorney, one branch of the Department of Justice. The FBI is another branch of the Department of Justice and generally acts as the investigatory arm of the U.S. Attorney's Office, although it has also been known to initiate the kind of surveillance we mentioned in Chapter III. The grand jury, while technically an arm of the court, is actually under direct supervision of a U.S. Attorney. The circular arrows on the chart indicate the close relationship between U.S. Attorney and the FBI, on the one hand, and the U.S. Attorney and the Grand Jury on the other.

If a trial takes place, it will take place in a Federal District Court. Each state is divided into one or more Districts, and the trial will usually take place either where the Defendant lives or where the allegedly failure to register took place. If there is an appeal, it will be to the United States Court of Appeals.¹ The Federal Courts have their own rules of procedure

¹The United States is divided up into eleven Circuits, each of which contains several Districts. Each Circuit has its own Court of Appeals, which hears the appeals from cases decided in the Districts within that Circuit. If there is an appeal from the decision of the Court of Appeals, it will be heard by the U.S. Supreme Court. However, the Supreme Court hears those cases by a discretionary "grant of certiorari."



before, during, and after trial. These rules often influence the way a case turns out: and they may be quite different from the rules of the State Courts of the state where the court is located.

The courts have a central role in the system because, ultimately, that is where a finding of guilty or not guilty will take place. This influences the bargaining positions of both the government and the accused at earlier stages. The chart contains notations, at a number of different points, where a case may be dropped or dismissed by the government. This can happen sometimes because the government decides that it is not worth pursuing the case, because you have made it so difficult for them to prosecute. However, in order for this to happen the non-registrant must make a decision to "cooperate" with the court, in the sense that he agrees to play by its rules of procedure. This is a means of trying to get the system to kick out your case on its own terms.

THE POWERS OF THE COURT

The Federal Courts have jurisdiction, that is the power, to decide the case of a person accused of non-registration in violation of the Selective Service Act because the Act is a Federal Law.² As in any other criminal prosecution, the Court must assure that this act is not enforced in such a way as to interfere with the Constitutional rights of an individual, among them:

- freedom of speech and assembly (First Amendment)
- freedom from unlawful searches and seizures (Fourth Amendment)
- due process of law, at all significant stages of court proceedings, and in parallel proceedings (Fifth Amendment)
- equal protection under the law (Fourteenth Amendment, applied to the Federal Government through the Fifth Amendment as an aspect of due process)
- representation by counsel (Sixth Amendment)
- reasonable bail (Eighth Amendment)
- freedom from Self-incrimination (Fifth Amendment)

But courts are often much more restricted in their decision-making power than many people would like to think. First of all, the Court's role is as the "interpreter" rather than as the "maker" of the law. This means that the Court will focus its attention on how the law is applied to the case in front of it. Second, the lower courts are bound by the "precedent"

²50 U.S.C. App. The Selective Service Act is a manifestation of the broad powers of Congress under Article I, Section 8 of the U.S. Constitution, to raise, support, govern and call forth the militia, and to make all laws "necessary and proper" to do so.

decisions of the higher courts. For example, the Federal District Court for the Northern District of California must follow the law as decided by the 9th Circuit Court of Appeals, and the Ninth Circuit must follow the Supreme Court: regardless of how the individual judge feels the law should be. Third, the court may only decide "legal" questions, and not "political" issues. For example, the court can decide that it won't enforce the registration requirement against a non-registrant because the requirement violates the Equal Protection clause of the Constitution by requiring men, but not women, to register. But the court could not normally refuse to enforce the requirement because it violated the judge's—or the non-registrant's—moral principles. Of course, "legal" considerations are often colored with the kinds of ethical, moral, and political considerations the Court is not supposed to take into account. Moreover, arguments which address those considerations can often be put into "legal" language to accommodate the judge's need to rationalize his/her decision in "reasoned" terms. As a human being a judge may well take into account his/her own personal or political beliefs when making a decision, but s/he will need to maintain the court's traditional appearance of insulation from political issues. Therefore, the most successful non-registration defenses have been, and probably will continue to be, those which take into account the judge's hesitancy to step out of his/her role, to make decisions which require a big change in the outside world, and particularly those which appeal to the judge's fairly comprehensive power to administer procedure within his/her own courtroom.

Some lawyers make a distinction between "technical" and "substantive" defenses. They consider technical defenses to be those which address some defect of the prosecution of the individual case, and substantive defenses, those which more generally address the rightness of legality of the registration requirement itself. But almost any non-registration defense will attack both areas to some extent, and everybody will have to make an individual decision as to what sort of strategy is acceptable to him. For instance, one person may see the protection against having to testify against himself as serving an important social value and forcing the government to a high standard of proof before inflicting criminal punishment on anybody.³ Someone else may view a non-registration defendant's refusal to testify at trial as playing with the court's procedural requirements in forcing the government to prove the case against him beyond a reasonable

³The protection against self-incrimination is often said to be a recognition of the autonomy and dignity of the individual against the coercive powers of the government.

doubt. The same may be said of challenges to jury composition because the jury doesn't represent a cross-section of the community, or of motions to exclude evidence based on unlawful search or seizure. These challenges may result in the prosecution's being unable to obtain a guilty verdict in the particular case. However, this is based on the government's failure to operate in accordance with its own laws, and not on whether or not you registered.⁴

USING THE FOURTH AND FIFTH AMENDMENTS

Everybody should probably try to develop an understanding of what their Constitutional rights mean at different stages of the legal process. The FBI and the Selective Service System are certainly not going to do much to help you.

Probably the most important of these for the private resister, is the Fifth Amendment protection against self-incrimination, the right not to be called as a witness against yourself. At the earliest stages of investigation you can protect this right by a polite but firm refusal to talk to police or FBI as we discussed in Chapter III.

In court, choosing not to testify makes the prosecution try to prove their case against you without your help. A complete trial can be put on without the defendant's testimony. An attorney will often present arguments and evidence to the court, along with putting other witnesses on the stand. Of course, whether or not to testify is also a strategic decision because some people on the jury might feel that anyone who chooses not to testify is more likely to be guilty.

The phrase "anything you say may be used against you" really means that *anything* you say may be used against you. For example, if you try to tell the government all about how you registered—when you really didn't register—they may be able to show that you didn't do things just the way you claimed to have done them. That may convince the judge/jury⁵ to doubt your truthfulness. Legally, the judge/jury may not use somebody's silence to conclude that he is guilty. But they may draw any reasonable conclusion from what somebody says when he does testify. For example, a defendant testifies that he did register, and his story seems a little flaky,

⁴See, e.g. *Holingsworth v. Balcom*, 441 F. 2d 419, 431 (6th Cir. 1971) on the requirement that government agencies follow their own regulations.

⁵In a "jury trial," the judge will decide questions of law and the jury will decide questions of fact. In a "non-jury" trial, the judge performs both functions: acting as both "finder of fact" and "finder of law."

the jury may decide not only that he did not register as he said, but that he did not register at all.⁶ Also, once you take the stand to testify, the government automatically gets the right to cross examine you.

Another important protection, again more for the private resister, is the the Fourth Amendment protection against unreasonable searches and seizure. The Fourth and Fifth amendments are enforced in court through the "exclusionary" rule. The prosecution, that is, the U.S. Attorney, cannot use evidence obtained in violation of them to prove the defendant's guilt in court.

Before trial, the defense may present arguments (called motions) to the judge, asking that this evidence be kept out of (or suppressed from) the trial. If the judge agrees that the evidence was obtained in violation of the Fourth or Fifth amendment, s/he will grant the suppression motion and the evidence cannot be shown to the jury (or considered by the judge if s/he is acting as finder of fact). If the defense wins a suppression motion that excludes a good deal of the prosecution's evidence, the case may be dropped.

The Fourth Amendment has been interpreted by the courts to protect a person from seizure of any kind of evidence—including conversations—about which s/he has a "reasonable" expectation of privacy.⁷ For example, let's say Elmer Eager tells a group of people on a sidewalk that he did not register. If Elmer has a trial, this statement could probably be used as evidence because the court is likely to conclude that Elmer should have been aware that his statement was heard by others. But if Sam Silent tells his mother that he didn't register while sitting at the breakfast table—and his statement just happens to be overheard by an FBI agent who is standing with his ear to the wall, the court may well conclude that this statement was meant to be private.

In Federal Courts the exclusionary rule protects only the defendant's privacy. Third parties, people other than the defendant, cannot protest an unreasonable search or seizure. For example, if Jay Jolly writes to his good friend Bonnie, telling her that he has decided not to register with the SS,

⁶If a defendant is found to be testifying falsely in court, he may be guilty of perjury, another felony.

⁷The words "reasonable expectation of privacy" are used by the courts to decide whether a "search" has taken place in violation of the defendant's Fourth Amendment right of privacy. *Katz v. U.S.*, 389 U.S. 347 (1967).

and Bonnie's house is searched, Bonnie will not have the standing, that is the legal right, to protest the use of the letter in a prosecution of Jay. This is because it is not Bonnie who is being prosecuted. And Jay won't have the legal right to protest either because it wasn't his house.⁸

"OFFERS" OF LATE REGISTRATION

One way in which the Court system is no different from other parts of the legal system is that its decisions are often made in the interest of efficiency. There is every indication that if the government can get a defendant to register late, it will consider that it has done its job, as much as if it were to find the defendant guilty of the felony of non-registration. The offer of late registration is clearly in the interest of the government in terms of time and money saved. The individual defendant will have to evaluate whether or not it is in his own interest. Regardless of the stage at which the offer is made, it should be discussed with a competent attorney and draft counselor in order to evaluate the defendant's chance of prevailing at trial, and whether, regardless of the outcome, the defendant is really prepared to go through with the trial. Perhaps the person who was willing to be a non-registrant when he risked a small chance of detection will not feel the same way when an investigation has focused on him, or when an indictment has been issued. Perhaps the defendant now has a better idea of what his chances will be of legally avoiding conscription if he does choose to register. The decision should be made only after much consideration of the alternatives.

In some cases in the past, the government did continue to prosecute people for non-registration, even though those people registered late.⁹ This is one more factor to consider in dealing with the prosecutor and the court.

Under the current regulations there is no stated "continuing duty" to register.¹⁰ By refusing the government offer of late registration, therefore, you are committing no additional violation.

⁸ Assuming that Jay had no reasonable expectation of privacy as to the letter once it was in Bonnie's possession.

⁹ Someone who registers late does not "cure" himself of the offense of non-registration during the designated period. Although the government has normally lost its interest in prosecuting someone who agrees, to register, there are no guarantees. During the summer of 1980, Bernard Rostker, head of the SS, stated that everyone would normally be given a chance to register before a prosecution started. After high non-registration during the 1980 registration period, conflicting statements came out, implying that prosecution was more likely.

¹⁰ During the Vietnam era, regulations provided for a continuing duty to register. That is, once somebody reached registration age, he not only had the duty to register

If you learned of your duty to register after the period during which you were supposed to have registered, you may be able to use this as an argument in your defense. If you do decide to register late, you will want to do so so that you are least likely to incriminate yourself or to be prosecuted for your original failure to register. Therefore, you should probably seek legal advice at this point.

GETTING AN ATTORNEY

The Sixth Amendment guarantees your right to be represented by a lawyer at trial. Under the Fifth Amendment you also have the right to have counsel present at any in-custody interrogation. At these stages, if you cannot afford a lawyer, one will be appointed for you: generally a Federal Public Defender or a private lawyer who is on the court's panel of appointees. Toward the end of the Vietnam War, the Federal District Courts developed panels of lawyers who did nothing but defend draft cases. At the present time, these panels are not functioning and there is almost no way that lawyers interested in the field can become members of the panel. But it is likely that these panels will be re-activated if large numbers of draft cases are prosecuted.

Although some non-registrants will undoubtedly come from families who can afford to pay for a private legal defense, few draft age people have lots of money of their own. If your family cannot or *will* not hire a lawyer for you, the decision of whether the government will pay for your lawyer is based on how much money you have yourself. In practice, it is usually quite easy to establish that you qualify, and there is also the possibility that the government will help you pay part of your legal fees, even if they decide you're not poor enough to be represented for free.

One of the ways that being in the Federal Criminal System makes a difference is that, assuming the court finds that you qualify for free legal representation, you may also have the lawyer of your choice appointed. This gives you the opportunity to have the government pay for the services of a lawyer you may have already consulted or someone you know is able to present the kind of defense you want in your case. Of course, the lawyer must agree to handle your case for the fees set by the government.

during the appropriate period, but, if he failed to do so, he continued to have a duty to register every day until he turned 26. The regulations for the new registration do not specifically include such a "continuing duty." Also, there is still a question about whether the statute of limitations runs after the registration period or after age 26. *Toussic v. U.S.* 397 U.S. 114 (1970).

The opportunity to choose your own lawyer can be an enormous advantage to you. As with other kinds of government appointments, many of the lawyers on the court's panel are there because of their political connections and not because of their expertise in this particular kind of case. Others may be excellent in narcotics cases but know nothing about Selective Service law. Further, a lawyer's assistance at the earliest stages—when you know you have been detected or when you are called before a grand jury or even if you just have a feeling that you are the subject of an investigation, can help you take actions that will be of critical importance to your case later on.

WHAT TO LOOK FOR

Generally, your lawyer should be skilled in Federal Criminal Procedure and also familiar with Selective Service law. A lawyer who practices criminal law regularly in a particular court will have the advantage of knowing the local U.S. attorneys and the judges of the court. S/he will have a feeling for their personalities, politics, and the kinds of arguments they like. On the other hand, attorneys who are not long-established may have lighter caseloads and therefore be willing to devote more time to your case. You shouldn't be afraid to check out a lawyer's background. Particularly if you are looking for a "political" approach in court, you should be aware that many lawyers view themselves as craftspeople only. They want to get you out as quickly and as easily as possible. See if your prospective lawyer is willing to discuss legal strategy with you.

If you will be paying for your own defense, ask what the lawyer's hourly rate is, what it includes and whether s/he may do your case for a flat fee. Unlike personal injury cases, no money is recovered if you win and you will have to pay for your defense even if you lose.

Three organizations which may be able to help you find a lawyer or check out his/her qualifications are: the American Civil Liberties Union (ACLU), the Central Committee for Conscientious Objectors (CCCO), and the Military Law Task Force of the National Lawyer's Guild (NLG). Our Bibliography contains the addresses and phone numbers of their national headquarters, but they may also have a local office near you. These three organizations have all had draft case referral panels in the past and are currently reorganizing them.

GETTING RID OF YOUR LAWYER

If you have a privately-retained lawyer you may fire her/him at any time, with what you owe him/her depending on the agreement between the two of you. If your case has reached the court, a Motion for Substitution of Counsel must be made. Private lawyers are usually pretty good about taking care of the formalities because they don't want to be responsible for your case once you've stopped paying them.

You can also make a Motion for Substitution of Counsel when you are being represented by a Public Defender or a Court Appointed Lawyer. The usual approach would be to talk to your lawyer and explain what you want to do and why. S/he will then generally present the Motion to the Court, although you can do so yourself if s/he refuses to. Most, but not all, of these motions are granted, but the further along your case has gotten, the harder it will be to change lawyers. Once trial starts, it will be almost impossible, unless—and sometimes even if—your attorney is obviously incompetent.

FIRST ENCOUNTERS WITH THE SYSTEM: THE START OF A FEDERAL CASE

Chapter III discussed the earliest stages of investigation—or at least those which take place fairly far away from the courtroom. So, the encounters described here may not be the first. But these are the stages where the decision to prosecute is becoming concrete.

ARREST

Everybody seems to be most concerned with the possibility of arrest. So, it may be surprising that, at least in the past, there was no arrest in the vast majority of non-registration cases, and other cases involving an alleged violation of the Selective Service Act. Rather, the defendant received a summons in the mail, along with an indictment, telling him when and where to show up for arraignment. If he did not show up as required, an arrest warrant was issued. Otherwise, arrangements for "voluntary" booking were made with the U.S. Magistrate.

But this is not to say that arrest is not a possibility. In most cases, the FBI must seek the authorization of the U.S. Attorney before it can arrest a suspect. The FBI will justify its request by saying that the alleged non-registrant is uncooperative: perhaps he has refused to answer questions or has refused an offer of late registration. The FBI makes similar arguments when it takes someone into custody without a warrant: For example, that

(based on a non-registrant's success at being undetected for so long) the suspect is likely to flee or that (based on a non-registrant's publicly admitting his violation of the law) he is a risk to security.

If you are arrested, you should politely and firmly refuse to say anything, stating that you want to talk to your attorney first. Once you are "in custody," the police must read you your "Miranda Rights": basically informing you of your right to counsel and your right to refuse to say anything. However, it is common practice for law enforcement personnel to continue to try to question a suspect, even after he has said he doesn't want to talk. Another very common practice is for police or FBI agents to make statements which indicate that they know a great deal about you, whether or not they really do. They may act very friendly and promise that nothing will happen to you if you explain the situation to them. But you are better off not saying anything in almost every case.

You also have the right to have an attorney present if there is a lineup or if there is another situation which may be "set-up" in such a way as to point to your guilt. If you are not allowed to call your attorney or to talk with an appointed attorney, you should insist on your rights once again.

One major problem is that, in some states, the local police have the right to detain a person who refuses to identify himself. Since such factors as your name and age are more relevant to proof of non-registration, this will put you in a difficult spot. It is not clear at the present time how much cross referencing there is between state and Federal data banks, and this will vary from state to state. Another problem is that identification is required to be engaged in many activities. Most states require automobile drivers to have a valid driver's license in their possession, and the license always states name and age. The non-registrant must make the choice between keeping absolutely silent, which may arouse suspicion, or revealing information which may incriminate him.

PRE-TRIAL HEARING

Where a non-registration defendant is arrested without indictment, a pre-trial hearing is held, normally after the arraignment, and after the defendant has had an opportunity to consult an attorney. The purpose of the hearing is to determine whether there is enough evidence against the defendant to hold him to answer. In the Federal system, the prosecution of a felony must always be by indictment, unless the indictment is waived by the defendant. Thus, the pre-trial hearing may actually provide the defense with an opportunity to "Discover" the case against the accused. This is an opportunity to find out the government's theory of the case and possible reasons for arguing that evidence was illegally obtained.

THE GRAND JURY

The grand jury is made up of citizens who meet to determine whether a defendant should be indicted. Although the grand jury is theoretically an arm of the court, it is actually supervised by an assistant U.S. Attorney. This is most often influenced by the prosecution's philosophy. The grand jury's responsibility is to decide whether or not an indictment should issue against a particular individual. The grand jury may consider evidence obtained in violation of search and seizure law in making that decision. The indictment is the paper which accuses the individual of the crime for which he must answer in court.

The grand jury is said to function in both "accusatory" and "investigatory" roles. The "accusatory" grand jury is called upon to review the outcome of an investigation by another government agency, and to make the decision whether or not to indict. The "investigatory" grand jury may call witnesses and subpoena other evidence before making a decision on indictment. In practice, grand juries do most of what the U.S. Attorney wants them to. Any felony case must be prosecuted by indictment, unless the indictment is waived by the defendant.

A witness called by the grand jury may not have an attorney present, although he may have a lawyer outside the room and may confer with the lawyer before answering any question. The witness may refuse to answer any question which he thinks may tend to incriminate him—but he may not refuse to answer questions which he thinks are based on an unlawful search and seizure. If immunity is granted, it only means that the particular statement of the witness may not be used as evidence against him in court. But other evidence of the same crime may be used.¹¹

Grand jury proceedings are not generally recorded. However, a potential defendant may make a motion for a transcript of the proceedings. Denial of this motion may create an opportunity to challenge the proceedings for denial of due process once the case is brought to trial.

¹¹The type of immunity discussed here is called "use immunity, to distinguish it from "transactional" immunity. If transactional immunity were granted, the government could not base any prosecutions on the transaction about which testimony is given. Use immunity, however, does not protect other people who may have been involved.

THE ARRAIGNMENT

The Eighth Amendment guarantees the right to reasonable bail, to protect accused persons from remaining in custody before trial. Bail is set by a magistrate at an arraignment held either "without delay" after arrest, or at a time specified in the summons if there is no arrest.¹² At the time of the arraignment, the magistrate will also appoint an attorney for a poor defendant or enter the appearance of a hired lawyer. Where there is an indictment, it is read in open court; if there is no indictment, a preliminary examination is held to determine probable cause for holding the defendant. The accused has the right to refrain from making any potentially incriminatory statements and to a reasonable continuance to consult with counsel.

In the Federal System, a defendant's release on his "own recognizance" is preferred over bail. If "O.R." is not granted the magistrate must state his reasons for denying it.¹³ However, the purpose of a bail requirement is to assure that the accused person will appear in court in the further proceedings, and the burden rests on him to show that he will not flee or become a public danger. Demonstrating family, job or school commitments, or other ties to the community will generally show that the defendant is not likely to flee. If O.R. is not granted, the defendant may often deposit ten percent (10%) of the total amount of the bail with the court (getting the money back at the end of the proceedings), or assign property as security for the full amount, so that nothing is ever actually deposited. The least preferred method is the bond put up by the bondsman, commonly used in State Court.

Even if a defendant appears in court in answer to a summons, without having first been in custody, he will not be released until he is O.R.'d or posts bail. If the defendant cannot raise the amount of bail initially required, he can request the magistrate to reconsider bail at any time.

PLEA BARGAINING

In many criminal cases, plea bargaining is efficient for both parties. The government and the defendant may both want to avoid the trouble and expense of a trial. Given a risk of being found guilty on several counts at trial, a defendant may opt for pleading guilty on, say, one count. Assuming that only one count of failure to register with the SS is charged in the

¹² Federal Rule of Criminal Procedure (F.R.Cr.P.) 5.

¹³ Bail Ref. Act, 18 USC 3146-50.

indictment, the defendant in a non-registration case will most often not have anything to gain from traditional plea bargaining, and the government will not have anything to offer. An exception would be a case where a non-registrant was willing to plead guilty based on an indication of a very light penalty from the judge.

This is not to say that dealings with the U.S. Attorney before trial are unimportant. For example, a case may be dropped when a defense lawyer brings procedural defect to the attention of the prosecution—without going through formal motions before the judge. The U.S. Attorney can also offer a "diversion" program if s/he feels it is appropriate. This requires the defendant to go through some sort of probationary program, perhaps an alternate service program like that required of C.O.s, without entering a guilty plea. After completion of the program, the charges are dropped.

Even after indictment, the U.S. Attorney is likely, at least in the case of a quiet non-registrant, to offer to drop the case if the defendant registers. Once again, there is no legal duty to accept this offer: but the choice must be made in the context of the circumstances, and should be thoroughly discussed with your attorney.

PROOF BEYOND A REASONABLE DOUBT

In a non-registration case, the government must prove all three "elements" of the offense beyond a reasonable doubt, or the defendant cannot be found guilty. Those elements are: that the defendant was *legally required to register*, that he *did not register*, and that his not registering was *knowing*.¹⁴ The first of these may be pretty easy to prove, but if a defendant does not take the stand and has not given his birthdate to the government, it will at least put the government to the trouble of proving age.¹⁵

The next element is harder to prove. The prosecution has the benefit of the "presumption of administrative regularity."¹⁶ If the defense presents no evidence to the contrary, the judge/jury could have to conclude that the Selective Service knows exactly who registered and who did not. But

¹⁴ The *mens rea* of non-registration, that is, the mental element of the crime, requires that the defendant at least knew he should have registered.

¹⁵ The government could try to prove age by introducing a birth certificate into evidence or by calling the defendant's relatives to testify.

¹⁶ However, the defendant might want to argue that the use of a presumption in a criminal prosecution violates his right to due process. See Federal Rules of Evidence 803, 902.

the defendant need not say anything. "Expert" witnesses could testify about the foul-ups of the U.S. Postal Service, about the failure rate of transferring information to a computerized file, and about possible screw-ups within the computer system itself. If they show a convincing rate of error, the judge/jury may decide that there is a reasonable doubt as to whether or not the defendant registered. That is enough for a finding of not guilty.

The law regarding the last element, the knowingness of the non-registration, is unclear. One case has held that the government need not prove that the defendant *knew* about the requirement unless he asserts that he did *not* know. Another court has held that the government must at least introduce some evidence that he knew—although it need not be "positive."¹⁷ Thus, the government could try to prove that everybody knew he had to register because he lives in the United States, and there was all this government publicity. On the other hand, a non-registration defendant could use the circumstances of the present registration to show that it's not clear *what* everybody knew. Publicity was not so hot. There hadn't been a registration for a number of years. And at least during the summer of 1980, there had been a court decision that said registration of just men was illegal.

MAKING MOTIONS

A lot goes on at a trial before the evidence is presented. The court may consider pre-trial motions on almost any matter, for example:

DISCOVERY: that all evidence favorable to the defendant be produced; that the government demonstrate how many people there are with the same name as the accused; failure rate of computer system; complete list of non-registrants and those being prosecuted.

SUPPRESSION: that evidence obtained in violation of the Fourth or Fifth amendment be excluded from consideration. Note that the government may appeal the pre-trial evidence suppression order.

CHANGE OF VENUE: burden on the defendant to show that he could not get a fair trial in the District (i.e., based on too much publicity in the area), or for the convenience of parties and witnesses.¹⁸

¹⁷U.S. v. Klotz, 500 F. 2d 580 (8th Cir., 1974); U.S. v. Keohelauli, 389 F. 2d 495 (9th Cir, 1968); U.S. v. Boucher, 509 F. 2d 991 (8th Cir. 1975).

¹⁸The venue motion may also be used as an opportunity to seek dismissal by moving for a bill of particulars (i.e. specific facts constituting the offense) under the F.R.Cr.P. as part of the attorney's duty to explore the possibility of a guilty plea.

Motions for dismissal may be introduced at this stage based on almost any legal argument, for example: unconstitutionality of the preregistration requirement, evidentiary deficiencies, illegal selection of the grand jury or the jury which sits at trial. Success on any of these motions may lead to dismissal of the case, because the defense is making it too hard to prosecute.

If the defendant wishes to enter a plea of not guilty based on insanity or incompetency, he must raise the issue at this point, before trial starts. Once the defense has presented some evidence of insanity, the burden falls on the government to prove that the defendant was sane at the time the omission allegedly occurred.

PROCEEDING TO TRIAL

Assuming that the case does go to trial, the next step will be deciding whether to try the case before a judge—who will make decisions about both the facts of the case, and about the law—or to a jury, which would then be charged with making the findings of fact. In most non-registration cases in the past, the best success was with trials to the judge, because most of the acquittals came out of decisions about the *law*. However, the non-registrant who wants to present a "political" defense, may very well want the case tried to a jury.

What we mean when we say "political" defense, is an approach which emphasizes that registration is wrong, and that the importance of the defense is publicizing that wrongness, even if that wrongness cannot be put into a legal pigeonhole. Non-registration defendants in the past have sometimes preferred to bring their cases before a jury so that the jury can decide that the defendant is "not guilty" based on its interpretation of the facts of the case. The facts will be weighed in light of the jury's own values, which may be different than the values of the judge. Some defendants will choose to have a jury trial because they want to bring their case in front of as many people as possible. One defense which was successful in front of some juries was the "constructive registration" defense. Essentially, this means that the jury decided that the defendant gave the Selective Service enough information to register him, even though it might not have been given in exactly the way prescribed by the regulations. If there is to be a jury, the jury will be sworn in after pre-trial motions.

At trial, the prosecution presents its case first. The defense may cross examine any witness presented, right after the prosecution has done a "direct examination," that is, questioned the witness. At the end of the prosecution's case, the defense may, make another motion for dismissal,

based on the failure of the prosecution to present an adequate case.¹⁹ If this motion is denied, the defense may proceed to put on its evidence and present the case to the judge/jury.

SUBSTANTIVE DEFENSES

Most legal defenses in a non-registration case, beyond those which focus on the inadequacy of the prosecution, are "justification" defenses. Essentially, the defendant is saying that he was right in refusing to register. If these are presented through an attorney's motions, the defendant does not need to admit non-registration.

EQUAL PROTECTION: the most publicized challenge to draft registration as instituted was the recent District Court decision that registration of men but not women violated equal protection law as evolved by subjecting men to twice the likelihood of conscription as they would otherwise suffer.²⁰

DISCRIMINATORY PROSECUTION: can be used by a defendant who believes that he has been selected for prosecution on the basis of free exercise of First Amendment rights, especially in light of statistics which show hundreds of thousands of non-registrants and few prosecutions. This can be particularly useful for the public resister.

FREEDOM OF RELIGION: that for reasons of conscience, similar to those which would qualify a person for a CO exemption, the defendant could not cooperate with the registration system. This defense has not been successful in the past.

INVOLUNTARY SERVITUDE: that conscription is a form of slavery in violation of the Thirteenth Amendment.

AGE-BASED DISCRIMINATION: also in violation of equal protection clause—but 18-20-year-olds do not fall into any suspect classification so this may be more difficult than sex-based discrimination claims.

Past experience with justification defenses in non-registration cases is not very positive. However, they can be tried again at any trial.

Another defense strategy is to say that the registration requirement is illegal because the regulations issued by the Selective Service for this registration do not meet all of the requirements of the Selective Service Act. This is another way of saying that the SS has not followed its own rules, but it also says that the defendant is justified in not following one level of

¹⁹ "Motion for judgment of acquittal." May be based on the law and/or on the failure to prove a case.

²⁰ The case of *Goldberg v. Rostker* was decided just before the summer, 1980, registration. Justice Brennan of the U.S. Supreme Court allowed the summer registration to go forward but the law remains to be decided by the Supreme Court.

law (the regulation) when a higher level of law (the statute) said something else. Some ways in which the SS might have failed to follow its own rules have to do with the publication requirements for regulations, the failure to maintain local draft boards, and the failure to classify registrants.²¹

APPEAL

A defendant who loses his case at trial has the right to appeal his case to the Circuit Court of Appeals. If he loses at the Circuit level, he can only go to the Supreme Court. The Supreme Court must decide that the case is important enough to hear, or there will be no appeal past the Circuit Court. If the defendant had appointed counsel at trial, he will also be entitled to have appointed counsel on appeal to the Circuit Court. Normally, in fact, the appeal is handled entirely by the attorney, who reviews the trial records. S/he then makes written arguments in "briefs" to the appellate court about why, as a matter of law, the trial court's decision was wrong. The appellate court has little power in the area of an erroneous *factual* decision, but much power where the error involved a standard of law. For this reason, appeal is likely to be more fruitful for those who choose traditional trial tactics, rather than a political approach.

The government cannot appeal a finding of "not guilty."²²

During the time that a defendant's appeal is pending, the sentence does not go into effect. Normally, the defendant remains free on bail or O.R. If the Appellate Court overturns the trial court's decision, there may be a new trial.

²¹ The Selective Service Law, 50 U.S.C. App. §463 (b) says that "no regulation issued under this Act shall become effective until the expiration of thirty days following the date on which such regulation has been published in the Federal Register." The thirty day period is designed to allow interested parties to comment on the regulation before it goes into effect. If any changes are made in the regulation during that time, the regulation is supposed to be published again with another 30 day comment period.

On July 18, 1980, the final regulations adopted by the Selective Service were published in the Federal Register, page 48130. However, they were *not the same* as the "proposed regulations" published on June 16, 1980. Some attorneys believe that the changes in the definition of "registration card," "permanent residence" and "Selective Service Number" are quite significant in the context of military law. However, even if the changes are not that significant, it is conceivable that a sympathetic judge would find the Selective Service barred from prosecuting someone who did not register on the theory that the registration regulation was illegal.

Other arguments of this type say that registration cannot be enforced because there is no provision for classification and examinations of registrants as required by statute, 50 U.S.C. 454(a), or because the President has failed to maintain local draft boards, as required by 50 U.S.C. 468.

²² The Constitution provides that no criminal defendant can be put in "double jeopardy." This means that no one can be held to answer for the same criminal act more than once. After a prosecution begins and "jeopardy attaches" the government has only one chance to win the case. Jeopardy generally "attaches" when the jury is

POSSIBLE PENALTIES

Almost no convicted non-registrant is likely to serve five years in prison, unless he has been convicted of additional offenses.²³ Even someone who receives a five year sentence is normally eligible for parole after one-third of that time. However, you should remember that sentencing is an area where the judge has a great deal of power, and lower-income and minority defendants tend to get stiffer penalties in general.

Proposed legislation—which generally toughens criminal penalties, would reduce the maximum jail sentence to 30 days (and/or \$5,000) for non-registration during peacetime when there is no induction. The same bill would punish non-registration during ongoing induction with 18 months/\$250,000 and during wartime with 40 months/\$250,000.²⁴

Regardless of the actual sentence, however, someone who has been convicted of a felony may be restricted in certain ways. These restrictions cover such areas as voting rights, government employment and state licenses. They are different in each state.

Sentencing under the Youth Corrections Act may also be available for defendants up to 26 years old. Such sentencing could avoid the legal disabilities of being a convicted (adult) felon.²⁵

Under the Adult Criminal Sentencing Provisions there are a number of alternatives: probation, a split sentence with six months of jail or treatment plus probation, a specific sentence for a term of years with parole available after one-third or after a lesser period specified by the court.

It is the judge who determines the sentence. The defendant who shows some clear, socially acceptable plans for the next few years and who has no other criminal involvement will generally get a lighter sentence. But a committed non-registrant has to realize that prison is a possibility. Imprisonment, even in the "best" of Federal "facilities" can be a devastating experience, and particularly so for the person who is committed to ideals.

sworn or, if the case is to be tried to a judge, when the first witness is sworn in. If the regulations were amended to provide for a continuing duty to register, the "double jeopardy" prohibition would not keep the government from prosecuting a non-registrant a second time because he would be committing a new crime every day.

²³ During the Vietnam era, approximately 50% of those Selective Service cases which went to trial resulted in convictions. Of course, many cases were dropped at some stage prior to trial. The 50% figure covers Selective Service cases generally, and the conviction rate in non-registration cases was probably a good deal higher because fewer technical defenses were available. Of those convicted for Selective Service violations, approximately one-third went to prison. The others got probation or suspended sentences. The average prison sentence was between 6 months and 2 years, although some people did do much more time.

Lawrence Baskir and William Strauss, *op cit*.

²⁴ S.1722, a revision of the criminal code, being considered by Congress during the fall of 1980.

²⁵ 18 U.S.C. §§005-26, 4209.

V. RESISTANCE AS A WAY OF LIFE

Some people who decide not to register go one step further: they make their resistance public, often in the hope that it will encourage others to become non-registrants or to resist the system in other ways. The decision to become a public resister has both advantages and disadvantages in terms of personal consequences. Detection is no longer an issue. This means that the government doesn't have to do any work to find you, but, on the other hand, it may relieve you of the anxiety of wondering whether or not you will become detected. You won't have the stress of keeping an important part of your life confidential, and you may feel that you have more control over your life because you've shown the government that they can't push you around.

The public resister can also seek support from those who share his ideals and public resisters often serve as resource people for the support of resisters generally. That is not to say that a private non-registrant will be completely alone; there will certainly be people in his community with whom he can share his decision in confidence. But public resistance implies that you have made a peace with yourself, and with your decision, regardless of what anyone else thinks.

The decision to resist is a long term commitment. It may have consequences that you do not foresee right now, good and bad. It may take you on a lifecourse different than the one you would have had otherwise. But there will also come a time when non-registration is not the focus of your energies, when you are able to move on.

The rest of this chapter is taken from an interview with Jeff Mertens, a public resister who refused to register with the Selective Service in 1968.

When I was sixteen and a high school student in Northern California, I was very much aware of the government's intention to register and classify all eighteen-year-olds. I decided to check out the system before it clicked me through and spit me out. I read a pamphlet called "Channelling" that was published by the U.S. Selective Service System. It talked about finding ways of getting young people to make choices in their lives based on government pressure—making the room in which young people were in hot, and having the choices that young people made determined by the heat of the room. They used the expression, "the carrot and the stick ap-

proach," which means that the government would offer deferments for people who cooperated with the SS. For those who didn't cooperate, they offered punishment which could be a fine and imprisonment.

This made me begin to see through the Selective Service System. I became aware of the coercion and pressure behind it, and the freedom I could have if I said no to the system. The clarity of conscience, the lack of participation in an evil that was leading directly to a war in Vietnam which ended in the deaths of several of my friends in high school and over fifty thousand other Americans. Not to mention mental illness for a large number of G.I.s, and the destruction of so much of the countryside of Southeast Asia, for what is now oddly enough admitted to be a war that was wrong.

I talked to my friends about the issue of non-cooperation and non-registration with the SS. And it frightened them, but they were interested, and four of five of us agreed not to register. Two of them ended up carrying out that decision. They went to Canada, keeping out of the government's way and coming back at the time of President Ford's pardon. And myself.

I talked to my family as I made the decision, first telling them that I didn't know what I was going to do when I was eighteen and then coming to the decision that I would have nothing to do with the draft and refused to register. They were very scared. My dad was a parole officer. He has dealt with people all his life who are just getting out of prison and his concerns were that this experience would warp me by meeting people who were rough. I dealt with those considerations of his, and the concern that I would never get a respectable job teaching or whatever in this society. I talked with them about it and I was very clear that I was not registering whether they liked it or not. I hoped that he'd like it and explained to him why by asking if he would care to read Ralph Waldo Emerson's *Civil Disobedience*, about refusing to pay taxes when those taxes were going to illegitimate corrupt government. I told him about people that I had talked to who had refused to register and how moving it was to see how their lives had been affected. They had families and jobs. They had survived. I talked with a lot of lawyers, and some of them tried to convince me to register on the basis that refusing to register would result in my imprisonment. But it resulted in an acquittal three years and several months after my eighteenth birthday. I even talked to a lot of people who were planning to enter the Army. I realized that the basis of a lot of people's choices was coercion. And the chain of coercion had to be broken somewhere, and if I could break it this would make it possible for other people to break it more easily.

On April 15, 1968, when I was eighteen I sent a letter to General Hershey the head of the Selective Service: "Dear General Hershey, I am eighteen years old. I refuse to register with the SS, and I am sincerely yours, Jeff Mertens."

I spoke to 15,000 people at a rally in front of the Federal Building in San Francisco, and I began to make a tour of local high schools. I opened the discussion with a statement that I was a public non-registrant with the Selective Service and I feel that is the best response to the current selective law. People would say "What has happened to you? What does that mean to your life? I have a broken bone in my nose, does that mean I can get out?" Very different responses from people.

I visited my local board, the one that claimed my allegiance, and made a statement to the clerk that I refused registration and that I lived in her area and believed that selective service was immoral and that anything to do with it would be silly. And I felt in addition to that that she as a Selective Service clerk should quit her job and join us. I went down several other times to obtain names of people being inducted from lists on the walls. They asked: "What do you want here?" I said I was getting names of people who were drafted and I was going to contact them and ask if they know their legal rights." People at the board got to know me.

At that time, I was a college student majoring in Political Science. I had a house with other students who had gone to high school with me. We shared rent and responsibilities and I often talked with them. I got up early in the morning and went down to my draft counseling office/resistance center (across from the induction center) and made coffee for the guys who were about to get sent off to Vietnam. As the busloads of fellows came in who were going to take their physicals and get drafted, we invited them to come down and I talked with about five thousand or six thousand people individually about their rights and what was going to happen. Around that time I wasn't under prosecution but I had only refused to register.

I used to hitchhike a lot. I really enjoyed it. I met quite a few police officers along the way, in the line of their duty. In Fairfield, California, I was stopped and asked where I was going and I explained that I was going up to Davis and they offered me a ride to the other side of town because that was a bad freeway entrance I was on. In Olympia, I was stopped by the police who informed me that it was illegal to hitchhike in Washington. They asked for my draft card. I informed them that I didn't have one, that I had refused to register. They said, "we want you out of the state, so go down to the Greyhound Bus Station and we won't bother you."

My first contact with the government was an FBI call to my house about a year after my refusal to register—a good kindly FBI agent and tough guy drove up to my house after a phoned-in request to see me. We talked for half an hour. I told them that I was glad I had a chance to tell someone in the government why I didn't register. How else would they know if they didn't talk to me personally? They evidently wrote up a report but I never saw it. A year and three months after that I was indicted. I had not seen any official during that time or received any letters from a government agency.

The indictment was recommended by the Federal Grand Jury due to the Public Nature of my non-registration. I suppose it was just my turn. They sent the list of indictments to a group of lawyers on a legal panel who were friends of mine. One of the lawyers called me up and told me I'd been indicted, and I could turn myself in or wait for the Federal Marshal to come and find me. He wished me luck and continued support in the legal areas. I requested the best lawyers they had. I turned myself in while visiting my sister in San Francisco. At 9:00 a.m. I was arraigned, fingerprinted and released on my O.R. by 11:00 a.m. and then they were very slow prosecuting me due to the backlog of cases. I had twelve pre-trial motions. Some were postponements by the government. Others were my challenges to the system.

It was May of 1970 when I was indicted, and May of 1971 when I was acquitted. I had three or four different judges.

It's important to have a good lawyer for your trial. To check out every angle to use as a defense, to understand the process and not be afraid of it and to let the issues of conscience come out as often as possible in the testimony. Not to assume that the rules established by the government are the end or the last word. For example, I got expert witnesses to testify about the effects of conscription on people's lives. They were not allowed to testify, but getting them together was a means of crystalizing my own ideas and getting my own head straight on communicating to the jury.

A couple of pleasing events occurred after my trial. One of the jurors wrote me a letter explaining that a buddy of his had been killed in Vietnam, but he respected my position and celebrated openly my acquittal at his home after he left the courtroom. In addition to the joy of knowing I had reached somebody in my case, I got quite a few telegrams and post-cards and clippings of my acquittal from different parts of the country.

I changed my major from political science to music. Went to teaching college and got a job in the schools, and went to become a painter and obtained a painting contractor's license. I'm the proud father of two boys.

I think refusing to register publicly gave me a strong desire to pick a meaningful career and to stick out any hardships I faced in my twenties, and to come up with a really satisfying job and desirable wife. Establishing a kind of base for myself. If I hadn't refused to register, I can only speculate what might have happened. The years of confusion might have numbered ten instead of five. I just don't know what would have happened.

I wouldn't say that I was more aware than any of my buddies in high school, but I would say that I looked at the effects of my decision beforehand and that was an important factor in making me stick with it. The Selective Service held a lottery when they picked birthdays and picked out of a big bowl full of numbered ping pong balls and that was the order in which people would be drafted. My number came out 302, which meant I had no possibility of being drafted, but I knew that it was collective pressure and in order to break that collective pressure and really affect public policy people had to stand up and say no. And that would make it easier for the people who were saying no silently.

I saw a lot of people dealing with the system every morning down at the induction center. One who walked down every line in the office backwards, another asked justification for orders to bend over during his hemorrhoid exam, another placing his hand over his heart during the chest exam, gentlemen who upped their blood pressure by drinking coffee and watching television all night. A very unaware twenty-year-old with a wife and child was asked to report, and the night before he had an arm breaking party with his buddies and smashed his arm with a sledge hammer and cracked it into many little pieces. I talked to him for a long while.

One of my friends from high school went to Canada as a private non-registrant. He married his sweetheart and became a telephone linesman (sic), and later came back and has a life here. Another friend began at the age of eighteen thinking that he was never going to register then registered at the age of twenty, received CO status, went to India and joined the Maharishi movement and is now in pharmacy school. The people I remember most are the ones who did choose their life course on their own. Choosing your life course without pressure from the government is a very big thing for me.

There was a man who walked down the street to the front of the Selective Service headquarters dressed as a shephard. He pulled out a horn which people used to communicate with others in the mountains and blew it as loud as he could so the walls practically came tumbling down. He looked at me and told me that he had been asked to report to the SS and had fulfilled his obligation. And he continued to walk on by.

GLOSSARY

- allegedly:** supposedly. Often used when someone has been accused of committing a crime.
- bureaucracy:** tendency of large institutions to bog down in paperwork, and to consider their own administrative needs as the highest concern in their operation.
- conscientious objector:** one of the exemptions granted by the SS to a person who is conscientiously opposed to war in any form. Other exemptions include medical and hardship.
- discovery:** opportunity for the defendant to find out the government's case against him/her.
- due process:** as used in this book, defendant's right to basic fairness at different parts of trial.
- exemption:** a classification for which a registrant applies in order not to have to serve in the armed forces. A *deferment* is a classification which means that the registrant does not have to serve until a period of time has passed.
- induction:** process by which registrants enter the military. Before induction, registrants are *classified*, into those who will be given an exemption/deferment.
- jurisdiction:** legal power of a court or government agency to consider a case.
- precedent:** case which the court must follow in interpreting the law.
- presumption:** assumption made by a court that the world operates in a certain way.
- substantive:** having to do with the "meat" of a legal case, as opposed to procedure.
- suppression motion:** argument by the defense that certain evidence should be kept out of court.
- totalitarian:** form of government which does not allow for democracy.

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RESOURCES

Finding a Lawyer:

ACLU (American Civil Liberties Union)

National Office

132 West 43rd St.
New York, NY 10036
(212) 944-9800

Northern California

814 Mission St., Ste. 301
San Francisco, CA 94103
(415) 777-4545

CCCCO (Central Committee for Conscientious Objectors)

National

2208 South Street
Philadelphia, PA 19146

Western Region

1251 Second Ave.
San Francisco, CA 94122
(415) 566-0500

NLG (National Lawyers Guild)

National Office

853 Broadway, Rm. 1705
New York, NY 10003
(212) 260-1460

Military Law Panel

Box 33544
San Diego, CA 92103
(714) 233-1701

Support for Resisters:

NRC (National Resistance Committee)

P.O. Box 42488
San Francisco, CA 94101
(415) 781-5839

WRL (War Resisters League)

National

339 Lafayette St.
New York, NY 10012
(212) 228-0450

WRL/West

85 Carl Street
San Francisco, CA 94117
(415) 731-1220

all of their personal information, and even more have received registration cards all filled out but for the signature pursuant to drivers license list matchup letters.

IRREGULAR REGULATIONS (pp. 56-57)

The trial judge on David Wayte's case ruled that the case had to be dismissed because the government had instituted the registration program less than 30 days after the issuance of the Presidential Proclamation announcing the registration. On appeal, however, the 9th Circuit held that the 30 day period did not have to elapse because the proclamation did not count as a regulation. *U.S. v. Wayte*, 82-1699 (9th Cir., 7/19/83). The appeal court also ruled that the regulation providing for registration procedures were invalid.

REGISTRATION WITHOUT CLASSIFICATION (pp. 56-57)

Nonregistrants in California brought a lawsuit (*Doe v. Rostker*), saying that a registration which did not provide for classification of registrant was illegal, based on the MSSA itself. The judge in the case, however, was not persuaded by the argument that prompt classification of registrants was needed to avoid keeping registrants in limbo for an indefinite period of time, and dismissed the case.

A variation on this argument is the claim that a registration that does not provide for simultaneous declaration of conscientious objection violates the First Amendment. Mark Schmucker featured this defense in his case, arguing that requiring him to register for a military draft violated his right to freedom of religion. Although the trial judge rejected this argument, the case is on appeal.

STATE OF MIND DEFENSES (pp. 53-54)

Although all the indictments have charged the defendants with knowingly and willfully failing, evading and refusing to present themselves for and submit to registration, no jury has yet found that the government has failed to demonstrate the state of mind element. As public nonregistrants, the indicttees might have a hard time making a case that the confusion around the time of the registration program could be blamed for their failure to know about the program, but this argument could still be persuasive in the case of a private nonregistrants. And it remains open to any resister to show the jury that his actions were compelled by conscience, and therefore were not "willful."

POSSIBLE PENALTIES (p. 58)

Most of those convicted of nonregistration over the past year have received sentences of probation or community service. Mark Schmucker was fined \$4,000 in addition to having to do community service, but he has the rest of his life to pay it back. Ben Sasway was sentenced to two years in prison, but with a classification that makes him eligible for parole immediately. Russ Ford, who spent 35 days in jail after initially refusing to sign a personal recognizance bond, was sentenced to time served. Kendal Warkentine, the only resister so far required by a judge to register as part of his punishment, did so on a special form that indicates he's a conscientious objector.

Although the statutory penalty for nonregistration remains at a maximum of 5 years and/or \$10,000, without distinguishing between wartime or peacetime, recent changes in the Federal Parole Guidelines indicate that during peacetime resisters sentenced to prison would spend 0 to 6 months in custody, and 12 to 16 months during time of war.

RESOURCES (p. 66)

This brief supplement does not begin to cover the many bureaucratic developments in draft registration since November 1980. For historical coverage of the hysterical proceedings you can look at anti-draft periodicals which have come out regularly over the last three years, including CCCO's Objector and NRC's Resistance News.

Representing Draft Nonregistrants, a compilation of legal materials, is available from CCCO-Western Region. The NLG's Military Law Panel can direct you to attorneys currently representing nonregistrants in the court if you want copies of legal papers that have been filed in those cases.

Everybody's Guide to Nonregistration Update '83

Prepared by Carol Delton

August, 1983

FEATURING:

LISTS AND THREATENING LETTERS

USE OF SOCIAL SECURITY NUMBERS

FEDERAL BENEFITS CUT-OFFS

15 INDICTMENTS; NO ARRESTS

OFFERS OF LATE REGISTRATION

MALE-ONLY DRAFT CONSTITUTIONAL

SELECTIVE PROSECUTION

CONTINUING DUTY TO REGISTER

CONSTRUCTIVE REGISTRATION

IRREGULAR REGULATIONS

REGISTRATION WITHOUT CLASSIFICATION

STATE OF MIND DEFENSES

POSSIBLE PENALTIES

RESOURCES

Three years, several sets of regulations, and fifty-five advisors to El Salvador later, they are still trying to convince us that "it's just a registration." But, although inductions may not have started, the draft registration program intrudes more and more into our civilian life. At this point, the government has indicted a total of 15 very vocal resisters. Meanwhile, estimates of everybody who's refused to register run from 500,000 to over a million. And, every year, about 20% of those who originally registered with Selective Service refuse to update their information. What do all the developments mean to anybody who is faced with the decision of whether or not to register?

Selective Service has run several threatening letter campaigns to try to intimidate people into registering. After all the trouble SS went through to get use of resisters' social security numbers, the Internal Revenue Service has refused to hand over addresses from their files. So, if you get a threatening letter with an IRS return address, SS probably doesn't know where you are. SS has also bought commercially available lists, just like advertisers do, and sent out "reminder" postcards. There is apparently no followup program on these commercial list-generated reminders.

More intimidating are letters generated by comparing lists of registrants with drivers license lists from the various states. SS has sent out about 500,000 of these letters so far, and has gone so far as to enclose completed registration forms with some of them. But these letters have not been sent by certified mail, and many will not arrive because people have moved or because the information wasn't correct in the first place. The letters almost always state that the resister has 15 days to register but, in practice, SS seems to be accepting late registrations any time it can get them. If you respond to one of these letters by writing in protest, you will be confirming your whereabouts and your nonregistration. If you don't respond, it will take the government a long time to find you. In July, 1983, SS sent 70,000 names to the Department of Justice as a result of the driver's license match program. Assuming the Department of Justice continues with its present policy, anyone targeted for prosecution will receive at least one further letter from the local U.S. attorney before indictment, but the government will followup on only 2% of the driver's license letters sent out.

The first rounds of SS letters and U.S. attorney letters were sent to those resisters who wrote in, declaring their resistance. These letters were sent by certified mail. Resisters who write to SS in the future are also likely to be contacted in this way. FBI visits are also possible.

CONGRESS OKs USE OF SOCIAL SECURITY NUMBERS FOR DRAFT REGISTRATION (p. 30)

SS can now require registrants to give their social security numbers and can also use social security number matchups to detect nonregistrants. As part of the Defense Authorization Act passed on December 1, 1981, Congress amended the Military Selective Service Act (MSSA) to make this exception to the general rule that social security numbers can only be used for social security and tax purposes. The amendment resulted in the dismissal of the Wolman case which had challenged SS use of social security numbers under the Privacy Act of 1974.

Although SS hasn't used Social Security number matchups on as large a scale as they'd once intended to, their having the capacity to require the numbers makes data-matching easier for them. Nonregistrants who want to avoid detection may want to use social security numbers as little as possible, so as not to make cross-checking any easier for the government.

FEDERAL BENEFITS CUT-OFFS: THE SOLOMON SQUEEZE

Frustrated by its inability to locate, much less prosecute, vast numbers of registration resisters, the government has taken to trying to punish resisters without a trial. Two laws passed by Congress, both introduced by Rep. Gerald Solomon, would take away Federal Student Aid and Job Training benefits from registration-age men who couldn't certify that they'd registered (Solomon I, taking away student aid, Section 12 of the MSSA. Solomon II, restricting Job Training benefits, is incorporated in Section 504 of the Job Training Partnership Act.) Before receiving the aid, everybody would have to sign a statement saying either that they'd registered, or giving the reason they hadn't. No trial first, and very little opportunity for an administrative hearing. When non-registrant financial aid recipients sued the government, a Federal judge in Minnesota ruled that Solomon I violated an individual's 5th Amendment right not to have to testify against himself, and that it was also unconstitutional as a Bill of Attainder, an attempt by the legislature to punish a particular group of people without a trial. As of summer 1983, the U.S. Supreme Court stayed the Minnesota injunction, which means that colleges and Job Training programs can go ahead and enforce the Solomon program. The Court will decide the case sometime in the next year.

As of fall 1983, some colleges have decided that they will try to provide everyone with financial aid by giving as much Federal aid as possible to people who do sign a compliance statement, and giving as much other aid as is available to people who can't. Job training programs could, similarly, provide whatever non-Federally funded programs they have to resisters. However, many nonregistrants will have to face the question of foregoing the benefits, at least until the Supreme Court decides the case, or finding some way of filling out the required forms that will pass without undue notice. Note that false statements on the forms associated with these laws can be separate grounds for Federal prosecution.

FIFTEEN INDICTMENTS SO FAR; NO ARRESTS (pp. 49-52)

All 15 nonregistrants indicted to date are men who wrote to the government, declaring their nonregistration and their political opposition to the draft registration program. At this time, none of them is in jail, and the government still has not located

Paul Jacobs, the only one to go underground. All the other indicted resisters were summoned to court and asked to sign personal recognizance papers (not depositing any money, but promising to pay \$5,000 in case of a future failure to appear). Certainly the public nature of their resistance, and the evidence of close community ties and support have helped these resisters secure their freedom pending trial without actually having to put up bail. Ben Sasway was the only resister so far to be jailed pending sentencing (for 6 weeks) because, the judge said, he knew about going to Canada, and therefore he might flee. The same judge, however, granted bail pending appeal.

OFFERS OF LATE REGISTRATION (pp. 46-47)

The government has emphasized over and over again that it will accept late registrations. Even their slick advertisements feature characters whose forms show that they are registering well beyond their 18th birthdays. Several nonregistrants who were about to be indicted registered at the last minute, with no legal consequences to date. One of the 15 inductees registered before trial, and was placed in a "diversion" program which means that he will end up with no criminal record--and if the government tries to prosecute him for nonregistration again, he can argue that they're putting him in double jeopardy.

During Vietnam, late registration came back to haunt some resisters who refused induction, in the form of a second offense charged against them. Everybody should consider all the possible consequences of late registration at any particular point. For example, someone who registers on the eve of indictment in response to an offer by a U.S. attorney is in a very different position from someone who registers late in response to a list-generated letter.

MALE-ONLY DRAFT RULED CONSTITUTIONAL BY U.S. SUPREME COURT (p. 56)

In its June 1981 decision of the Rostker v. Goldberg case, the U.S. Supreme Court held that registering only men does not violate the equal protection clause of the Constitution. 101 S. Ct. 2646. The Court decided that it was legitimate to treat men and women differently in this case because Congress had established the policy of keeping women out of combat. And, the Court noted, draft registration was expressly designed to raise combat troops. The Court bowed to the decision of Congress even more than usual in this case, in deference to the war powers of Congress. Rostker v. Goldberg means that resisters who raise a sex discrimination defense in court can expect it to be dismissed quite abruptly. The case also challenges everybody to develop good arguments that will get beyond a superficial analysis of "national security."

SELECTIVE PROSECUTION (p. 56)

All 15 nonregistrants indicted were vocal about their resistance, and some raised Selective Prosecution as a defense, saying that the Court should dismiss their cases because the government chose to prosecute them on the basis of their exercise of free speech. David Wayte was the first resister to have his case dismissed by the trial judge on this basis. On appeal, the 9th Circuit ruled that the trial record showed that many other violators had not been prosecuted, but not that the government had an ulterior motive in prosecuting Wayte, in other words, that it singled him out because of his speaking out. At the appeal hearing in Ben Sasway's case, the judges closely questioned a government program which was bound to result in the prosecution of vocal resisters only. Wayte has applied for a joint hearing of both cases in front of all the judges in the 9th Circuit, and if their decision remains against him, the trial court can still decide that the facts of his case meet the Selective Prosecution test. This defense depends heavily on the facts of each case, and will probably be raised many times in the future.

THE CONTINUING BATTLE OVER THE CONTINUING DUTY TO REGISTER (pp. 46-47)

In all the indictments issued so far, the government has assumed that everyone who is required to register has a continuing duty to do so, through age 26, even though no regulations currently provide for a continuing duty. The trial judge dismissed Rusty Martin's case, saying that no crime had been alleged, since the government didn't accuse Martin of failing to register at the time that he had a legal duty to register. This case is currently on appeal in the 8th Circuit, along with Gary Ecklund's case where a trial judge made just the opposite decision on the same issue.

CONSTRUCTIVE REGISTRATION?

During the Vietnam War, some resister defendants argued that they should be acquitted because they'd been completely open about who and where they were, and had actually given the government all the information it needed to register them. This defense has so far not been extensively explored in the current round of prosecutions but, in November 1981, an assistant U.S. attorney wrote to Rusty Martin, informing Martin that he was considered "constructively registered" because he'd sent in all the information required for registration with a Freedom of Information Act request for his FBI file. This is the only case where the government has tried to declare someone constructively registered, even though many other resisters have written in to the government including