The Reporter for Conscience' Sake

The Center on Conscience & War

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

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Seventy-Five Years of NSBRO, NISBCO, and CCW
A Reminiscence by L. William (Bill) Yolton, Executive Director Emeritus

In our history, the struggle to secure and perfect the rights of those whose beliefs will not allow them to participate in war and violence has been ongoing. Vigilant engagement with members of Congress, the courts, and the public has led to a slow and steady widening of rights, including for those whose consciences matured while already in the Armed Forces.

George Washington was just and merciful in allowing the peace church conscripts in colonial militias and so-called "voluntary associations" to go home, but the national chauvinism that began in the Spanish American War was whipped up again for the war against the "Huns," and so gave rise to the brutal mistreatment of conscientious objectors (COs) in World War I. It was out of those terrors that the idea for the National Service Board for Religious Objectors (NSBRO) was born.

With the draft law of 1917, the government lied to peace church representatives, promising favorable treatment for COs. The army, however, had other ideas, as it prepared strict discipline for the conscripted pacifists who refused to support the war. Those who did not cooperate were court-martialed in military courts and 500 were imprisoned. The two Hoffer brothers died from exposure while imprisoned at Alcatraz, and when their bodies were shipped home, their Hutterite families opened their coffins only to find that in death, their bodies had been clad in the very uniforms they refused to wear in life. When Evan Thomas refused forced labor during his imprisonment, he was made to stand tied by his thumbs in a small cage, dubbed a "standing coffin," developed just for conscientious objectors, forcing them to stand upright during the hours others went out for forced labor.

Beginning In 1937, realizing that the US would once again be involved in the looming war in Europe, leaders of the traditional peace churches, who had been meeting periodically, began to act. These leaders pressed for accommodation in the draft law of 1940 that would allow conscientious objectors to perform non-military alternative service, and over the weekend of October 4-6, 1940, NSBRO was organized to implement it. Paul Comly French, a Quaker, would be its first secretary.

The bulk of the cost for the alternative service program was born by Mennonites, Church of the Brethren, and Friends, with Methodists joining in the planning. Twelve thousand men served in 151 Civilian Public Service (CPS) camps and projects. COs were not paid, and their families and faith communities had to cover their room and board.

The first CO camp opened in May 1941 near Baltimore, Maryland, and it can be visited today at Patapsco State Park. These early sites were former Civilian Conservation Corps (CCC) camps that had been developed to provide employment during the Great Depression. *CPSers* worked on forestry and soil conservation projects, and some National Park construction sites. Although often derided as cowards, the pacifist young men were eager to give meaningful service "in the national interest." Unsatisfied with the menial tasks they had first been assigned, COs themselves advocated to be given truly meaningful work and volunteered as smoke jumpers, parachuting into forest fires, or as guinea pigs for medical experimentation, studying the effects of intense cold, starvation and, later, even radioactive materials on the human body. Twelve hundred COs volunteered to harvest crops and work on dairy farms to meet the shortage of farm labor. The money that they earned from agricultural work was promised for altruistic purposes, but it was escrowed in the Federal treasury. The "frozen fund" was never recovered.

Eighteen hundred COs volunteered in the country's psychiatric hospitals, "asylums." Finding these hospitals to be places of violence and neglect, the COs were appalled. They documented and exposed the horrific conditions to the public and worked to make life more humane for the patients. Many of the COs' wives found employment there as well, and the beginnings of mental health reform were initiated. Charles Lord took pictures of conditions, which became the basis of a LIFE Magazine exposé in 1947.

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Founded in 1940, the Center on Conscience & War works to extend and defend the rights of conscientious objectors to war. In pursuit of this mission, the Center provides the following services free of charge:

- Technical and community support for military conscientious objectors;
- Monitoring of Congress and Selective Service to extend and defend the rights of conscientious objectors;
- Support for COs who refuse to register for the draft;
- Counseling military personnel with accuracy and honesty through the GI Rights Hotline;
- Truth in military recruitment information;
- Workshops, training, and speakers on any of the above topics.

A Reminiscence by Bill Yolton, *continued from p.1*

With the Korean War came changes to the Selective Service (draft) law and changes to NSBRO's role in administering the alternative service program. NSBRO's "Consultative Council" no longer wished to be so closely tied with the government, and the government returned the sentiment. NSBRO would stay focused on its primary mission: "To uphold the principle of religious freedom, the rights and privileges of conscientious objectors…."

During the war in Vietnam, NSBRO continued to support conscientious objectors and the movements opposing the war and the draft. No longer operating the service program, it focused on supporting the work of the member religious groups in its Consultative Council. Under the leadership of Warren Hoover, NSBRO changed its name to the National Interreligious Service Board for Conscientious Objectors (NISBCO), to recognize the broadening definition of CO resulting from the 1965 Supreme Court decision in *US v. Seeger* (see p. 3). Later, in 1970, under *Welsh v. US,* the definition of CO was further expanded to include those "whose consciences, spurred by deeply held, **moral, ethical, *or* religious beliefs**, would give them no rest or peace if they allowed themselves to become any part of an instrument of war" (emphasis added). When the war in Vietnam widened, NISBCO was part of a coalition of groups opposing the draft and supporting conscientious objectors, both those facing the draft and those COs already in the military forces. (Beginning in 1962, the Pentagon allowed members of the military to seek discharge or reclassification as COs.) The National Council to Repeal the Draft was housed at NISBCO's office, and the Interfaith Committee on the Draft and Military Information (IFCDMI) met monthly to coordinate work.

Other agencies, most notably the **Central Committee for Conscientious Objectors (CCCO)** – founded in 1948, rose to meet the increasing need as thousands expressed a conscientious objection to war, even though they had no ties to pacifist religious groups. By late 1960s, an estimated 5000 war resisters and prisoners of conscience were serving sentences for refusing to participate in any way with the war machine, even alternative service. To organize solidarity and support for the war resisters in prison, NISBCO and CCCO reworked a NSBRO program to support COs in prison: the Prison Visitation Service. Eventually it was transformed to become **Prisoner Visitation and Support**, a program to visit any prisoner held in the Federal Prison System. Their mission continues today.

After the war in Vietnam, NISBCO joined the movement for amnesty for resisters who went AWOL and draft resisters. President Ford's 'earned re-entry program' provided conditional relief for some resisters; Senator Ted Kennedy achieved what amounted to amnesty for most draft resisters, and President Carter later pardoned Vietnam-era draft resisters. Still, NISBCO and its allies, particularly CCCO, achieved better results for resisters through traditional draft and military counseling and grassroots organizing.

In 1980, President Carter resumed draft registration, and NISBCO was kept busy providing information and support for conscientious objectors facing, *and resisting*, draft registration. A few years later, we couldn't stop Representative Gerald **Solomon** of New York from introducing – and successfully passing – legislation that prevented non-registrants from obtaining government loans and grants for higher education. In response, NISBCO, in cooperation with other agencies, developed a Fund for Education and Training to provide grants to assist these young COs who refused to register for the draft.

With the retirement of Warren Hoover in 1984, I became the first Executive Director of NISBCO who was not from a peace church. I promised ten years of service and ended up giving a dozen. As the former secretary of the Presbyterian Emergency Ministry on Conscience and War, I brought experience with the needs of COs and the broadening constituencies that were emerging. The ministry helped with those in exile and advocated for returning veterans on issues including **PTSD and the effects of Agent Orange**, which the government would not acknowledge.

During the Gulf War in 1991, NISBCO developed the *Draft Counselor's Manual*, a comprehensive analysis of the draft, based on the statute, regulations, and court decisions. Edited by Charles Maresca, the manual became the definitive resource for individuals and counselors. After the Pentagon suspended all discharges, including CO, during the Gulf War, we worked with Representative **Ron Dellums** to develop the **Military CO Act**, which would put specific protection for conscientious objection in statute, as opposed to relying on Department of Defense policy based on the draft law of 1940. That bill went nowhere. Still, we were able to defeat new federal sentencing regulations proposed at the time that would have increased penalties for draft law violators. NISBCO also worked on legislation to repeal the draft law, which nearly passed the House in the nineties. *continued on p.3*

Fifty Years Later: Thoughts on the Case of the *United States of America vs. Daniel A. Seeger*

By Daniel A. Seeger

On March 8, 1965, the United States Supreme Court greatly expanded the number of American citizens qualified for classification as conscientious objectors to military service. It did this by striking down the requirement that a conscientious objector must affirm belief in a Supreme Being and must derive his conscientious claim from that belief. Now that, amazingly, fifty years have elapsed since the rendering of the verdict in the case of the *United States of America vs. Daniel A. Seeger* it is useful to reflect on its meaning. I am, perhaps, the least qualified to do this on account of being too personally enmeshed in the matter. However, I will try to offer some perspectives from the point of view of the defendant.

The case was argued on a *pro bono* basis by attorney Kenneth Greenawalt, and the American Friends Service Committee's Rights of Conscience Fund, along with individual donors, picked up other costs, which were considerable. Staff and members of the Central Committee for Conscientious Objectors (CCCO) offered advice and support, and many mainstream religious denominations and organizations filed *amicus* briefs in my defense.

When the effort to challenge the constitutionality of Section 6(j) of the Universal Military Training and Service Act of 1948 was launched in the late 1950's, no one had any idea that a war in Vietnam was in our future. By the time the case was decided in 1965, the first stages of the War in Vietnam were underway, and the catastrophe was to escalate rapidly into a major national crisis. Conscription meant that many thousands of individuals and families were impacted by the war policy. And so the *Seeger* case had far more impact than one supposed it could have had when the effort was first launched, as so many young people were forced by circumstances to think deeply about the implications of the conscription system in the context of our country's misguided military policy, and, as such, many were inspired to seek exemption from military service for reasons of conscience.

To this day I still meet people who, when they learn my name, exclaim that my case was the reason they did not have to go to Vietnam, or to jail, or to Canada.

Personally, when I first filed my claim for conscientious objection back in the late 1950's, I felt somewhat diffident about my own action. While my sense was overpowering that entering the military and getting trained to kill people would be deeply and profoundly wrong, I was nevertheless also somewhat awed by what seemed to be a universal consensus that war is often an inevitable necessity. After fifty years of observation, I am more than ever convinced that all military endeavors are utterly immoral and monumentally foolish, and I would probably be much more acerbic expressing a conscientious claim today, and perhaps, therefore, less successful in gaining the sympathy of people who disagree with me, including judges and other government officials.

Although, as a result of the case, many conscientious objectors with unorthodox religious beliefs were enabled to do alternative service rather than join the military, the case did, nevertheless, have its limitations. I was (and am) an absolute pacifist, that is, I am opposed to all wars in any form. The decision in my case allowed only others also opposed to all wars in any form to qualify for alternative service, but this benefit did not extend to people who would fight in some wars but not others. Although I disagree with people who think that some wars can be justified, I also fail to see why, because one regards some wars as necessary, one loses one's right to decline to serve in a war one sees as unjustified and/or foolish. There are enough instances in United States history, from the invasion of Mexico to the War in Iraq, which do not pass any reasonable "just war" test, that there seems no logic to the idea that in a free country one must fight in every war just because one might regard a particular war as unavoidable.

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CCW at 75*, continued from p.2*

NISBCO celebrated the 50th anniversary of NSBRO and its successors in a **Celebration of Conscience** at Bryn Mawr College in August 1990. Through the 1990s, NISBCO continued to support conscientious objectors in the military with the arduous application process. Together with several other organizations, we co-founded the **GI Rights Hotline** in 1995, and our Latin America Initiative supported and encouraged emerging conscientious objector movements to our south. We supported the successful effort at the United Nations to declare conscientious objection as a fundamental human right. After my retirement, NISBCO became further engaged in the international movement to stop child soldiers; the US was the primary obstacle to establishing the International Protocol for the prohibition of the use of child soldiers.

In 1999, **J.E. McNeil**, an attorney who had represented COs and served on NISBCO's legal committee, became the director; **Bill Galvin** (who had worked at CCCO and the Emergency Ministry) came on staff in 2000, and the name was changed to the Center on Conscience & War (CCW). The decade that began on a hopeful note, with the World Council of Churches declaring a Decade to Overcome Violence, was soon mired in the never-ending **war on terrorism**. The demand for the Center's services increased with large-scale deployments, 'stop-loss' orders, and fears about the possible resumption of the draft. CCW rose to the occasion, updating our materials about COs and the draft, and expanding our resources for COs in the military. CCW continues to be an anchor for the GI Rights Hotline, and has trained many of the counselors in the Hotline network. Our resources for military conscientious objectors are still the principal documents used by counselors on the Hotline. And when, in 2009, after 61 years of service, the last remaining office of CCCO closed its doors, CCW became **the only national organization still working today whose primary mission is to support conscientious objectors**. In 2011, Maria Santelli (formerly of the Albuquerque Center for Peace and Justice in New Mexico) became the Director, and brought to the Center new energy and commitment, and a passion for the work to take us into the future.

The names and the faces may have changed over the years; the heart of the work continues, as it always has been, for the last 75 years: to extend and defend the rights of conscientious objectors to war.

US v. Seeger at Fifty, continued from p. 3

I believe I can honestly say that the movement of the heart which first motivated me to file my conscientious claim was compassion – compassion for my fellow human beings who were the victims of war, both civilians and soldiers, who lost their lives, who were maimed, who became dislocated refugees, who lost loved ones, and who suffered economic hardship. My strong sense that war cannot achieve any decent political or social goal, and that the cost is never commensurate with the results, came later. Today I would express the element of compassion more broadly. True peace requires of us compassion not only for our fellow humans, but for the entire biotic community which inhabits planet earth. True peace will only come when we learn to live graciously with the animals and plants which are part of the earth's normally balanced ecological system. In destroying the earth's many species and their habitats, we certainly will end up destroying the human estate itself. But a true decency of spirit will sense a reverence and a love for the community of nature, and will not seek to preserve it merely as a matter of self-interest. We see this enlargement of spirit beginning to take hold among some of our fellow citizens when they seek to restore monarch butterflies and communities of wolves. In the meantime, the degradation of the earth, and the loss of such resources as pure water, are the seeds of future wars. Nor will any hidden hand of the marketplace let economic entities know when it is time to stop over-exploiting the earth or its working people.

In many respects the unfolding of the case of the *United States of America v. Daniel A. Seeger* showed our country governance system at its best. Lots of bad things were happening in the country at the same time. After all, lynchings occurred as late as 1968. The Stonewall Riots, which only began the gay liberation movement, occurred in 1969, and we still do not have an equal rights amendment addressing women's issues. Nevertheless, in the *Seeger* case, a thoughtful review of a Congressional action was implemented by the courts about the sensitive matter of who should and should not be conscripted for war, and in an admirable example of the separation of powers, the Supreme Court upheld the rights of a small minority in the face of an act of Congress. In spite of all the problems the country faced regarding issues of discrimination and injustice internally, and in spite of the misguided foreign policy which allied us with despots around the globe so long as they announced themselves to be against Communism, it seemed possible to hope that things could be set right through persevering in social action and in the conscientious practice of democratic principles. But things have progressed very far downhill since. International trade deals are exacerbating the mal-distribution of wealth. Campaign costs and financing methods have made of elected government officials the paid lackeys of the super-rich and of the corporations. Voter ID laws and the gerrymandering of districts effectively disenfranchise millions. The media, too, have lost all independence. As a consequence, the American electoral system, the foundation of any democracy, seems hopelessly and irreversibly corrupt. Whether a similarly delicate issue as the *Seeger* case represented could find a fair resolution in today's circumstances is not at all clear to me.

What about God? After all, the case was as much about religion as it was about pacifism. The outcome hung on my statement of agnosticism given on Form 150, the Special Form for Conscientious Objectors.

The first question on the Form was: "Do you believe in a Supreme Being?" followed by a checkbox for a "yes" answer and another for a "no" answer. I drew a third checkbox and referred to "attached pages," where I offered an essay on the knowability and unknowability of God.

Fifty years later, I remain convinced that we are better off acknowledging that we face great and awesome mysteries when it comes to questions of origins, of life, and of death, than we are by claiming to know too much. We can develop a reverence for what is sacred without making extravagant dogmatic claims – claims which always flaunt and fail. While I have become an avid reader of devotional literature from Christian and other traditions, and while in the course of my life and work I have met many God-fearing people whose purity of spirit has been truly uplifting to encounter, I am also increasingly wary of the dangers of religious fanaticism, an age-old problem in every spiritual culture – a problem which manifests itself with particular virulence today. I am equally wary of dogmatic atheists. It is only in recent times that whole societies have been organized on atheistic principles, as with the Soviet Union and China. There is little to inspire confidence here.

The idea that reason and empirical observation will eventually solve all the mysteries of existence, a claim which seems to be being made by some of the "new atheists" in Europe and the United States, strikes me as extraordinarily naive. Every deductive reasoning process begins from some unpremised first premise – some sort of unexplainable principle. And regarding ethics, it is impossible to argue from what *is* to what *ought to be* following scientific and rational procedures.

The scientific view of reality we are offered is certainly less satisfying than is that given in the Book of Genesis. We are to believe that a big bang magically emerged from some sort of nothingness, that space is curved and time is elastic, and that we change something merely by observing it. Most of the matter in the universe is invisible matter, or dark matter, because if it wasn't there exerting a gravitational force, the universe would not behave as we observe it to do. Space itself is expanding even though there is nothing for it to expand into. String theory now proposes that there are many parallel universes. Thus, scientific hypotheses (they can hardly be called discoveries) tend to raise many more questions than they solve. One longs for arguments about angels dancing on the head of a pin. Is it not clear that we are dealing with limitations in the human perceptual apparatus? We are like goldfish trying to figure out the economy of the household based on observations made from inside their bowl, or lobsters speculating about fire.

We do know that we are the stuff of stars, that this universe through some mysterious Creative Process generated us, and that we have a kinship with all that exists. Francis of Assisi, as legend has it, recognized this when he sang of Brother Sun and Sister Moon. Jesus recognized this when, in his final sermon in the Gospel of John, said he came "so that all may be One." Religious people who acknowledge that all speech about God is misleading, and secularists who nevertheless have mystical experiences in which they feel the exaltation of a loving sense of unity with all that exists, are not that far apart.

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Dan Seeger Reflects on *US v. Seeger*, Fifty Years Later, *continued from p. 4*

So, although we are surrounded by mystery, happily, we live in an island of light. The most worthwhile endeavor the human spirit can address today is the search for a way in which decency and humanity can be identified and defended in an uncommonly degraded age. We know we live in a time of profound transition – a time when the world's habitual way of doing things has outlived its usefulness, has exhausted itself, and is foundering on its own internal contradictions. **The job that is given to us – we did not choose it – is to lay the foundations for a new civilization. This is a task not to be undertaken with sadness, resignation, anxiety or desperation, for that would taint the result, but should be addressed with joy, confidence and hope.** Truth is never without its witnesses; there are always people who are discriminating and independent, yet communicative and responsive, and willing to join with others in the decent management of our common human affairs. **We must persevere in our work, planting seeds whose fruits we will not live to see.** The arc of history is unmistakable – whatever good things folly threatens to dissolve will, over the very long run, be restored through the practices of reconciliation and love.

WHAT DOES THE SUPREME COURT'S *HOBBY LOBBY* DECISION MEAN FOR CONSCIENTIOUS OBJECTORS TO WAR?

By Peter Goldberger and Deborah Karpatkin

In late June of 2014, the Supreme Court announced its decision in a pair of cases that were among the most anticipated, difficult and controversial of its annual Term: *Burwell, Secretary of Health and Human Services v. Hobby Lobby Stores, Inc.* and *Conestoga Wood Specialties Corp. v. Burwell.* People concerned about legal protections for religious liberty were looking to those cases for a decision concerning two important issues: 1) whether closely-held, for-profit corporations would be held to enjoy "free exercise" rights under a 1993 federal law known as the Religious Freedom Restoration Act ("RFRA") based on their owners' sincere religious beliefs; and 2) also of concern to supporters of reproductive and other civil rights (but for very different reasons), was whether RFRA would be interpreted to allow those private, for-profit companies an exemption from regulations implementing the part of the Patient Protection and Affordable Care Act (ACA) that ensures contraceptive services for their employees and the employees' dependents.

The Conscientious Objector community was watching these cases as well. **Might the Supreme Court's interpretation of RFRA lay the groundwork for reconsidering the legal treatment of the military COs?** Do principles of **free exercise of religion**, at least as guaranteed by the RFRA statute if not by the Constitution itself, **require release from military service obligations on any basis beyond that allowed in the Pentagon's own regulations?**

The Pentecostal owners of Hobby Lobby and the Mennonite owners of Conestoga Wood Specialties won their cases. The Supreme Court held by a 5-4 vote that if the government wants to ensure contraceptive coverage to the companies' employees, RFRA requires that it do so without the objecting employers' participation.

So what could this decision mean for military conscientious objectors?

First, some background on the Religious Freedom Restoration Act, or, as it's commonly known, RFRA. Supported by a broad coalition of groups and adopted by a near-unanimous Congress, RFRA was enacted to override Supreme Court decisions narrowly interpreting the Free Exercise Clause of the First Amendment; those cases held that the Constitution only protects against laws that specifically target religious practices or discriminate against a particular sect. RFRA, on the other hand, requires exceptions for religious objectors to laws that are "neutral toward religion" but nevertheless burden the religious exercise of some of those subject to those laws. While Congress cannot tell the Supreme Court how to interpret the Constitution, it is free to limit the authority of federal agencies in ways that ensure greater individual liberty than the Supreme Court says the Constitution otherwise requires. Exercising this Congressional power, RFRA mandates that if a person's religious freedom is burdened by a federal law that is facially neutral towards religion, the government must prove that the burden is both "in furtherance of a compelling governmental interest" and also "the least restrictive means of furthering that compelling governmental interest." If the government fails to meet this burden, the individual is entitled to an exemption from what the federal law would otherwise require.

The Supreme Court did not refer to military conscientious objectors in its *Hobby Lobby* decision. Nevertheless, the Court's latest interpretation and application of RFRA invites reflection on how its conclusions may affect the interpretation of the regulatory scheme facing servicemen and women who seek CO status. (These questions are not new. CCW argued in a 2007 friend-of-the-court brief in support of Army CO Agustin Aguayo that RFRA requires greater protection for military conscientious objectors.)

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The Supreme Court, *Hobby Lobby*, and COs Who Oppose Violence and War, *continued from p. 5*

Are military CO regulations governed by the *Hobby Lobby* ruling?

Let us start with the question whether *Hobby Lobby* and RFRA will even be held to apply to military CO regulations. Like the ACA regulations at issue in *Hobby Lobby*, the process guiding military COs is set forth in federal government regulations. RFRA expressly applies to all federal laws, departments, and agencies. Even so, RFRA's application to the regulations concerning military COs cannot be assumed. Courts have historically given the military enormous leeway in how they run their personnel operations. Typically, military rules or regulations affecting military personnel matters – and discharge categories and processes are viewed by courts as military personnel matters – are typically upheld after at best a very deferential review. Notably, the *Hobby Lobby* majority went out of its way to endorse a pre-RFRA precedent holding that Amish employers of Amish workers are not entitled to an exemption from Social Security taxes that they oppose on religious grounds, because religious objections to paying taxes cannot be allowed. The taxing power gets extreme judicial deference similar to that generally afforded the military.

Some insight into how the Supreme Court sees this issue came in its January 2015 decision in the *Holt v. Hobbs* case, when the Court considered another federal religious freedom law, which applies to state prisons in terms nearly identical to RFRA's. *Holt* challenged, on religious freedom grounds, a regulation barring a Muslim inmate from growing a half-inch beard. Prison administrators' decisions generally receive the same kind of deference in court as do military personnel actions, as both are seen as unique institutions with particular expertise in the security issues that each of them deals with. But in *Holt,* applying its *Hobby Lobby* reasoning, the Court ruled unanimously for the inmate. It did not defer to the security issues raised by the prison administrators. Indeed, prison officials could hardly articulate a good reason for banning a half-inch beard, when quarter-inch beards were permitted. The Court made clear that its ruling was specific to the case's particular facts and left room for a different ruling in future cases. Even if the law does not permit "unquestioning deference" to prison administrators, the majority asserted, "courts must not blind themselves to the fact that the analysis is conducted in the prison setting." After *Holt* and *Hobby Lobby*, then, it still remains to be seen how much deference courts will allow the military in applying RFRA to military CO regulations.

While prisons – and the military – are unique institutions, the Supreme Court's reasoning in *Hobby Lobby* did not suggest that particular governmental institutions might be held to be wholly exempt from RFRA. Rather, to reach its conclusion that those closely-held private corporations were entitled to free exercise protection under RFRA, the court noted the broad inclusionary intent expressed by Congress. The religious freedom of the individuals involved in leading those corporations would not be protected unless the corporations themselves could be exempted from the ACA obligation to which the owners objected, the Court explained. By the same reasoning, it would be wrong to exclude the military categorically from the reach of RFRA, given the broad inclusionary intent expressed by Congress. Military personnel are no different from any other "persons" entitled to RFRA's protection, and each of the military branches, for this purpose, is just another federal government agency.

The regulations facing military COs are particularly burdensome

Many aspects of the military CO regulations impose enormous burdens on the religious beliefs of the person seeking CO status. The application form is lengthy and complex and demands written answers to probing, personal questions requiring that the applicant's most private and deeply held spiritual beliefs be explicated and explained. The claim must then be investigated, including interviews by both a chaplain (often of a totally different faith tradition) and a psychologist or psychiatrist. The entire process is premised on skepticism about the applicant's sincerity and motives, leading to a "hearing" before an "investigating officer" of the very institution from which the CO is seeking separation. The applicant bears a heavy burden of persuasion in an environment that is far from neutral. There are then multiple levels of review, and in the end the application can be denied if there is any "basis in fact" at all to turn it down. This process necessarily takes many months, sometimes more than a year. *Hobby Lobby* and the *Wheaton College* case, decided on the same basis a week later, suggest that RFRA may also protect against burdensome *processes* for allowing religious exemptions from government programs. And of particular significance to military COs, RFRA explicitly places the burden on the government to prove its *inability* to accommodate any sincere objector, not the other way around.

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Art courtesy of Albuquerque Center for Peace and Justice

Hobby Lobby and Military COs, *continued from p. 6*

The **military regulations also define in advance only two very narrow categories of objection that will be honored** – an absolute scruple against participating in "war in any form" and a refusal to use or train with weapons ("noncombatant status"). Those with equally sincere religious objections to participation in particular wars or kinds of wars, or to use or train with particular kinds of weapons, are not protected at all. Here again is an inconsistency with RFRA, which extends its protections equally to all religious objections, without pre-defined limitations. **RFRA's application to military COs would result in a fairer process, and reach many more objectors than are now protected.**

***Hobby Lobby* and COs with non-mainstream beliefs**

Hobby Lobby also offers support for the argument many advocates often advance on behalf of military COs: that what matters is the CO applicant's own personal religious convictions, even if those beliefs are illogical, religiously disputed, or not mainstream. The Supreme Court majority opinion focuses on the ability of the objecting parties to conduct business in accordance with "*their religious beliefs"* (emphasis in original). The court explicitly declines to analyze or question the content or plausibility of those beliefs, and declined to consider whether the beliefs were "mistaken" or "insubstantial," even though the objecting business-owners themselves made scientific claims (which experts disputed) to explain their opposition to certain forms of contraception as "abortifacients." **Military CO applicants' claims, by contrast, are frequently disputed or rejected on grounds of logical inconsistency or lack of "depth," a standard which the Supreme Court in *Hobby Lobby* suggests is not permitted under RFRA.**

***Hobby Lobby* and the refusal of non-combatant assignments**

In addition, *Hobby Lobby* offers analysis to support military COs who refuse non-combatant assignments, because those assignments make it possible for other service members to wage war. *Hobby Lobby* acknowledges "a difficult and important question of religion and moral philosophy, namely, the circumstances under which it is wrong for a person to perform an act that is innocent in itself but that has the effect of enabling or facilitating the commission of an immoral act by another." While the Supreme Court majority here was referring to the rule under which the objecting employer need only advise the government of the name of its insurance provider, as a result of which the insurer would provide contraceptive coverage to the objectors' employees at no additional cost to the employer, this argument may be made with equal force on behalf of military COs.

***Hobby Lobby* and "non-religious" COs**

RFRA, by its terms, protects only "*religious* exercise." Perhaps the most severe limitation in present military CO regulations applies to those applicants whose conscientious objection to participation in war is **not grounded in traditional religious belief and practice, but instead derives from equivalent moral and/or ethical beliefs.** According to applicable military regulations, those CO applicants can be approved, but they first must demonstrate that their moral/ethical opposition to participation in war, to quote the Army regulation, was "gained through training, study, contemplation, or other activity comparable in rigor and dedication to the processes by which traditional religious convictions are formulated." AR 600-43 ¶1-5a(5)(b). No similar "study, contemplation, rigor and dedication" test is imposed on CO applicants who base their beliefs on a more traditional religious foundation. Advocates for military COs have long struggled against this double standard and the resulting high hurdles placed before non-religious objectors.

The military's position on non-religious COs is derived from Supreme Court decisions addressing conscientious objector claims under the draft. The Selective Service law allowed CO status for those opposed to war by reason of what it referred to as "religious training and belief." It may seem strange that a law using the term "religious" would be interpreted to include beliefs that the holders of those beliefs label differently. Yet the Supreme Court in *Welsh v. United States* (1970), interpreted the statutory language to include not only CO applicants whose beliefs were based on formal religious training and belief in a Supreme Being, but also whose beliefs were based on ethical and moral principles held with the strength of more traditional religious beliefs. If similar reasoning were applied, ***Hobby Lobby's* interpretation of RFRA also could also mean equal treatment for these "non-religious" military COs.**

Conclusion

The Supreme Court's *Hobby Lobby* opinion, reinforced by the Court's subsequent decision in *Holt*, offers a sympathetic interpretation of RFRA's guarantee of individualized exemption from obligations imposed by federal laws for all those with religious scruples. Based on this broad reading, advocates now have new arguments available to address the many burdens and challenges faced by military COs in the current legal and regulatory scheme.

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Peter Goldberger is a lawyer in private practice in Ardmore, PA and Deborah Karpatkin is a lawyer in private practice in New York City. Both have worked with CCW on a number of conscientious objector cases for many years, and have represented conscientious objectors in hearings and in habeas corpus litigation.

Center on Conscience & War
1830 Connecticut Avenue, NW
Washington, DC 20009-5706

1-800-379-2679
http://centeronconscience.org

CCW Mission Statement

The Center on Conscience & War (CCW) works to extend and defend the rights of conscientious objectors (COs), those who oppose their participation in war, including members of the US military who, following a crisis of conscience, seek discharge as conscientious objectors.

CCW also assists others who oppose their participation in war and the preparation for war, including youth required to register with Selective Service; individuals seeking US Citizenship who wish to take the alternative, nonviolent oath; and citizens of other countries facing mandatory military service. CCW opposes conscription, and, in the event of an active military draft, CCW will assist in the placement of conscientious objectors in alternative service programs, as we did in previous draft years.

CCW, formerly the National Interreligious Service Board for Conscientious Objectors (NISBCO), founded in 1940, is a founding member of the G.I. Rights Hotline, a national referral and counseling service for military personnel.

Contemplating the Power of Conscience

By Bill Galvin
CCW Counseling Coordinator

I was raised in the Presbyterian Church, with good values, but they were pretty abstract until I went to Warren Wilson College. At that time, a quarter of the student body were international students, and only two were from Europe. As many of my best friends were from places like the Dominican Republic, Vietnam, Japan, Lebanon, Nigeria, and Cuba, I came to understand myself as a citizen of the world and not a particular country. Facing the draft and studying the gospel (I was planning to be a minister), I came to the realization that if I took Jesus seriously I had to be opposed to war and violence, and that people from other countries are my sisters and brothers.

I'll never forget the day I asked my friend what he was doing as he sat typing. I thought he was working on a term paper. He told me it was his conscientious objector (CO) application. I asked him about it and when he told me what he believed, I said, "That's what I believe!" I realized I, too, was a CO. I had never heard the words conscientious objector in church, even though a WWII CO was a leader in my local church. Like others of that time, I sought out guidance from a Quaker professor. He pulled out NISBCO's book, *Words of Conscience,* which was the first time I learned about the Presbyterian Church's support for COs. Hand-written at the bottom of the page was the name, L. William Yolton, whom the Presbyterians had just hired to help people like me. Even though Warren Wilson was a diverse community and fairly progressive, as a CO I was still unique and different from others: I had posted information about the National Council to Repeal the Draft on my dorm room door and it was vandalized. Having the resources of NISBCO available as I prepared my CO application meant so much. While in seminary, I was trained as a draft counselor by Bill Yolton, who once more relied on NISBCO's resources. Bill became – and has remained – a mentor and friend.

There is no way to quantify what it means for a CO to have support – someone who truly understands and affirms their position, as they are made to bear their souls to a government that is not particularly (or at all) sympathetic.

I know how important that support was for me, even during the 1960s when there was a lot of anti-war sentiment throughout the culture. Support for COs is even more important today when people in the military environment feel completely isolated and alone. They need to know that their conscience is guiding them in ways that are natural and acceptable and shared by many churches and institutions.

I am personally very grateful for the opportunity to be involved with this important work, and I am honored to have met so many wonderful people of conscience over the years. When I was 19 years old and realized I was a conscientious objector, I had no idea that I would have the privilege to spend my lifetime giving back the same unwavering support that was given to me.

I am humbled by the power of conscience.

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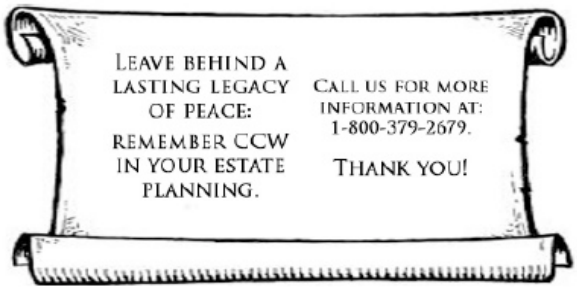
Bill Galvin attended his first NISBCO Consultative Council meeting in 1973. He was on staff at the Central Committee for Conscientious Objectors (CCCO) from 1980-1994. He has been a staff member with CCW since 2000.