

# “I’m a Free Man Resisting Slavery”

The cake had white icing, with red and blue trim. It was decorated with an American flag and a quote from Benjamin Franklin, spelled out in sugary blue letters: “They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.” Underneath was written “Welcome Home, Paul.”

The cake was part of a celebration at the Little Rock, Arkansas, residence of John and Jane Jacob. Along with about 50 guests, the Jacobs were welcoming home their son, Paul, from federal prison, where he had served a six-month sentence for refusing to register with the Selective Service System for possible military duty in the future. For Paul, the party was a milestone. It marked the end of a years-long personal struggle against registration and the draft—a struggle that erupted into one of the most highly publicized draft-resistance cases since the Vietnam war.

Jacob’s battle against compulsory military duty began in 1978 when, as an 18-year-old freshman at Westminster College in Missouri, he formed a campus chapter of the Libertarian Party. Most of

## Paul Jacob’s fight against the draft

by James W. Harris

the activities of the Westminster libertarians were directed against proposals for national service and a military draft.

In July 1980, President Jimmy Carter, responding to the Soviet invasion of Afghanistan, instituted draft registration—but stopped short of a draft itself—for all young men born in 1960 (Jacob’s year of birth). Jacob, who had moved back to Arkansas and become chairman of the Arkansas Libertarian Party, was by now convinced that registration was an individual-rights issue of overriding importance.

“As Carter started registration, it was clear to me that I wasn’t going to register,” Jacob recalls. It was also clear to him that

“the most effective way to beat it, for those of us threatened with the draft, was to resist.”

In January 1981, when the law was broadened to require all men to register when they turned 18, Jacob organized a protest demonstration. It was small—just three or four persons standing with placards and leaflets outside a Little Rock post office. But it marked a major turning point in his life.

“There was no thought in my mind that I would publicly state that I wouldn’t register,” he remembers. But when reporters covering the demonstration asked him if he had registered, he said he had not and would not. He urged others to actively resist, also.

This brought Jacob a good bit of local publicity. It also brought some unwanted attention: in June he received a letter from Selective Service ordering him to register or face prosecution.

Neither option was acceptable to Jacob. Instead, he chose to defy Selective Service and continue his antiregistration activities underground. He left Arkansas on July 4, leaving no forwarding address.



the world, a more than sufficient force to perform "their only legitimate role, the defense of our country." The draft, he said, is "an insult to young people. [It] implies that we are too cowardly or too unpatriotic to defend our homes unless threatened with prison sentences."

Jacob also argued that a volunteer military provides an important curb on military adventurism. "The freedom of choice to say no to unjust wars is an important check on the politicians' ability to involve us in such conflicts," he said. "The volunteer system puts the trust where it belongs, with the people. The draft puts the trust where it doesn't belong—with politicians."

To claims that registration is not the same as a draft, and therefore not objectionable, Jacob replied that registration is clearly a first step toward a draft and had been viewed as such by many advocates of the program—such as Army Chief of Staff Gen. Bernard Rogers, who in 1979 urged a Senate committee to adopt "the evolutionary approach" toward resumption of the draft: "First, to start to register and get us accustomed to that...then commence to classification...then, third, start to draft."

Jacob's trial took place in Little Rock in July 1985. He was charged with refusing to register—an offense carrying a maximum penalty of five years in prison and a \$10,000 fine. In his defense he argued that Selective Service had violated his First Amendment rights, both by targeting only vocal nonregistrants for prosecution—thus using selective prosecution to crush dissent—and by insisting that the act of registering constituted an endorsement of registration, even though that "endorsement" was *compelled* under threat of fines and imprisonment. He further argued that the draft is unconstitutional and that his refusal to register was therefore not a crime.

Jacob had no illusions about his prospects in court. "I realized I had very little chance of winning," he says. Instead, his goal was to publicize his views—to "put the draft on trial." To this end he persuaded 1980 Libertarian Party presidential candidate Ed Clark and former Republican Congressman Ron Paul to testify against the draft at his trial. Both, Jacob says, did "terrific jobs."

Paul, who had introduced legislation in Congress to end draft registration, commended Jacob's stance as "a position only courageous people can hold." The prosecuting attorney confronted Paul with Jacob's voter registration card—Jacob had written "Smash The State" on it—and asked, "Is that an opinion or an attitude that...finds support among people of your philosophy?" Paul replied that during his last years in Congress he had voted against "99 percent

## "Not everybody who's against the draft is a commie, a pacifist, or afraid to fight."



of the expenditures of the state....I don't use those words ['Smash the state'], but if you took my voting record, I certainly would reduce the state in a very significant manner....It's a threat to the individual liberties not only of Paul Jacob but to every single solitary person in this country."

Jacob was also able to subpoena Selective Service head Thomas Turnage—a first among registration resisters. Turnage asserted that, in his view, the high rate of compliance with registration did indeed constitute an endorsement of the program.

Jacob and his lawyers suffered two major setbacks in their planned defense, however. They were not allowed to inform the jury of the long-established legal principle of jury nullification, whereby jurors can refuse to convict a defendant of breaking a law that they deem unjust—a principle used widely during Prohibition. And the judge refused to allow the jury instructions prepared by Jacob's lawyers, which clarified and amplified many of the First Amendment issues involved in his case.

Given this, a guilty verdict was virtually a foregone conclusion. Jacob was sentenced to five years in prison, with four-and-a-half years suspended provided he do two years of "community service" eight hours per week. He was taken immediately to prison.

Despite the verdict, however, Jacob feels that in a real sense he won the trial. One juror, he learned later, told a reporter that most of the jurors basically agreed with his philosophy and thought he had done the right thing. However, the jury instructions were such that they felt they had no choice but to return a guilty verdict.

Jacob spent the first month of his sentence in a county jail in Little Rock. His cell mate was a Vietnam veteran who said prison officials had told him he could do whatever he wanted to the "draft dodger" without fear of punishment. The vet instead became good friends with Jacob and sympathized with his cause. Eventually Jacob was transferred to a prison camp at Seagoville, Texas, where he served out his term.

During this time he received "countless" letters of support from family, friends, and others across the country and abroad—so many that his fellow prisoners jokingly asked if he were paying people to write. He also continued receiving donations to

help with legal bills and family expenses.

After being released from prison, Jacob encountered yet another shock. According to the conditions of his probation, he was forbidden to speak publicly about the draft, Selective Service, his prison stay, and related topics. So much for the First Amendment. Even more incredible, his probation officer, an officer of the court, told him that it was his speaking out against the draft that had gotten him into trouble in the first place—precisely what Jacob had tried unsuccessfully to argue in court!

Jacob and his lawyers immediately protested and filed motions. Local newspapers spoke out strongly against the restriction; largely because of this publicity, the proviso was dropped.

Upon his release from prison, Jacob went home to Little Rock, where he attended law school at the University of Arkansas. To fulfill his community-service obligation, he worked at Easter Seals. After completing a successful semester in law school, Jacob moved east with his family. Now he and his wife both work at the Cato Institute, a free-market think tank in Washington, D.C., where he is sales director and mailroom coordinator and she is assistant to the president. To complete his community-service requirement, Jacob is an "active listener" at a northern Virginia crisis hotline. In the near future he expects to go back to school to study either law or history.

And he remains very active in antidraft activities. In addition to speaking around the country and serving on the Libertarian Party National Committee, Jacob is cofounder and president of Volunteers for America, an organization designed to promote the concept of a volunteer military and to provide a support network for draft resisters.

"Our position is that the volunteer system is the best, both tactically and morally. It's very important that people realize that not everybody who's against the draft is a commie, a pacifist, or afraid to fight—that you can be against the *draft* without being against the *military*. We want a military that defends our country, and defends it in keeping with the best values of our country."

After eight years of fighting registration and the draft, Jacob is more convinced than ever of the importance of educational efforts and active resistance. "I have never believed that the battle against conscription would be won in the legal area," he says. "Only by speaking out and convincing the American people that the draft is unjust, unnecessary, and dangerous can we ultimately stop it." □

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