A Proposed Form for Local Board Consideration of Conscientious Objector Claims

David M. FitzGerald

University of Michigan Law School

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A PROPOSED FORM FOR
LOCAL BOARD CONSIDERATION OF
CONSCIENTIOUS OBJECTOR CLAIMS

Nothing contained in this title . . . shall be construed to require any person to be subject to . . . training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this subsection, the term "religious training and belief" does not include essentially political, sociological or philosophical views, or a merely personal moral code.


I. INTRODUCTION

The general subject of selective service reform contains enough problems to busy the proverbial thousand monkeys at a thousand typewriters for a thousand years in an effort to solve just one. A solution to one of these problems, conscientious objection, would surely justify the effort. But this article, being the work of a single man using a single typewriter over a period considerably less than a year, makes no such pretense. Unlike most of the books, articles, and commission reports dealing with the selective service law, and conscientious objection in particular, this article is concerned primarily with procedural rather than substantive issues. It is a plea for an administratively imposed requirement that a standard form be used by local boards in considering conscientious objector claims.¹

II. THE SELECTIVE SERVICE SYSTEM AND CLAIMS FOR CONSCIENTIOUS OBJECTOR STATUS

The Selective Service System is a unique administrative organization composed of two parallel branches, each organized on local, state, and national levels. The professional administrative

¹ See Report of the National Advisory Commission on Selective Service, In Pursuit of Equity: Who Serves When Not All Serve (1967); and Comment, Successful Evaluation of Sincerity after Welsh, 11 SANTA CLARA LAW. 381 (1971), for suggestions for more elaborate legislative reforms which would take the consideration of conscientious objector claims out of the hands of the local boards.
branch\(^2\) consists of a director and national headquarters, fifty-six state directors and headquarters, and clerks at each of the several thousand local boards.\(^3\) The other branch consists of part-time volunteers who are appointed by the President to the local boards and state and national appeal boards.\(^4\) The function of these boards is to classify registrants in accordance with the Military Selective Service Act of 1967 [hereinafter, 1967 Act] and the regulations and local board memoranda issued pursuant thereto by the professional arm of the System.\(^5\)

Section 6(j) of the 1967 Act provides for conscientious objector classification.\(^6\) A registrant may initiate a claim for conscientious objector status at any time before being ordered to report for induction.\(^7\) After making his claim to the local board,\(^8\) the registrant is issued Form 150 “Special Form For Conscientious Objector,” which requires him to answer various questions concerning the basis for his conscientious objector claim. The answers to these questions together with any other written evidence added by the registrant to his file, are used by the board in its consideration of his claim. The registrant also has a right to appear in person before the local board to give testimony and present witnesses on his behalf.\(^9\)

\(^2\)The organizational structure of the System is set out in the Military Selective Service Act of 1967 [hereinafter cited as 1967 Act] §§ 10(a)-(c), 50 U.S.C. App. §§ 460 (a)-(c) (1970), and regulations issued thereunder, 32 C.F.R. § 1604 (1971). In addition to a headquarters in each state, there are headquarters in each territory or possession, the District of Columbia, and New York City.

\(^3\)In 1966 there were 4,087 local boards, ranging in size from 27 to 54,000 registrants. J. DAVIS & K. DOLBEARE, LITTLE GROUPS OF NEIGHBORS, THE SELECTIVE SERVICE SYSTEM 33 (1967).


\(^5\)Id.

\(^6\)Id. § 6(j), 50 U.S.C. App. § 456(j) (1970). This section of the Act specifically provides for two classes of conscientious objectors, those who object to any military service (Class I-O, 32 C.F.R. § 1622.14 (1971), and those who object only to combatant service (Class I-A-O, 32 C.F.R. § 1622.11 (1971)).

\(^7\)32 C.F.R. § 1625.2 (1971), as interpreted in Mulloy v. United States, 398 U.S. 410, 414–15 (1970), require the board to “reopen and consider anew the classification of a registrant . . . upon [receipt of] facts not considered when the registrant was classified which, if true, would justify a change in the registrant’s classification.” However, after an induction order has been issued the board may reopen only if “there has been a change in the registrant’s status resulting from circumstances over which the registrant has no control.” Id. This does not include a conversion to conscientious objection. Ehlert v. United States, 402 U.S. 99 (1971).

\(^8\)The courts have required the boards to take a liberal view of what constitutes a “claim.” See, e.g., United States v. Moyer, 307 F. Supp. 613 (S.D. N.Y. 1969). In Moyer, the court held that a letter to a draft board from a registrant, explaining that he was returning his draft card in protest over war and that his act of civil disobedience was based on moral convictions against killing, sufficiently apprised the local board of the registrant’s claim for conscientious objector classification and was, in effect, a request for a conscientious objector form.

\(^9\)32 C.F.R. § 1624 (1971), as amended 36 Fed. Reg. 21076 (Nov. 3, 1971). The registrant may exercise this right either before the local board makes a decision on his claim, or afterwards, in the event of a denial of his claim.
If the registrant is aggrieved by the decision of the local board he may appeal the decision to the state appeal board, where he may make a personal appearance and add written evidence to his file.\textsuperscript{10} Should the state appeal board deny his claim by a divided vote, the registrant may appeal to the national board by right. In any case, he may request the state or national director to intercede and appeal on his behalf.\textsuperscript{11}

Thus a registrant has at least three opportunities to present his claim before it can finally be denied. Furthermore, the 1971 amendments\textsuperscript{12} to the 1967 Act added several procedural safeguards. These include: (1) the right to appear in person before the appeal boards; (2) the right to present witnesses before the local board; (3) the right to demand that a quorum of the local board be present for any personal appearance; and (4) the right to "a brief written statement of the reasons for its decision" from the local board.

Two factors, however, have combined in recent years to make the present procedure unwieldy. First, there has been a dramatic increase in the number of conscientious objector claims in the last five years.\textsuperscript{13} Second, the courts have become more active in the selective service area and have more carefully scrutinized the decisions of the boards.\textsuperscript{14} Furthermore, the courts have broadened the scope of section 6(j) of the 1967 Act and have established new standards for its application. These standards, discussed throughout the remainder of the article, are equally as vague as, but more technical than previous standards.

The above developments have adversely affected all parties involved. The local boards have been required to apply difficult standards, yet continue to be composed of untrained and unpaid, albeit often dedicated, personnel who receive limited guidance from the professional branch of the System. The registrant claiming conscientious objector status is therefore frequently confronted with an uncertain application of these standards and may be forced to risk criminal prosecution in order to have his claim resolved. The courts, for their part, remain overburdened with

\textsuperscript{10} 32 C.F.R. § 1626 (1971). Until the 1971 amendments to the 1967 Act, the registrant had no right to appear personally before the state appeal board, but could add written material to his file indicating the errors of the local board.


\textsuperscript{12} Pub. L. No. 92-129 (Sept. 28, 1971).


\textsuperscript{14} Section 10(b)(3) of the 1967 Act provides that "review shall go to the question of the jurisdiction herein reserved to the local boards, appeal boards, and the President only when there is no basis in fact for the classification assigned to such registrant." 50 U.S.C. App. § 460(b)(3) (1970).
cases that would never have arisen but for the misapplication of, or the hopes fostered by, these vague and overly technical standards.

For these reasons entirely new procedures that would place the determination of conscientious objector claims before a professional body at some stage of the proceeding have been proposed. Nevertheless, the procedural changes in recent years have been limited to the abolition of Justice Department hearings at the appeal board level in 1967, and the procedural rights implemented in 1971. This article presents a new approach designed to alleviate some of the problems within the present system through administratively imposed measures. The approach, stated most simply, is to inform the local board of the issues it must decide when considering a conscientious objector claim, to clarify what criteria the board must consider in deciding each issue, and to require the board to give adequate reasons for its final decision.

III. THE PROPOSAL

The proposed form is designed to meet many of the objections to current Selective Service procedures. In general, it breaks down the conscientious objector provision of the 1967 Act, section 6(j), into three tests: (1) whether the objection is based upon "religious training and belief"; (2) whether the objection extends to "war in any form"; and (3) whether the objector is "sincere." Each of these tests must be met if the claim is to be

17 It should be noted that the local boards are not without any guidance in the area at the present time. Local Board Memorandum No. 107, issued by the Director of Selective Service on July 6, 1970, does attempt to set forth the criteria that should be considered by the local board in deciding a conscientious objector claim. However, the proposal embodied in this article goes beyond Memorandum 107 in several respects. It attempts to present the criteria in considerably more detail, especially in the area of sincerity, the single most important issue presented in most conscientious objector cases. Cf. United States v. Seeger, 380 U.S. 163, 185 (1965): "[Sincerity is] the threshold question . . . which must be resolved in every case." In the case of conscientious objectors, the criteria are complicated enough so that they should be directly before the board each time a claim is considered.
18 Section 10(b)(1) of the 1967 Act gives the President the authority "to prescribe the necessary rules and regulations to carry out the provisions of this [Act]", 50 U.S.C. APP. § 460(b)(1) (1970), and this authority has been delegated to the Director of the Selective Service System under the authority of section 10(c) of the 1967 Act, id. § 460(c). Thus the Director has the power to require that local boards use the proposed form.
20 This three part analysis was recently approved by the Supreme Court in Clay v. United States, 403 U.S. 698 (1971). See also Local Board Memorandum No. 197 (July 6, 1970).
upheld by the local board. The criteria which the board should consider in applying the tests are set forth in the proposed form, and the board must, on the same form, make a decision as to whether each test is met and give the reasons for its decision.\textsuperscript{21}

The proposed form is set forth below. Each section is followed by a comment which seeks to justify the criteria advanced in the section and to discuss the development of the substantive law of conscientious objection.\textsuperscript{22}

\textbf{FORM FOR LOCAL BOARD USE IN CONSIDERATION OF CONSCIENTIOUS OBJECTOR CLAIMS}

\textbf{SECTION 1. INTRODUCTION}

ALL LOCAL BOARDS MUST USE THE FORM IN CONSIDERING CLAIMS FOR CONSCIENTIOUS OBJECTOR STATUS. THE BOARD MUST CONSIDER EACH OF THE FOLLOWING SECTIONS IN EVERY CASE, AND THE FINDING IN EACH SECTION MUST BE MADE ON THE BASIS OF THE CRITERIA PRESENTED IN THE SECTION AND THE FACTS OF THE INDIVIDUAL CASE. A CLAIM SHALL BE DENIED IN THE EVENT OF AN ADVERSE FINDING, INCLUDING A FINDING OF INSUFFICIENT INFORMATION, IN ONE OR MORE SECTIONS. THE CLAIM SHALL BE GRANTED ONLY UPON A FINDING OF INSINCERITY.

\textsuperscript{21} Two recent developments should make the adoption of this procedure attractive to the Selective Service System. The first is the reform instituted by the 1971 amendments to the 1967 Act that require the local board, on demand, to give the registrant reasons for its classification decision. Pub. L. No. 92-129 § 22(b)(4) (1971). This seems designed to make the registrant's appeal rights more meaningful and gives legislative approval to a requirement already imposed by several courts. See, e.g., United States v. Haughton, 413 F.2d 736 (9th Cir. 1969), holding that the local board must give reasons for denial if the registrant makes out a "prima facie" case. Contra, Gruca v. Secretary of the Army, 436 F.2d 239 (D.C. Cir. 1969), cert. denied, 401 U.S. 978 (1971), wherein the court held that the board need not give reasons where enough evidence appeared in the record to support a finding of insincerity.

The second important development was the Supreme Court's decision in Clay v. United States, 403 U.S. 698 (1971). As indicated above, the 1971 amendments require the local board to give reasons for its denial of a claim; Clay seems to indicate that the reasons given must all be legally valid. This is an exemplary rule where the statement of reasons leaves open the strong possibility that the erroneous reason may have tainted all the other reasons given. In an earlier application of the same rule, however, the Supreme Court limited its application to situations "where it is not clear that the board relied on some legitimate ground." Sicurella v. United States, 348 U.S. 385, 392 (1955). Thus, even if it were not required by the 1967 Act, the more detailed reasons on the proposed form might well save a classification decision in which there were one or more erroneous decisions against the registrant along with at least one valid finding against him.

\textsuperscript{22} The substantive law dealing with the issue of a registrant's sincerity in a conscientious objector claim has been virtually ignored in past writings, even though it is likely to become the dominant issue in future cases.
ING IN FAVOR OF THE REGISTRANT IN ALL SECTIONS.

THE PURPOSE OF THIS FORM IS TO PROVIDE A BASIS FOR EVALUATING THE LOCAL BOARD DECISION TO THE REGISTRANT, AND ANY ADMINISTRATIVE, JUDICIAL OR EXECUTIVE BODY REVIEWING THE CLAIM. FOR THIS REASON, CARE SHOULD BE EXERCISED IN SUPPORTING THE FINDINGS IN EACH SECTION IN ACCORDANCE WITH THE CRITERIA SET FORTH THEREIN.

EACH TIME A CLAIM IS CONSIDERED BY THE BOARD, A SEPARATE FORM MUST BE USED AND, IF NECESSARY, SEPARATE FINDINGS MADE.

Comment

This section is designed to acquaint the local board with the purpose of the form and the procedure to be followed in its use. As provided in the first paragraph, the board must consider all sections of the form in each case, rather than merely stopping with the first adverse finding.

This section also requires that a separate form be used each time that a claim is considered by the local board. Thus, one form will be used by the board in its initial consideration of the claim, and, if the claim is denied and the registrant makes a personal appearance before the board, a second form will then be used.\(^2\) Since it is entirely possible that the personal appearance will change none of the board's initial conclusions, separate findings are to be made only "if necessary."

SECTION 2. RELIGIOUS TRAINING AND BELIEF

IN ORDER TO QUALIFY FOR CONSCIENTIOUS OBJECTOR STATUS, THE REGISTRANT'S OBJECTION MUST BE BASED UPON RELIGIOUS TRAINING AND BELIEF. CONSCIENTIOUS OBJECTOR STATUS IS NOT LIMITED TO MEMBERS OF SO-CALLED "PEACE-CHURCHES," NOR IS IT LIMITED TO THOSE PERSONS WHOSE BELIEFS ARE RELIGIOUS IN THE TRADITIONAL SENSE. THE REGISTRANT NEED NOT BELIEVE IN A TRADI-

\(^2\) The board must make findings when it initially considers the claim, because the registrant is not required to make a personal appearance before appealing the local board decision. 32 C.F.R. § 1623.1 (1971).
TIONAL "GOD" OR A "SUPREME BEING." IF A REGISTRANT CLASSIFIES HIS BELIEFS AS RELIGIOUS, THE LOCAL BOARD SHOULD GIVE GREAT WEIGHT TO THIS STATEMENT. EVEN IF THE REGISTRANT DOES NOT CATEGORIZE HIS BELIEFS AS RELIGIOUS, OR SPECIFICALLY DENIES THAT THEY ARE RELIGIOUS, THE LOCAL BOARD MUST MAKE AN INDEPENDENT FINDING ON THE ISSUE BASED UPON THE CRITERIA WHICH FOLLOW.

THE LOCAL BOARD SHALL FIND THAT THE REGISTRANT'S OBJECTION IS BASED UPON RELIGIOUS TRAINING AND BELIEF, ONLY IF THE BELIEFS STATED IMPOSE UPON THE REGISTRANT A DUTY OF CONSCIENCE TO REFRAIN FROM PARTICIPATION IN WAR. THESE BELIEFS MAY BE THOSE THAT WOULD ORDINARILY BE CATEGORIZED AS MORAL OR ETHICAL AS WELL AS RELIGIOUS. THE LOCAL BOARD IS NOT FREE TO REJECT PROFESSED BELIEFS BECAUSE THEY APPEAR INCOMPREHENSIBLE OR SIMPLY INCORRECT. NOR IS IT PROPER TO CONSIDER HERE THE OTHER REQUIREMENTS FOR CONSCIENTIOUS OBJECTION, SUCH AS SINCERITY. THE FACT THAT THE REGISTRANT'S BELIEFS MAY HAVE BEEN INFLUENCED BY PUBLIC POLICY CONSIDERATIONS OR OTHER FACTORS IS NOT A GROUND FOR AN ADVERSE FINDING UNDER THIS SECTION, SO LONG AS THE BELIEFS ARE IN FACT MORAL, ETHICAL, OR RELIGIOUS IN CHARACTER. SIMILARLY, THE FACT THAT A REGISTRANT'S BELIEFS ARE NOT A PRODUCT OF ANY SYSTEMATIC RELIGIOUS, MORAL OR ETHICAL TRAINING, BUT MERELY THE RESULT OF THE REGISTRANT'S OWN CONTEMPLATION, STUDY, OR INTERPRETATION IS NOT A GROUND FOR AN ADVERSE FINDING UNDER THIS SECTION.

THE LOCAL BOARD SHALL FIND THAT THE REGISTRANT'S OBJECTION IS NOT BASED UPON RELIGIOUS TRAINING AND BELIEF IF THE BOARD FINDS, WITH APPROPRIATE SUPPORT IN THE REGISTRANT'S FILE, THAT HIS BELIEFS ARE BASED SOLELY UPON CONSIDERATIONS OF POLICY, PRAGMATISM, OR EXPEDIENCY. THUS IF THE REGISTRANT'S OBJECTION IS BASED SOLELY UPON DISAGREEMENT WITH THE FOREIGN
POLICY OF THE UNITED STATES, OR WITH THE EFFICIENCY OF WARFARE AS A MEANS OF ACHIEVING SOCIAL ENDS, SUFFICIENT GROUNDS FOR AN ADVERSE FINDING UNDER THIS SECTION SHALL EXIST. THESE GROUNDS ARE NOT INTENDED TO BE EXHAUSTIVE. THE PRINCIPAL QUESTION TO BE CONSIDERED BY THE LOCAL BOARD IS WHETHER THE REGISTRANT'S BELIEFS, AS STATED, IMPOSE UPON HIM A DUTY OF CONSCIENCE TO REFRAIN FROM PARTICIPATION IN WAR.

IN ITS INITIAL CONSIDERATION OF THE REGISTRANT'S CLAIM, THE LOCAL BOARD MAY FIND THAT THE REGISTRANT HAS NOT PRESENTED SUFFICIENT INFORMATION TO PERMIT A DISPOSITIVE FINDING UNDER THIS SECTION. ORDINARILY SUCH A FINDING WILL ONLY BE APPROPRIATE WHEN THE REGISTRANT HAS MERELY STATED THAT HIS OBJECTION IS RELIGIOUS WITHOUT PROVIDING ANY FURTHER DETAILS.

THE REGISTRANT AGAINST WHOM SUCH A FINDING IS MADE SHOULD BE ENCOURAGED TO SUPPLY FURTHER INFORMATION AT ANY PERSONAL APPEARANCE AND ONLY IN THE EVENT THAT HE FAILS TO DO SO, OR FAILS TO MAKE A PERSONAL APPEARANCE, SHOULD THIS FINDING BE FINAL AT THE LOCAL BOARD LEVEL.

FINDINGS

1. THE LOCAL BOARD FINDS THAT THE REGISTRANT'S OBJECTION IS BASED UPON RELIGIOUS TRAINING AND BELIEF.

2. FOR THE FOLLOWING REASONS, THE LOCAL BOARD FINDS THAT THE REGISTRANT'S OBJECTION IS BASED SOLELY UPON CONSIDERATIONS OF POLICY, PRAGMATISM, OR EXPEDIENCY:

3. FOR THE FOLLOWING REASONS, THE LOCAL BOARD FINDS INSUFFICIENT INFORMATION TO DETERMINE THIS QUESTION:
Section 6(j) of the 1967 Act requires that conscientious objection be "by reason of religious training and belief." The criteria in this section of the proposed form are based upon the interpretation of this phrase by the Supreme Court in a long line of cases.

While conscientious objection has long been recognized in this country, until relatively recent times it was generally limited to members of a few specific sects, like the Quakers, which were doctrinally opposed to participating in war.\(^{24}\) Until World War I, however, others could escape from military service by providing a substitute or paying a fee.\(^{25}\) The Selective Draft Act of 1917\(^{26}\) for the first time provided for mandatory service in the military.\(^{27}\) Although on its face the 1917 statute continued the practice of limiting conscientious objector status to members of well-recognized pacifist sects, in practice the executive branch extended the same consideration to all persons who claimed, upon induction, to be conscientious objectors.\(^{28}\)

The Selective Training and Service Act of 1940\(^{29}\) adopted a quite different approach, for the limitation to particular sects was entirely abandoned in favor of the more general provision which appears virtually unaltered in section 6(j) of the 1967 Act.\(^{30}\) The 1940 statute expanded the criteria for conscientious objection,\(^{31}\) but the exact scope of that expansion has been the subject of considerable debate by the courts. Between the enactment of the provision in 1940 and a 1948 revision, two important, and

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\(^{26}\)Ch. 15, 40 Stat. 76 (1917).

\(^{27}\)The constitutionality of the conscientious objector provisions of this Act were upheld in a dictum in The Selective Draft Law Cases, 245 U.S. 366 (1918).

\(^{28}\)Exec. Order No. 2823 (1918). It should be noted that this "consideration" was only noncombatant service. There was no alternative service option available for those who opposed all military activity.

\(^{29}\)Ch. 720, 54 Stat. 885 (1940).

\(^{30}\)The only change is the addition of the phrase specifically excluding "political, sociological or philosophical views or a merely personal moral code" in the 1967 Act. 50 U.S.C. APP. § 456(j) (1970).

\(^{31}\)The 1940 statute appears to have been the result of some successful lobbying by pacifist groups. Russell, supra note 24, at 423.
conflicting, decisions interpreting the phrase “religious training and belief” were decided by the United States courts of appeals.

In *United States v. Kauten*, the Second Circuit established a liberal interpretation of the phrase: “It is a belief finding expression in a conscience which categorically requires the believer to disregard elementary self interest and to accept martyrdom in preference to transgressing its tenets.” On the other hand, the Ninth Circuit was more theistically oriented, holding in *Berman v. United States* that by “religious training and belief” Congress meant “[f]aith in a supreme power above and beyond the law of all creation. . . .”

Faced with these diverse interpretations of the 1940 statute, Congress defined “religious training and belief” in the 1948 revision as “an individual’s belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but [not including] essentially political, sociological or philosophical views, or a merely personal moral code.” This phrase was derived from the dissent of Chief Justice Hughes in *United States v. Macintosh*, which was cited by the *Berman* Court with approval, but modified by substituting “Supreme Being” in the Act for “God” in the Hughes opinion. In addition, the *Berman* case was cited in the Senate report on the 1948 revision.

Although this would seem to indicate that Congress intended to adopt *Berman*’s theistic definition of “religious training and belief,” the Supreme Court disagreed. In *United States v. Seeger*, the Court undertook a rather tortuous interpretation of legislative history in order to hold that section 6(j) is satisfied if “a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption.” This interpretation was clearly strained if not totally implausible.

Nevertheless, in 1970 this test was broadened in *Welsh v.*
Conscientious Objector Claims

Mr. Justice Black’s plurality opinion in *Welsh* once again purported to rest the expansion of section 6(j) on statutory construction. According to the opinion, section 6(j) “exempts from military service all 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 a part of an instrument of war.” The only individuals excluded from this definition of religious training and belief are those “whose objection to war does not rest at all upon moral, religious or ethical principle but instead rests solely upon considerations of policy, pragmatism or expediency.”

This historical background should provide a basis for discussing the criteria advanced in the “Religious Training and Belief” section of the proposed form. These criteria are primarily aimed at reflecting the *Welsh* definition of religious training and belief. Because of the breadth of that definition, very few claims will be disqualified under this section, and the difficulty will be to convey to the local board the scope of the *Welsh* definition, while at the same time defining the small number of claims that may still not meet this test.

*United States v. Shevenell* is a case which indicates that as late as 1969 at least one local board thought that conscientious objector status was limited to members of the “peace churches.” The first paragraph of this section of the proposed form is de-

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42 Id. at 344.
43 Id. at 342 (emphasis added). Mr. Justice Harlan felt that by reading section 6(j) so broadly, Justice Black had “performed a lobotomy and completely transformed the statute”; yet he concurred in the judgment and the test advanced, although basing his concurrence on constitutional grounds. Id. at 351.

It should be noted that *Welsh* dealt with the 1948 version of section 6(j) just as *Seeger* did. The language was amended in the 1967 Act. and, although the deletion of the phrase purporting to define religious training and belief might be thought to evince an intent to limit the section, the House Report, H.R. Rep. No. 267, 90th Cong. 1st Sess. 31 (1967), makes it clear that somehow the change was intended to limit the scope of section 6(j). This argument has been unpersuasive to the lower courts however, who have uniformly applied the *Welsh* standard. See, e.g., *United States v. Burns*, 431 F.2d 1070 (10th Cir. 1970).

The *Welsh* decision, like the *Seeger* decision, is difficult to analyze because the plurality opinion may not state the true reasoning of the Court. Justice Harlan’s concurring opinion in *Welsh* is helpful, for it may indicate that the Court was merely trying to avoid a difficult constitutional issue in both cases. The dissent points out, 398 U.S. at 368, the conceptual difficulty in remedying a constitutionally defective statute by in effect amending the statute as Justice Harlan does. One can probably assume that underlying both the Black and Harlan opinions were the traditional recognition of conscientious objection in this country and the changing nature of our society from religious to secular. The constitutional infirmity for Justice Harlan was that the distinction between theistic and non-theistic beliefs violated the establishment clause, since it was underinclusive of the class of conscientious objectors.

signed to correct this, and make it clear to the local boards that they should not apply exclusively traditional standards of religious training and belief.

The second paragraph attempts to set out the Welsh holding as clearly as possible.\textsuperscript{45} Additionally, in light of the phrase “religious training” it must be made clear to the local boards that the 1967 Act “does not distinguish between externally and internally derived beliefs.”\textsuperscript{46} A registrant need not have attended divinity school to qualify for conscientious objector status.

The third paragraph attempts to illustrate those beliefs which still do not qualify under the Welsh test. The Welsh Court’s test did seem to exclude those who are motivated solely by the type of purely pragmatic belief, such as the inefficiency of war, illustrated in Berman.

The fourth paragraph is necessary to prevent registrants from satisfying this section merely by stating that their objection is based on religious training and belief. Finally the “insufficient information” finding may be open to abuse—thus the attempt to limit it to a preliminary finding. However, a local board may use this finding to avoid careful examination of the merits or to require the registrant to make a personal appearance. While such practices should be discouraged, they seem inevitable.

\textbf{SECTION 3. WAR IN ANY FORM}

IN ORDER TO BE CLASSIFIED AS A CONSCIENTIOUS OBJECTOR, THE REGISTRANT MUST BE OPPOSED TO WAR IN ANY FORM. A REGISTRANT WHOSE OBJECTION EXTENDS ONLY TO A PARTICULAR WAR, OR CLASS OF WARS, IS INELIGIBLE FOR CONSCIENTIOUS OBJECTOR STATUS. NEVERTHELESS, A REGISTRANT WHOSE BELIEFS WOULD ALLOW HIM TO PARTICIPATE IN A CERTAIN TYPE OF WAR MAY NOT BE DISQUALIFIED UNDER THIS SECTION IF THE CLASS OF WARFARE TO WHICH HE DOES NOT OBJECT WOULD NOT FORESEEABLY OCCUR IN THE PRESENT STATE OF THE WORLD. THUS, IT IS NOT A GROUND FOR AN ADVERSE FINDING UNDER THIS SECTION THAT A REGISTRANT WOULD

\textsuperscript{45} This paragraph does not differ greatly from the Selective Service System’s interpretation in Local Board Memorandum No. 107 (1970), but goes to greater length to guarantee that the broad scope of that holding is emphasized.

\textsuperscript{46} United States v. Seeger, 380 U.S. 163, 186 (1965).
PARTICIPATE IN A WAR UNDER THE COMMAND OF GOD. SIMILARLY, A REGISTRANT WHO BELIEVES IN THE THEORY OF A "JUST WAR" IN WHICH HE WOULD PARTICIPATE, BUT DOES NOT BELIEVE THAT SUCH A WAR COULD POSSIBLY OCCUR IN THE MODERN WORLD, WOULD NOT BE DISQUALIFIED UNDER THIS SECTION.

THE TERM "WAR" IS USED IN ITS LITERAL SENSE. IT IS NOT PROPER TO REJECT A CLAIM UNDER THIS SECTION IF A REGISTRANT INDICATES THAT HE WOULD BE WILLING TO DEFEND HIMSELF OR HIS FAMILY OR OTHERS FROM IMMEDIATE ATTACK. MOREOVER, THE BELIEFS AT ISSUE ARE THE REGISTRANT'S CURRENT BELIEFS, AND A CLAIM SHOULD NOT BE DENIED MERELY BECAUSE A REGISTRANT IS UNABLE OR UNWILLING TO PREDICT HIS BELIEFS AT SOME FUTURE DATE UNDER UNFORESEEABLE CIRCUMSTANCES. IN MAKING A DETERMINATION UNDER THIS SECTION, HOWEVER, THE LOCAL BOARD MAY PROPERLY SEEK THE REACTION OF THE REGISTRANT TO REASONABLY FORESEEABLE FACT SITUATIONS.

IN THE EVENT OF AN ADVERSE FINDING UNDER THIS SECTION, THE LOCAL BOARD SHALL NOTE THE REASONS FOR ITS DECISION, AS SUPPORTED BY THE REGISTRANT'S FILE.

IN ITS INITIAL CONSIDERATION OF THE CLAIM, THE BOARD MAY FIND THAT THE REGISTRANT HAS NOT PROVIDED SUFFICIENT INFORMATION TO ENABLE THE BOARD TO MAKE A DISPOSITIVE FINDING ON THIS ISSUE. IN THAT EVENT, THE LACK OF INFORMATION SHALL BE NOTED. THE REGISTRANT SHOULD THEN BE ENCOURAGED TO PROVIDE FURTHER INFORMATION AT ANY PERSONAL APPEARANCE, AND ONLY IF HE FAILS TO DO SO, OR FAILS TO MAKE A PERSONAL APPEARANCE, SHOULD THIS BE THE FINAL ACTION AT THE LOCAL BOARD LEVEL.

FINDINGS

1. ___ THE LOCAL BOARD FINDS THAT THE REGISTRANT'S OBJECTION EXTENDS TO WAR IN ANY FORM.
2. ___ FOR THE FOLLOWING REASONS, THE LO-
CAL BOARD FINDS THAT THE REGISTRANT IS NOT OPPOSED TO WAR IN ANY FORM:

3. FOR THE FOLLOWING REASONS, THE LOCAL BOARD FINDS INSUFFICIENT INFORMATION TO DETERMINE THIS QUESTION:

Comment

Section 6(j) of the 1967 Act provides that in order to obtain conscientious objector status a registrant must be "opposed to participation in war in any form." The "war in any form" limitation upon conscientious objection first appeared in the 1917 statute and was intended to exclude from conscientious objector status those whose opposition extended only to World War I. There was an attempt in Congress to adopt a broader definition that would include those opposed only to that war, but the attempt failed. In 1940 this provision was carried over into the new enactment without objection, and remains in the 1967 Act.

An understanding of the judicial reaction to the problem of selective objection requires a close examination of four decisions handed down over a period of forty years which form the outstanding links in a chain of judicial reasoning leading to Gillette v. United States. In the first of these decisions, Macintosh v. United States, the Supreme Court held that a selective objector was properly denied citizenship under the naturalization laws. Nonetheless, the dissent of Chief Justice Hughes, joined by Justices Holmes, Brandeis and Stone, is far more important for our purposes. It is widely quoted with approval in selective service laws.

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48 55 CONG. REC. 1474 (1917). The amendment appears to have been aimed at allowing those of German or Austrian descent to avoid combat service. There seems to have been no conception of a religious selective objector.
49 Russell, supra note 24, at 423.
51 283 U.S. 605 (1931).
52 Macintosh was overruled in Girouard v. United States, 328 U.S. 61 (1946).
decisions, and, as noted above, was the basis for the language in the 1948 revision defining religious training and belief.

The dissent in *Macintosh* defended conscientious objection as a part of our religious freedoms and contended that the statute in question should be interpreted with this history in mind. Furthermore, the dissenters said, Macintosh's beliefs cannot be distinguished from other conscientious objectors "because his conscientious scruples have particular reference to wars believed to be unjust. There is really nothing new in such an attitude." The dissenters viewed selective objection as primarily motivated by religion or conscience and saw no reason to distinguish it from general objection. On the other hand, the question in *Macintosh* involved construction of a naturalization law, not a military procurement act, and the statute did not contain the "war in any form" language of the selective service statute then in effect. Nevertheless, the *Macintosh* dissent does throw light upon judicial attitudes toward conscientious and selective objection.

The second case to be considered is *United States v. Kauten*, decided by the Second Circuit in 1943. The court in that case adopted a distinctly liberal interpretation of religious training and belief. At the same time, however, it took a narrow view of the phrase "war in any form," stating that selective objection "is usually a political objection, while [general objection], we think, may justly be regarded as a response of the individual to an inward mentor...." Here the court was interpreting a specific provision limiting the scope of the conscientious objection exemption; but surely a court that could interpret religious training and belief as broadly as the *Kauten* court did would not be restrained by that fact. The crucial factor may well have been the court's concern for national security. The case arose during World War II, and the court had just advanced a broad definition of religious training and belief. The court seems to be using the "war in any form" provision to ensure that the number of conscientious objectors would be small and national security would not be impaired.

The third important case is *Sicurella v. United States*, decided by the Supreme Court in 1955, and holding that the phrase

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53 Note 36 *supra*.
54 283 U.S. at 635.
55 "[T]o engage in a war believed to be unjust would be contrary to the tenets of religious groups among our citizens who are of patriotic purpose and exemplary conduct."
56 133 F.2d 703 (2d Cir. 1943).
57 *Id*. at 708.
"war in any form" was not intended by Congress to exclude a registrant who was only willing to take part in a theocratic war commanded by Jehovah: "Congress had in mind real shooting wars when it referred to war in any form—actual military conflicts between nations of the earth in our time—wars with bombs and bullets, tanks, planes, and rockets." As in *Macintosh*, the case arose in peace time, and no danger was posed to the national defense by allowing Sicurella's claim. Declining to follow a literal construction of a fairly clear congressional prohibition, the Court recognized what the *Kauten* court denied—that there is a religious basis for selective objection, however limited it may have been in Sicurella's case.

The recent *Gillette* case is a shift in emphasis from *Sicurella*. The *Gillette* Court held that the "plain words" of section 6(j) (this from the same court that decided *Welsh*) excluded from conscientious objector status "persons who object solely to a particular war," even if their beliefs come within the definition of "religious training and belief." The Court further held that this statutory discrimination did not violate either the free exercise or establishment clauses of the first amendment, since "the affirmative purposes underlying section 6(j) are neutral and secular," and any "incidental burdens felt by persons in petitioner's position are strictly justified by substantial government interests that relate directly to the very impacts questioned." Both *Gillette* and *Kauten* arose in time of war, and both courts had already accepted a very broad definition of the phrase "religious training and belief." Therefore, the specter of national security arose again in *Gillette*.

The merits and rationale of *Gillette* are not, however, the primary concerns of the proposed form; rather, the task is to set out the rule of the case for the local board. The criteria advanced in the "War In Any Form" section of the proposed form attempt to do just that.

Two exceptions to the general rule against selective objection appear in the first paragraph of the section. The first of these is the theocratic war exception of *Sicurella*. The second is an ex-

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59 *Id.* at 391.
61 *Id.* at 447-48.
62 *Id.* at 462.
63 There is a major difference between *Gillette* and *Kauten*, however. Since *Sicurella* the Court cannot pretend that the war in any form limitation will not exclude some truly religious objectors. One suspects that, that being the case, it was the order in which the *Welsh* and *Gillette* cases arose, rather than their individual merits, which determined their respective outcomes.
ception for a registrant who, while accepting the theory of a just war, does not believe such a war is possible in today's world. The Sicurella rationale seems equally applicable in this second case. So long as the registrant's objection extends to any foreseeable war “between nations of the earth in our time,” the national security considerations in Kauten and Gillette do not apply.

The second paragraph of the section further limits the general prohibition of selective objection. These are approved and distinguished by the Court in Gillette. Acting in self defense against an immediate attack is hardly participation in war. The Gillette Court also points out that beliefs are subject to change, and that it would be unjust to inquire into more than current beliefs. In order that this idea should not be misunderstood, however, the section specifically allows the local board to use hypothetical questions during a personal appearance. Practically, this appears to be the only way to question the registrant as to this part of his claim, even though it allows the abuses apparent in the “what would you do if your grandmother was being raped” hypothetical.

SECTION 4. SINCERITY

IN ORDER TO QUALIFY FOR CONSCIENTIOUS OBJECTOR STATUS, THE BELIEFS UPON WHICH A REGISTRANT BASES HIS CLAIM MUST BE DEEPLY AND SINCERELY HELD. IF THE LOCAL BOARD DETERMINES THAT THE REGISTRANT IS NOT SINCERE IN HIS PROFESSED BELIEFS, THEN IT MUST DENY THE CLAIM. HOWEVER THE MERE FACT THAT A LOCAL BOARD DOES NOT BELIEVE THAT A REGISTRANT IS SINCERE IS NOT A SUFFICIENT BASIS FOR AN ADVERSE FINDING. THE DETERMINATION OF THIS ISSUE IS TO BE MADE UPON THE LOCAL BOARD'S CONSIDERATION OF ALL THE VARIOUS ITEMS OF OBJECTIVE EVIDENCE APPEARING IN THE REGISTRANT'S FILE OR TESTIMONY.

THE LOCAL BOARD MAY PROPERLY CONSIDER THE FOLLOWING FACTORS:

(1) CONFLICTING OR INCONSISTENT INFORMATION: THE FACT THAT THE REGISTRANT'S CLAIM INCLUDES SUCH INFORMATION ON ITS FACE MAY BE CONSIDERED EVIDENCE OF INSINCERITY.

(2) DEMEANOR AND CREDIBILITY: IF THE REGISTRANT APPEARS BEFORE THE LO-
CAL BOARD THESE FACTORS MAY BE CONSIDERED. A FORTHRIGHT MANNER MAY BE EVIDENCE OF SINCERITY, WHILE EVASIVENESS, INABILITY TO ANSWER QUESTIONS OR TO EXPLAIN INCONSISTENT OR CONFLICTING INSINCERITY. THE LOCAL BOARD SHOULD RECORD IN DETAIL THE PARTICULAR POINTS IN THE REGISTRANT’S TESTIMONY UPON WHICH IT BASES ITS FINDINGS. THE FACT THAT A REGISTRANT IS POORLY EDUCATED AND HAS DIFFICULTY ARTICULATING HIS CLAIM IS NOT EVIDENCE OF INSINCERITY, NOR IS POLISHED SPEECH EVIDENCE OF SINCERITY.

(3) EMPLOYMENT AND ACTIVITIES: PREVIOUS OR CURRENT EMPLOYMENT OR ACTIVITY MAY BEAR UPON SINCERITY. HUMANITARIAN OR RELIGIOUS EMPLOYMENT OR ACTIVITY OR PEACEFUL PROTEST AGAINST WAR MAY BE EVIDENCE OF SINCERITY. EMPLOYMENT OR ACTIVITIES IN MILITARY AREAS, SUCH AS DEFENSE WORK OR RESERVE OFFICER TRAINING CORPS (ROTC) MAY BE EVIDENCE OF INSINCERITY.

(4) REFERENCES: LETTERS SUBMITTED BY THE REGISTRANT OR INDIVIDUALS PERSONALLY CONTACTED BY THE BOARD MAY FURNISH PERTINENT INFORMATION. ORDINARILY, GREAT WEIGHT SHOULD ONLY BE GIVEN TO PERSONAL EVALUATIONS RECEIVED FROM SOURCES WELL ACQUAINTED WITH THE REGISTRANT.

(5) TIMING: THE FACT THAT A CLAIM IS FILED CLOSE TO THE DATE OF INDUCTION MAY BE EVIDENCE OF INSINCERITY BUT IT IS NOT CONCLUSIVE. THIS FACTOR MAY HAVE NO RELEVANCE AT ALL IF THE REGISTRANT HAS AT ALL TIMES BEEN IN A LOWER SELECTION GROUP AND THUS NOT REQUIRED TO FILE HIS CLAIM, OR IF THE LOCAL BOARD FINDS THAT THE FILING OF THE
CLAIM ACCOMPANIED A CHANGE OR CRYSTALLIZATION OF BELIEF.

(6) EXPRESSION OF BELIEFS: A RECORD OF PUBLIC OR PRIVATE EXPRESSION OF HIS BELIEFS MAY BE EVIDENCE OF THE REGISTRANT'S SINCERITY. RECENT EXPRESSION OF INCONSISTENT OR CONFLICTING BELIEFS MAY BE EVIDENCE OF INSINCERITY. THE MERE FACT THAT A REGISTRANT HAS NOT GIVEN PUBLIC EXPRESSION TO HIS BELIEFS IS NOT NECESSARILY EVIDENCE OF INSINCERITY.

(7) RELIGIOUS AFFILIATION: AFFILIATION WITH A PARTICULAR SECT, WHICH HOLDS CONSCIENTIOUS OBJECTION AS ONE OF ITS BELIEFS, IS RELEVANT TO THE ISSUE OF SINCERITY, BUT IS NOT DISPOSITIVE. THE PERSONAL BELIEF OF THE REGISTRANT, AND NOT THE TENETS OF HIS RELIGION, IS THE CENTRAL ISSUE. LACK OF MEMBERSHIP IN ANY SECT IS NOT EVIDENCE OF INSINCERITY, NOR IS THE FACT THAT THE REGISTRANT IS NOT AN OFFICIAL MEMBER OF A SECT WHOSE BELIEFS HE MAY FOLLOW. IT MAY BE RELEVANT TO THE ISSUE THAT THE REGISTRANT IS NOT CONSIDERED A MEMBER IN GOOD STANDING OF A SECT TO WHICH HE MAY CLAIM MEMBERSHIP, BUT THE FACT THAT HE MAY REJECT SOME OF THE TENETS OF SUCH SECT OR THAT THE BOARD MAY NOT AGREE WITH HIS UNDERSTANDING OF THE SECT'S TENETS IS IRRELEVANT.

(8) DRASTIC CHANGE IN BEHAVIOR: THIS MAY BE EVIDENCE OF THE INSINCERITY OF A REGISTRANT WHO CLAIMS LONG ADHERENCE TO THE BELIEFS ON WHICH HE BASES HIS CLAIM, BUT WHO, FOR EXAMPLE, SUDDENLY INCREASES HIS RELIGIOUS ACTIVITIES IMMEDIATELY BEFORE OR AFTER FILING HIS CLAIM. ON THE OTHER HAND, THE SAME FACTS MAY BE EVIDENCE OF THE SINCERITY OF ONE WHO CLAIMS A RECENT CHANGE IN BELIEF.
(9) PRIOR CRIMINAL RECORD: THIS MAY BE EVIDENCE OF INSINCERITY WHERE IT INCLUDES ACTIONS THAT INDICATE A DISRESPECT FOR LIFE, OR ACTIONS OTHERWISE INCONSISTENT WITH HIS CLAIM. A PRIOR RECORD WHICH DOES NOT INCLUDE SUCH CRIMES IS IRRELEVANT.

(10) PERSONAL KNOWLEDGE: LOCAL BOARD MEMBERS MAY RELY UPON THEIR OWN KNOWLEDGE OF THE REGISTRANT. IF SUCH INFORMATION IS RELIED UPON IT MUST BE PLACED IN THE REGISTRANT'S FILE.


FINDINGS

1. FACTORS INDICATING THAT THE REGISTRANT IS SINCERE:

2. FACTORS INDICATING THAT THE REGISTRANT IS INSINCERE:

3. BASED UPON THESE FACTORS, THE LOCAL BOARD FINDS THAT THE REGISTRANT IS _______ IN HIS CLAIM.
Conscientious Objector Claims

Comment

Section 6(j) of the 1967 Act does not specifically mention sincerity as a requirement for conscientious objector status. Nevertheless, such a requirement seems implicit in the very concept of conscientious objection, and the Supreme Court, in Witmer v. United States, has said that "the ultimate question in conscientious objector cases is the sincerity of the registrant in objecting, on religious grounds, to participation in war in any form."

Sincerity is surely the most difficult of the requirements to deal with under the procedure suggested in this article. The nature of the issue is such that no single court decision, or series of decisions, can set universal guidelines. Indeed, the term "sincerity" has been subject to quite divergent interpretations. The Selective Service System has taken the position that "[the] belief upon which conscientious objection is based must be the primary controlling factor in the man's life." This interpretation appears to be unduly restrictive, and not sanctioned by either the language of section 6(j) or the recent decisions of the Supreme Court. What is required is that the beliefs "impose upon [the registrant] a duty of conscience to refrain from participation in any war at any time." The proper inquiry for the local board is whether these beliefs are "truly held."

To resolve this issue, the local boards must engage in a case by case determination of a purely subjective fact. To assist in this determination, the boards should adopt a balancing approach and weigh all of the evidence.

In determining what factors the local board should consider, the courts are frequently in hopeless conflict, and many undertake a rather independent, almost de novo review of local board decisions. Nevertheless, there has been a dramatic change in the willingness of the courts to review the sincerity issue in recent years, with a much greater reluctance to accept superficial reasons for a denial of a conscientious objector claim.

Some courts now hold that certain factors, standing alone, are insufficient as a matter of law to sustain a finding of insincerity.

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64 348 U.S. 375, 381 (1955).
65 Local Board Memorandum No. 107 (1970).
68 See, e.g., Helwich v. Laird, 438 F.2d 959, 963 (5th Cir. 1971), holding there must be "hard, provable, reliable facts" in the record to support a finding of insincerity.
69 See, e.g., United States v. Abbott, 425 F.2d 910 (8th Cir. 1970) (lateness); United States v. Close, 215 F.2d 439 (7th Cir. 1954) (failure to publicly express beliefs); and
For example, a local board’s mere disbelief of a registrant has been an inappropriate basis for sustaining a finding of insincerity since Witmer. However, the courts do not deal with the issue of what weight should be given to particular factors, and one or two minor factors have frequently been relied upon to sustain a finding which is otherwise against the weight of the evidence.70

Because of the nature of the issue, this section of the proposed form requires a different approach than that used in the preceding sections. A number of factors are set out as examples of what the local board should consider in deciding the sincerity issue. Instead of merely making a finding on the question, the form requires the local board to set out all of the factors that bear upon the question of sincerity. In this way the local board should be discouraged from merely seeking out and concentrating on one or two minor factors; if they omit consideration of any relevant factors, this will also be clear. Although this procedure will not prevent the local board from considering invalid factors, ignoring valid factors, or drawing erroneous conclusions from all the relevant factors, it will allow for a much easier review of board decisions by appeal boards, administrative personnel, and courts. To the extent that the board’s errors are minor, courts can be expected to use the harmless error rule to sustain the local board decision.71

The enumerated criteria in this section are drawn largely from the case law, with some common sense hopefully filling in gaps. Although a single body of law seems to be emerging slowly from the lower court cases, there are many conflicting decisions, and, where this is so, what is believed to be the better rule has been adopted.

Inconsistencies or conflicts that appear on the face of the registrant’s claim, insofar as they are relevant, seem to present the clearest ground for a finding of insincerity, and the courts have so held.72 At the same time, these apparent inconsistencies can often be explained, and therefore the board should bring them to the attention of the registrant who appears personally before it.

The courts have long considered the demeanor and credibility of the registrant as being indicative of his sincerity,73 although the

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United States v. Cummins, 425 F.2d 646 (8th Cir. 1970) (seeking deferments as well as conscientious objector status).

70 See, e.g., United States v. Corliss, 280 F.2d 808 (2d Cir. 1960) (three separate cases, all illustrate this point); and United States v. Kember, 437 F.2d 534 (9th Cir. 1970) (lateness of claim, one of many people interviewed by board doubted sincerity, and claimant may have told someone he was in college to avoid the draft).

71 See note 21 supra.


73 Id.
courts have begun to require the local board to detail adverse findings in this area in the registrant's file. Employment and activity of the registrant also have long been recognized as important factors. There should be practical limits to the importance of these factors, however. The fact that a registrant worked in a steel mill whose product might eventually end up in a war machine has been found to be irrelevant, while recent uncomplaining participation in the Reserve Officers Training Corps (ROTC) has been held relevant to the sincerity question.

References, either through letters solicited by the registrant or obtained by the board on its own initiative, can provide important information on the sincerity issue. The cases, however, indicate a lamentable practice on the part of some boards of searching diligently for anyone who will comment adversely on the registrant's claim, and basing a finding of insincerity on that information. This should be discouraged if the person giving the information has only a passing acquaintance with the registrant.

Timing is another factor which local boards have relied upon too heavily. Some courts have now held that lateness alone will not support a finding of insincerity. Others have held that lateness is totally irrelevant where the registrant has been in a deferred classification at all times prior to making his claim. This would appear to be the correct interpretation of the Selective Service Regulations, since the claim, even if upheld, would not change the registrant's classification.

The public expression of one's beliefs over a period of time would seem to indicate that the registrant is sincere. Nevertheless, failure to give public expression to one's beliefs should not alone support a finding of insincerity. Another factor which may be of great relevance in particular cases, but which is subject to abuse, is the religious affiliation of the registrant. The Witmer

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75 United States v. Joyce, 437 F.2d 740 (7th Cir. 1971).
76 United States v. Pritchard, 413 F.2d 663 (4th Cir. 1969).
79 United States v. Rutherford, 437 F.2d 182 (8th Cir. 1971); United States v. Velen, 437 F.2d 763 (7th Cir. 1971).
80 "Each classified registrant shall within 10 days after it occurs, report to the local board in writing any fact ... that might result in his being placed in a different classification." 32 C.F.R. § 1625.1(b) (1971), as amended, 36 Fed. Reg. 21077 (Nov. 3, 1971) (emphasis added).
81 One court has so held: United States v. Close, 215 F.2d 439 (7th Cir. 1959).
opinion indicates that membership in a pacifist sect is relevant to the board's inquiry, but that the real issue is the personal beliefs of the registrant.\textsuperscript{82} Thus, although one court has held that a Menonite's violation of the tenets of his faith by drinking and dating girls was a sufficient basis to find that he did not sincerely hold the pacifist beliefs of the sect,\textsuperscript{83} the better rule seems to be that the registrant is in no way bound to all of the beliefs of his sect.\textsuperscript{84} It is also quite clear from the broad definition of religious training and belief that the fact that the registrant does not belong to any sect is not conclusive.

While a sudden change of behavior may indicate insincerity, it may also buttress the argument of one who claims a recent conversion. Finally, crimes of physical violence should cast doubts upon a registrant's sincerity, but other types of crimes should be irrelevant.\textsuperscript{85}

The personal knowledge of the board members must be included if the "little groups of neighbors" fantasy is to survive at all. However, any information so relied upon must be placed in the registrant's file so that he will have an opportunity to examine and rebut it.\textsuperscript{86}

The factors included in this section may appear rather obvious. The object of listing them, however, is to force the local board to consider each claim fully, and not to concentrate upon only one or two factors. In an effort to avoid limiting the scope of the board's inquiry, it is specifically provided that other factors may be considered.

IV. CONCLUSION

Use of the proposed form in local board consideration of conscientious objector claims would provide a framework for reasoned application of the standards which have been established by the courts. As a result, registrants claiming conscientious objector status would be ensured of a more uniform application of the standards. Moreover, the number of court appeals arising from misapplication of the standards would be lessened and, in those instances where an appeal did arise, the courts would be in a

\textsuperscript{82}See also Olquin v. United States, 392 F.2d 329 (10th Cir. 1968).


\textsuperscript{84}Cf. United States v. Newton, 435 F.2d 671 (9th Cir. 1970) (Seventh Day Adventist not barred from conscientious objector status because members of his sect generally object only to combatant service).

\textsuperscript{85}Chernoff v. United States, 219 F.2d 721 (9th Cir. 1955).

better position to review the local board decision. Use of the proposed form would thus benefit all parties involved while compromising the interests of none.

The type of procedure suggested here should be used, not only in conscientious objector claims, but in other areas where the local boards must apply extremely technical standards. The only way to guarantee that such standards are correctly applied is to ensure that an adequate explanation of them is before the board each time the problem arises. The proposed form would be an important step in that direction.

Perhaps the form proposed in this article establishes a framework too rigid and technical to be applied effectively by the local boards. Perhaps local board members are not sophisticated enough to use it properly. If so, considering the truly elementary nature of the proposal, the local boards have lost any claim to being effective administrative agencies and a more elaborate structural reform must be implemented.

On the other hand, perhaps the proposal is simply unneeded. Perhaps the local boards can handle the disposition of conscientious objector claims without the suggested form. But this position is belied by their past performance, as evidenced in nearly every volume of the Federal Reporter and Federal Supplement.

—David M. FitzGerald*

*J.D. 1971, University of Michigan.