Washington and Lee Law Review

Volume 22 | Issue 2 Article 18

Fall 9-1-1965

Conscientious Objectors And Belief In A Supreme Being

act, as to warrant discipline include: operating a disorderly house,[42] attempting to coerce women to prostitution,[43] participating in a lynching,[44] or engaging in abnormal sexual conduct.[45] Such conduct demonstrates an inherent unfitness, discipline being necessary even though the conduct may not be related to the profession.

Not every private vice, however, will suffice to support a disciplinary proceeding.[46] Frequenting a disorderly house[47] and exhibiting a violent temper and using abusive language[48] do not show such a high degree of immoral and unethical conduct as to warrant discipline.

The court's power to discipline attorneys for misconduct in their nonprofessional life is well established. No absolute rule, however, has yet been established separating those offenses which do warrant discipline from those which do not. As a result, virtually every act of misconduct could subject the attorney to discipline. It is submitted that although disciplinary proceedings may be necessary to maintain a high degree of respect for the legal profession, in order to justify discipline courts should require a showing of moral turpitude.

JEFFREY GORDON HAVERSON

CONSCIENTIOUS OBJECTORS AND BELIEF IN A SUPREME BEING

Conscientious objectors do not have a constitutional right to an exemption from military service upon religious objections.[1] Once an

[42]In re Okin, 272 App. Div. 607, 73 N.Y.S.2d 861 (1947); In re Marsh, 42 Utah 186, 129 Pac. 411 (1913); In re Kosher, 61 Wash. 2d 206, 377 P.2d 988 (1963).

[43]In re Gould, 4 App. Div. 2d 174, 164 N.Y.S.2d 48 (1957), where an attorney lured young women to his premises by help wanted advertisements, attempted to induce them to commit prostitution and other immoral acts and made other indecent proposals. Accord, In re Kosher, 61 Wash. 2d 206, 377 P.2d 988 (1963).

[44]Ex parte Wall, 107 U.S. 265 (1882).

[45]In re Heinze, 233 Minn. 391, 47 N.W.2d 123 (1951) (improper sexual conduct with juvenile boys); In re Fleckenstein, 34 N.J. 20, 166 A.2d 753 (1961) (carnal indecency).

[46]Drunkenness alone probably will not be sufficient to support a disciplinary proceeding. Drunkenness may be a factor in a disciplinary proceeding where it is coupled with some other form of misconduct. See In re Wells, 293 Ky. 201, 168 S.W.2d 730 (1943); In re Osmond, 174 Okla. 561, 54 P.2d 319 (1935). Habitual and public drunkenness has been held sufficient to warrant discipline. Wood v. State ex rel. Boykin, 45 Ga. App. 783, 165 S.E. 908 (1932).

[47]People ex rel. Black v. Smith, 290 Ill. 241, 124 N.E. 807 (1919).

[48]State v. Metcalfe, 204 Iowa 123, 214 N.W. 874 (1927) (dictum); In re Washington, 82 Kan. 829, 109 Pac. 700 (1910).

[1]Keefer v. United States, 313 F.2d 773 (9th Cir. 1963); Korte v. United States, 260 F.2d 633 (9th Cir. 1958); Uffelman v. United States, 230 F.2d 297 (9th Cir. 1956);

exemption has been recognized by the legislature, however, it must be made available on a nondiscriminatory basis.[2] The establishment of a conscientious objector exemption by Congress[3] has presented the courts with serious legal considerations, since the exemption must be broad enough to be free from constitutional objections,[4] while being narrow enough so as to admit of adjudication of an individual's right to the exemption.[5] Meeting both of these requirements is difficult.

The Selective Training and Service Act of 1940[6] granted exemptions from military service to any person "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."[7] The Universal Military Training and Service Act of 1948[8] added to this clause the further statement that: "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."[9]

In the recent case of *United States v. Seeger*,[10] this statutory "Supreme Being" clause was attacked as being a violation of the free establishment of religion and due process clauses of the first and fifth amendments to the United States Constitution. Seeger claimed an exemption from military service on the ground that due to his individual religious training and belief he was conscientiously opposed to participation in war in any form. Because of his disbelief in the existence of God he refused, however, to affirm or negate a belief in a Supreme Being. Seeger contended that his was a "belief in and

---

White v. United States, 215 F.2d 782 (9th Cir. 1954); Imboden v. United States, 194 F.2d 508 (6th Cir. 1952); United States v. Monroe, 150 F. Supp. 785 (S.D. Cal. 1957); United States v. Alvies, 112 F. Supp. 618 (N.D. Cal. 1953); United States v. Newman, 44 F. Supp. 817 (E.D. Ill. 1942); Koster v. Holz, 3 N.Y.2d 639, 148 N.E.2d 287, 171 N.Y.S.2d 65 (1958).

[2]Speiser v. Randall, 357 U.S. 513 (1958).

[3]Universal Military Training & Service Act § 6(j), 62 Stat. 612 (1948), 50 U.S.C.A. App. § 456(j) (1951).

[4]A declaration of unconstitutionality might void the exemption clause and leave conscientious objectors without relief.

[5]There must be some objective basis by means of which the courts can test satisfaction of the requirement. Otherwise, the law would be uncertain and individuals could not determine where they stand in relation to the exemption.

[6]Section 5(g). 54 Stat. 889 (1940).

[7]Ibid.

[8]Supra note 3.

[9]Supra note 3, at 613.

[10]380 U.S. 163 (1965).

devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed."[11] On this basis, Seeger was convicted by the United States District Court for the Southern District of New York for refusal to submit to induction. The District Court found Seeger to be sincerely opposed to participation in war because of his religious training and belief, but denied the exemption to him since his was not a "belief in a relation to a Supreme Being."[12] The United States Court of Appeals for the Second Circuit reversed Seeger's conviction and declared the "Supreme Being" clause to be violative of the due process clause of the fifth amendment.[13] The Supreme Court of the United States granted certiorari,[14] and consolidated this case with two others.[15]

In affirming the judgment of the Court of Appeals, the Supreme Court entirely disregarded the constitutional question, and instead, attempted to establish a judicial test by which the applicability of the statutory "Supreme Being" clause to an individual seeking exemption could be determined without arbitrarily classifying individual beliefs. The Court said: "We believe ... the test of belief 'in a relation to a Supreme Being' is whether 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."[16]

Since the Federal Government pre-empted the field of military draft,[17] Congress has been unable to produce an entirely satisfactory conscientious objector clause. The clauses either apply only to certain religious sects and beliefs,[18] or are so broad that almost anyone can qualify.[19]

---

[11]Id. at 166.

[12]216 F. Supp. 516 (S.D.N.Y. 1963).

[13]326 F.2d 846 (2d Cir. 1964).

[14]377 U.S. 922 (1964).

[15]United States v. Jakobson, 325 F.2d 409 (2d Cir. 1963), in which the defendant had a humanistic belief which he felt would conflict with participation in war. On appeal, the United States Court of Appeals for the Second Circuit reversed the conviction for failure to submit to induction on the ground that the lower court did not clearly state its reasons for denying the exemption.

Peter v. United States, 324 F.2d 173 (9th Cir. 1963), in which the defendant was not a member of a specific religious sect and whose belief in a Supreme Being was doubtful, and the record did not contain evidence as to his sincerity, the Unted States Court of Appeals for the Ninth Circuit affirmed a conviction for failure to submit to induction.

[16]380 U.S. at 165-66.

[17]The first Federal Draft Law was passed in 1864. Supra note 10, at 170-71.

[18]See the Draft Act of 1917, 40 Stat. 78.

[19]Congress refused to adopt a provision exempting any person "'who is *conscientiously* opposed to participation in war in any form.'" Conklin, Conscientious

To meet the requirement of the exemption under the 1940 Act,[20] a person must be *sincerely* opposed, by reason of his *religious training and belief,* to *participation* in war in any form. Although the courts have had little difficulty applying the test of *sincerity*[21] and opposition to *participation*[22] in war, they have been unable to agree upon what is embodied in the term "religious training and belief."

Early cases indicated that membership in a specific religious sect, whose tenets were opposed to participation in war, was a prerequisite to the exercise of the exemption.[23] Specific sect membership, however, was quickly discarded as a prerequisite and attention was directed toward the individual's belief.[24] This did not result in a solution since the type of individual belief remained undefined. Some courts felt the requirement was met by the "existence of a conscientious

---

Objector Provisions: a View in the Light of Torcaso v. Watkins, 51 Geo L. J. 252, 270 (1963).

[20]Supra note 6.

[21]The following cases involved the sincerity of the individual's belief: Gonzales v. United States, 348 U.S. 407 (1955); Witmer v. United States, 348 U.S. 375 (1955); United States v. Corliss, 280 F.2d 808 (2d Cir. 1960); Parr v. United States, 272 F.2d 416 (9th Cir. 1959); Selby v. United States, 250 F.2d 666 (9th Cir. 1957); Riles v. United States, 223 F.2d 786 (5th Cir. 1955); Shepherd v. United States, 220 F.2d 855 (9th Cir. 1955); Pitts v. United States, 217 F.2d 590 (9th Cir. 1954); Goetz v. United States, 216 F.2d 270 (9th Cir. 1954); Hinkle v. United States, 216 F.2d 8 (9th Cir. 1954); Williams v. United States, 216 F.2d 350 (5th Cir. 1954); Roberson v. United States, 208 F.2d 166 (10th Cir. 1953); Koster v. Holz, 3 N.Y.2d 639, 148 N.E.2d 287, 171 N.Y.S.2d 65 (1958).

[22]The following cases involved a question of opposition to participation in war: United States v. Lauing, 221 F.2d 425 (7th Cir. 1955); Blevins v. United States, 217 F.2d 506 (9th Cir. 1954); Jessen v. United States 212 F.2d 897 (10th Cir. 1954); Pitts v. United States, 217 F.2d 590 (9th Cir. 1954); Shepherd v. United States, 217 F.2d 942 (9th Cir. 1954); United States v. Close, 215 F.2d 439 (7th Cir. 1954), cert. denied, 348 U.S. 970 (1955); Annett v. United States, 205 F.2d 689 (10th Cir. 1953); Taffs v. United States, 208 F.2d 329 (8th Cir. 1953); United States v. Sage, 118 F. Supp. 33 (D. Neb. 1954). These cases deal with the issue of whether the indvidual's moral acceptance of a willingness to take another's life in self-defense is evidence conclusively rebutting the claim of objection to participation in war. It is generally held that it does not. Contra, United States v. Jones, 142 F. Supp. 806 (E.D.S.C. 1956). See also Bouziden v. United States, 251 F.2d 728 (10th Cir. 1958).

[23]E.g., Selective Draft Law Cases, 245 U.S. 366 (1918).

[24]Bradley v. United States, 348 U.S. 967 (1955); Simmons v. United States, 348 U.S. 397 (1955); United States v. Hartman, 209 F.2d 366 (2d Cir. 1954); Imboden v. United States, 194 F.2d 508 (6th Cir. 1952); United States v. Macintosh, 42 F.2d 845 (2d Cir. 1930); United States v. Erikson, 149 F. Supp. 576 (S.D.N.Y. 1957).

Although, sect membership was thus an advantage, it was considered by many to be an arbitrary classification. Since sect membership is no longer a prerequisite, it may become a disadvantage since at least one case has held that an individual's beliefs could not entitle him to an exemption if the tenets of his religious sect themselves fell short of the requirement. Roberson v. United States, 208 F.2d 166 (10th Cir. 1953).

scruple against war in any form...."[25] Other courts felt it required an orthodox belief in a deity.[26] Intercircuit conflict resulted.[27]

To settle this conflict, Congress passed the 1948 Act[28] defining "religious training and belief" as an "individual's belief in a relation to a Supreme Being...."[29] Instead of resolving the conflict, however, the 1948 Act merely presented the courts with new terms to construe, and the result was another conflict, this time as to what constitutes a "belief in a relation to a Supreme Being." Some courts said it required an orthodox view of a deity,[30] while others thought the clause could be more liberally construed to mean any belief involving a transcendental idea.[31]

Against this background, the Supreme Court in *Seeger* considered what constitutes a "belief in a relation to a Supreme Being."[32] The Court was faced with the difficult problem of construing the statute broadly enough so as to avoid a declaration of unconstitutionality, while construing it narrowly enough so as to avoid a flood of litigation, and still establishing a practical test for the lower courts to follow.

The Court indicated its desire to give the clause a constitutional interpretation, fearing that voiding it, would leave conscientious objectors without any exemption.[33] In the test adopted the Court satisfies both the orthodox, by making the basic standard "the orthodox belief in God...", and the more liberal, by making the exemption available to those who possess beliefs "parallel" to that basic standard. The test remains limited by the exceptions specifically announced in the "Supreme Being" clause, which are still applicable.[34]

---

[25]United States v. Kauten, 133 F.2d 703, 708 (2d Cir. 1943). Accord: United States ex rel. Reel v. Badt, 141 F.2d 845 (2d Cir. 1944); United States ex rel. Phillips v. Downer, 135 F.2d 521 (2d Cir. 1943).

[26]Berman v. United States, 156 F.2d 377 (9th Cir. 1946), cert. denied, 329 U.S. 795 (1946); United States v. Knappke, 125 F. Supp. 303 (W.D. Pa. 1954).

[27]E.g., Berman v. United States, supra note 26; United States v. Kauten, supra note 25.

[28]Supra note 3.

[29]Supra note 3. The constitutionality of the "Supreme Being" clause was upheld in the following cases: Etcheverry v. United States, 320 F.2d 873 (9th Cir. 1963), cert. denied, 375 U.S. 930 (1963); Clark v. United States, 236 F.2d 13 (9th Cir. 1956), cert. denied 352 U.S. 882 (1956); United States v. Bendik, 220 F.2d 249 (2d Cir. 1955); George v. United States, 196 F.2d 445 (9th Cir. 1952), cert. denied, 344 U.S. 843 (1952).

[30]Clark v. United States, 236 F.2d 13 (9th Cir. 1956), cert, denied, 352 U.S. 882 (1956); United States v. Bendik, 220 F.2d 249 (2d Cir. 1955).

[31]Supra note 13.

[32]380 U.S. at 165-66.

[33]Ibid.

[34]"[B]ut does not include essentially political, sociological, or philosophical views or a merely personal moral code...." Supra note 3. It appears, however, that these types of beliefs may very well be "parallel" to a belief in an orthodox deity.

The Supreme Court has, at least in theory, reached a compromise in the intercircuit conflict.[35] It is submitted that determining when an individual's belief is sufficiently "parallel" to an "orthodox belief in God" to entitle him to the exemption will be the next conscientious objector conflict the Court will be asked to resolve.[36]

HENRY ANGEL

[35]Supra note 27.
[36]This test requires a complete knowledge of an individual's psychology.