

Copy of the affidavit and complaint, copy of Commitment, together with the minutes as taken by the official stenographer, are herewith attached and made a part of this return, all of which is

Respectfully submitted,

FRANCIS X. MANCUSO (signed)
City Magistrate
per JB.

Dated New York
November 19, 1918.

uncorrected

COPY

No. 3109.

UNITED STATES OF AMERICA ;
District of Colorado. ;)SS.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLORADO.

UNITED STATES OF AMERICA, *
Plaintiff, *
-vs- *
BENJAMIN JOSEPH SALMON, *
Defendant. *

ASSIGNMENTS OF ERROR.

Comes now Benjamin Joseph Salmon, the defendant in the above entitled cause and alleges that in the record proceedings and trial of said cause in this Court and in the verdict rendered and in the judgment and sentence upon said verdict there is manifest error prejudicial to said defendant in the following particulars, to-wit:

FIRST: The Court committed error prejudicial to this defendant in refusing to permit defendant's counsel in his examination of the jury to ask the question "If it be shown that Mr. Salmon is now and for years has been a member of a religious organization which teaches that the new testament is the revealed and inspired word of God, and if it be also shown that he has, and for years past has had and freely expressed, a deep religious conviction that he is bound to follow the commandment 'thou shalt not kill,' and the admonition of Christ, 'resist not evil,' and the admonition, 'love thine enemies,' - if these things be shown - is there anything in your mind or in your experience, or do you know of anything,

that would prejudice you either for or against Mr. Salmon in the consideration of this case?"

SECOND: The Court committed error prejudicial to this defendant in permitting witness Mooney, over the objection of defendant to testify relative to mailing to defendant the "Questionnaire".

THIRD: The Court committed error prejudicial to this defendant in receiving in evidence, over defendant's objection, Exhibit C.

FOURTH: The Court committed error prejudicial to this defendant in permitting witnesses Mooney, Holland and Plattner to testify relative to conversations between defendant and said witnesses on January 4th, 1918.

FIFTH: The Court committed error prejudicial to this defendant in refusing to permit defendant's counsel upon cross-examination to ask witness Plattner concerning "the extent of his experience in sitting on boards authorized to pass upon questions concerning the rights of other persons".

SIXTH: The Court committed error prejudicial to this defendant in refusing to permit defendant's counsel upon cross-examination to ask witness Plattner the question "If he (defendant) had filled out the Questionnaire would you have known any better what his ground of refusal (to fill out the Questionnaire) was?"

SEVENTH: The Court committed error prejudicial to this defendant in refusing to allow defendant to establish by the testimony of Elizabeth Salmon, Catherine C. Salmon, Lester V. Cannady and James T. Smith "that for a period beginning before the commencement of the present war, defendant has been a member of a well-recognized religious organization

whose creed and teachings are opposed to war, or the participation therein, in any form; that he is still a member of that organization; that his convictions are opposed to war, or the participation therein, in any form, in accordance with the teachings and creed of that organization; and that his convictions have been such since before the beginning of this war;" "that at a public meeting held some four or five years ago, defendant declared his personal opposition to war, or the participation therein, in any form;" "that the defendant's religious convictions, are against war and the participation therein, in any form, and that these convictions are in accordance with the creed and teachings of the religious organization to which he belongs, and has belonged for the period mentioned."

EIGHTH: The Court committed error prejudicial to this defendant in charging the jury that the Questionnaire had been introduced in evidence and in reading to the jury therefrom when the Questionnaire had not been introduced in evidence.

NINTH: The Court committed error prejudicial to this defendant in charging the jury that defendant's only defense was "that his religious convictions were such that he was exempt from military duty."

TENTH: The Court committed error prejudicial to this defendant in charging the jury that if the "Local Board" refused to consider defendant's claim for exemption on account of his religious convictions then "he can come into Court and have some relief."

ELEVENTH: The Court committed error prejudicial to this defendant in permitting the government, over the objection of defendant and after the case was closed and was submitted to the jury and as the jury were about to retire,

to reopen the case and to introduce additional evidence, to-wit, Exhibit F.

TWELFTH: The Court erred in refusing to instruct the jury to acquit the defendant.

THIRTEENTH: The Court erred in refusing to sustain defendant's contentions "The President exceeded his authority in issuing a Questionnaire purporting to require a religious objector to (1) designate what department of the military forces he prefers to serve in; (2) The President exceeds his authority in requiring a religious objector to do anything except make known to the Local Board that his objection was based upon religious grounds; (3) that the Questionnaire requires him to do military service contrary to the expressed exemptions of the Act."

FOURTEENTH: The Court erred in refusing to sustain defendant's contentions "That the Act is unconstitutional (1) because while recognizing religious conviction against war and participation therein as a proper ground of exemption, and therefore as not opposed to the peace and prosperity, and the morals of the country and its people, nevertheless it requires, in addition to such conviction, membership in a religious organization; also it provides exemption to the holder of the conviction if he be a member of such organization, but punishes the one holding the same conviction if he be not a member of such organization, and thereby permits the free exercise of religious conviction by organization members but prohibits the free exercise of the same religious convictions by others; (2) because it delegates to military, unqualified boards, the right to pass upon the constitutionality of the Act as to this express exemption."

FIFTEENTH: That the verdict is contrary to the evidence.

SIXTEENTH: That the verdict is contrary to law.

SEVENTEENTH: That no crime is charged in the information herein and that upon the statements and allegations of the information the defendant could not be found guilty of any crime.

EIGHTEENTH: That the information herein states facts showing that the default, if any, of the defendant in the matter of filling out and returning his questionnaires, occurred and was completed on the 31st day of December, 1917, and that the crime, if any, committed by the defendant must have been committed and completed on the 31st day of December, 1917, the same being the last day of the period within which, according to the statements in the information, defendant was required to fill out and return his questionnaire, whereas the only crime charged in the information is the willful failure and refusal of the defendant to fill out and return his questionnaire upon a day which, according to the allegations of the information, was four (4) days subsequent to the last day upon which it is possible for defendant to commit such an offense said subsequent day being the 4th day of January, 1918.

NINETEENTH: That it appears upon the face of the information that the 31st day of December, 1917, was the only day upon which defendant could have committed the crime sought to be charged, whereas said information charges the commission of said crime by the defendant on an impossible day, to-wit, the 4th day of January, 1918.

TWENTIETH: That whereas said information charges that defendant was under a duty to fill out and return said

questionnaire on or before the 31st day of December, 1917, it is nowhere in said information charged that he was under any duty or legal obligation to fill out or return said questionnaire on the day upon which the commission of the crime is alleged, to-wit, the 4th day of January, 1918.

TWENTY-FIRST: Defendant further shows to the Court that neither upon the 4th day of January, 1918, nor on any other day subsequent to the 31st day of December, 1917, was there any duty or obligation under the law upon defendant to fill out or return a questionnaire.

TWENTY-SECOND: That the Court erred in receiving the verdict of the jury in this cause.

TWENTY-THIRD: That the Court erred in entering judgment on the verdict of the jury in this cause.

TWENTY-FOURTH: That the Court erred in passing sentence in this cause.

TWENTY-FIFTH: That the Court erred in denying defendant's motion for new trial.

TWENTY-SIXTH: That the Court erred in denying defendant's motion in arrest of judgment in this cause.

WHEREFORE the defendant, Benjamin Joseph Salmon, prays that the judgment aforesaid for and on account of the errors aforesaid may be reversed, annulled and altogether holden for naught and that the sentence if any against this defendant upon said judgment be vacated and set aside.

WHITEHEAD & VOGL
Attorneys for Defendant.

If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.—*John Stuart Mill.*

This letter sent to our Congressman for transmittal to President Wilson. Letter returned. Retailed to the President's secretary with request that it be given to our Chief Executive.

DENVER, COLO., June 5, 1917.

HIS EXCELLENCY, WOODROW WILSON,
President of the United States,
Washington, D. C.

My Dear Mr. Wilson:

Complying with your edict, I registered today. Your mandate was autocratic, and contrary to the Constitution, nevertheless, acquiescence caused injustice against no one but myself, consequently, I submitted. But, I must now tell you that I refuse to submit to conscription.

Regardless of nationality, all men are my brothers. God is "our Father who art in heaven." The commandment "Thou shalt not kill" is unconditional and inexorable.

If the parent orders the child to do wrong, the child should disobey. If the State commands the subject to violate God's law, the subject should ignore the State. Man is anterior to the State, and God is suprema.

Both by precept and example, the lowly Nazarene taught us the doctrine of non-resistance, and so convinced was He of the soundness of that doctrine that he sealed His belief with death on the cross. The great mass of the people still adhere to Christ's teachings against war, regardless of the fact that cardinals, priests and ministers have repudiated the Christian ideal and bowed to the god of expediency.

There are many ways to avoid war. Now that you are in it, there are many ways to get out of it without sacrificing, or threatening to sacrifice, a single life. Solution of the problem, without breaking the commandments of God, is merely a question of desire and determination.

Aside from right or wrong, why concern ourselves about German injustice while unmindful of the disorder of our own house? In America, millions of impoverished citizens vainly send forth their mute appeal for justice. Their supplications are answered with greater tyranny, renewed iniquities, and a farther disregard of their rights and their liberties. Show me any German cruelty that can outdo in horror the massacre of the women and children in the tent colony at Ludlow! And, the underlying cause of the Ludlow tragedy manifests itself daily throughout the length and breadth of this land of liberty, although it is only when given spontaneous expression that we even notice the misery and sorrow and seething despair that is slowly eating out the heart of our boasted civilization in America. Why not correct the wrongs at home? "..... Hypocrite, cast first the beam out of thy own eye; and then shalt thou see clearly to take out the mote from thy brother's eye."—*St. Luke, vi-42.*

I am not an alien sympathizer. I was born in Denver, of Canadian-American parents, and I love America. This letter is not written in a contumelious spirit. But, when human law conflicts with Divine law, my duty is clear.

Conscience, my infallible guide, impels me to tell you that prison, or death, or both, are infinitely preferable to joining any branch of the army, and contributing, either directly or indirectly, to the death of my fellow workingmen.

I voted for you and worked for your election in 1916, and I still have faith in you. Hopeful that you may yet see the right and have the courage to follow it, I am, sincerely yours,

(Signed) BEN J. SALMON.

(Copy)

Denver, Colorado, Dec. 26, 1917.

Local Board for Division No. 1,
City of Denver, State of Colorado,
3607 West 32nd Ave.,
Denver, Colorado.

Gentlemen:

The government's Questionnaire was received by me yesterday -- Christmas day -- the day we celebrated the birth of Him Who bade nations as well as individuals "Love one another."

"You have heard that it hath been said, Thou shalt love thy neighbor, and hate thy enemy. But I say to you, Love your enemies: do good to them that hate you; and pray for them that persecute and calumniate you." St. Matthew, V-43,44.

You may inform the proper officials that I refuse to answer the Questionnaire.

I am legitimately entitled to exemption: a wife and mother to support. However, I will not use my dependents to shield me from an institution against which my soul rebels.

War is incompatible with my conception of Christianity. I positively refuse to aid organized murder, either directly or indirectly. I must serve God first, and, in serving Him it were impossible to be other than loyal to my country -- the world.

Ultimately, individuals and nations must awaken and rally to Christ's Standard or perish. Meantime, I must stand firm and trust in God.

Let those that believe in wholesale violation of the commandment "Thou shalt not kill" make a profession of their faith by joining the army of war. I am in the army of Peace, and in this army I intend to live and die.

Very truly yours,

(Signed) Ben J. Salmon.

Fol. 1

UNITED STATES DISTRICT COURT

DISTRICT OF GEORGIA

-----x
UNITED STATES OF AMERICA, ex rel. ;

NATHAN SEGAL, ;
Relator, ;

- against - ;

COMMANDING OFFICER, Camp Greenleaf, ;
Lytle, State of Georgia, ;

Defendant. ;
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The petition of Louis Segal, respectfully shows:

2 He is the brother of Nathan Segal, and resides at No. 153 Osborne Street, in the Borough of Brooklyn, City of New York. That his brother Nathan Segal is now a private at Camp Greenleaf, Lytle, Georgia. That said relator is not committed or detained by virtue of any process of mandate issued by any court of the United States, or by any judge thereof; nor is he committed or detained by virtue of the final judgment or decree of a competent tribunal of civil or criminal jurisdiction, or the final order of such tribunal made in a special proceeding instituted for any cause, except to punish him for contempt; nor by virtue of an execution or other process issued upon such a judgment, decree or final order.

3 The cause or pretense of the imprisonment or restraint of said Nathan Segal to the best of the knowledge and belief of your petitioner is as follows: That his brother, said Nathan Segal duly registered under the Selective Service Act in Local Board for Division No. 34 in the Borough of Brooklyn, City of New York; at the time of such registration said relator resided at No. 179 Stanton Street, in the Borough of Brooklyn, City of New York. He, the said Nathan Segal was given serial No. 749 by the said Local Board which said Board is one of the Boards created by the rules and regulations promulgated by the President.