

THE COURAGE
★ OF THEIR ★
CONVICTIONS

SIXTEEN
—
AMERICANS WHO
—
FOUGHT
—
THEIR WAY TO
—
THE SUPREME COURT

PETER IRONS

7

Daniel Seeger
v. United States



Dan Seeger, standing before the Supreme Court with his lawyer, challenged in 1957 the draft law that forced conscientious objectors to swear belief in a Supreme Being. *Courtesy of Daniel A. Seeger*

I. “A Truthful, Decent Young Citizen”

On July 15, 1957, Daniel A. Seeger composed a brief, polite letter to his local draft board in Queens, New York. “As a result of the resolution of a number of problems of conscience with which I have been preoccupied for the past months,” he wrote, “I am bound to declare myself unwilling to participate in any violent military conflict, or in activities made in preparation for such an undertaking.” In this serious, somewhat pedantic tone, Dan Seeger informed the board members that he would refuse military service. He was then 21, having recently completed his third year at Queens College as a physics major.

Dan based his stand against military service on concerns about “the welfare of humanity and the preservation of the democratic values which we in the United States are struggling to maintain.” He added that “I have concluded that war, from the practical standpoint, is futile and self-defeating, and that from the more important moral standpoint, it is unethical.”

Dan’s draft board interpreted this letter as a request for exemption from service as a conscientious objector, although the letter did not use this term. Under the draft law, young men with sincere objections to participation in war could be assigned either to non-combatant service in the army or to alternative civilian service, usually in hospitals. The law limited exemption to those whose pacifism was based on “religious training and belief.” Dan’s letter

used the word "moral" to describe the basis of his objection and did not mention religion. Nonetheless, the board promptly sent him a copy of Form 150, the special form for conscientious objectors, generally known by the shorthand term "CO's."

Within a week, Dan returned the completed Form 150. However, he slightly altered the form and vastly expanded its length. One question asked whether he believed in a "Supreme Being" and offered two boxes for an answer, one labeled "yes" and the other "no." Dan added a neatly drawn and checked third box and the words, "Please see attached sheets." In seven single-spaced, typed pages which he appended to the form, Dan explained why he couldn't squeeze into the yes and no boxes. His statement displayed much thought and exposure to philosophers who had wrestled with the question of God's existence. "Of course, the existence of God cannot be proven or disproven," Dan wrote, "and the essence of his nature cannot be determined." The capital letter for "God" and the lower-case for "his" hinted at Dan's agnostic position. Although he declined to answer the "Supreme Being" question, Dan assured the board members that "skepticism or disbelief in the existence of God does not necessarily mean lack of faith in anything whatsoever. Such personages as Plato, Aristotle and Spinoza evolved comprehensive ethical systems of intellectual and moral integrity without belief in God, except in the remotest sense."

Another question asked the names of persons who influenced the objector's stand, and Dan listed Leo Tolstoy, Bertrand Russell, Mahatma Gandhi, and a Quaker pamphlet entitled *Speak Truth to Power*. Unlike Dan's first letter, this response to Form 150 asserted his "religious faith in a purely ethical creed." But the draft law excluded those whose pacifism reflected "essentially political, sociological, or philosophical views or a merely personal moral code." Although Dan was untutored in law, his statement was perfectly designed to provoke a constitutional test of the government's demand that CO's profess a belief in a Supreme Being as the price of exemption.



Conscientious objectors to war have always been a small, and most often a persecuted, minority. Although the scriptures of

many religions preach nonresistance to evil, most also counsel obedience to state commands. Early Christians rejected military service, not only for scriptural reasons but from revulsion at emperor worship as well. After Constantine's conversion in the fourth century, the Catholic church excommunicated those who refused military service, and religious objectors often were tortured. The Protestant Reformation brought a revival of pacifism among dozens of Anabaptist sects which emulated the early Christians, including "peace churches" like the Quakers, Mennonites, and Brethren. Members of these churches joined the flood of European immigrants to America, before and after the Revolution, who sought escape from military conscription. Napoleon swept more than 2 million conscripts into his army between 1800 and 1812, and Americans responded with revulsion. During the War of 1812, Daniel Webster opposed any military draft as "despotism."

The American experience with conscription began during the Civil War and provoked widespread resistance. Ten thousand Union troops were diverted from the Gettysburg campaign to battle New York draft rioters, mostly Irish immigrants, who denounced the draft as slavery imposed on those who could not afford to buy exemptions which were offered to the wealthy. Congress enacted a draft law during World War I over vehement opposition: "Must we Prussianize ourselves," asked Rep. James Byrnes of South Carolina, "in order to win democracy for the people of the world?"

Pressure from pacifist and liberal groups secured exemption from combatant service for members of "a well-recognized religious sect" which opposed war on creedal grounds. Local draft boards approved more than 50,000 claims of conscientious objection by members of peace churches. But CO's were inducted into noncombatant service and forced to wear army uniforms. Nearly 4,000 in this group refused to serve; some 500 were tried at courts-martial and tossed into military prisons. Sentences were harsh: Seventeen were sentenced to death (although none was executed) and 142 to life imprisonment. The Rockefeller Foundation sponsored a study concluding that "objectors were often subjected to indignities and physical cruelty. Some were beaten; others were hung by their fingers to the doors of their cells in such a way that their feet barely touched the floor."

Two decades after the Armistice ended conscription, Europe

was again engulfed in war and the advocates of American “preparedness” urged Congress to revive the draft. Fears that CO’s might again be tortured in military prisons led pacifists and civil libertarians (the American Civil Liberties Union grew out of efforts to protect World War I objectors) to press Congress for broader grounds for exemption and alternative civilian service. The 1940 Selective Training and Service Act provided that a draft registrant “who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form” could be exempted from combatant service to perform “work of national importance under civilian direction.”

The “good war” against the Nazis was unquestionably more popular than the earlier war against the “Huns.” The 100,000 religious objectors during World War II constituted only a tiny fraction of the 34 million men who registered with local draft boards. Most CO’s performed noncombatant military service, usually in the medical corps, or worked on conservation projects in Civilian Public Service camps. Only 6,000 objectors, most of them Jehovah’s Witnesses, went to federal prison. Conditions behind bars improved: Guards did sometimes beat objectors, but official torture was rare. Imprisoned CO’s conducted sporadic but often successful hunger and work strikes to protest racial segregation and brutality.

The wartime draft law expired when World War II ended. But the nation’s first peacetime draft began in 1948, as Cold War tension mounted over the Soviet invasion of Eastern Europe and the formation of NATO in response. Congress adopted the Universal Military Training and Service Act, adding to the 1940 law a requirement that CO’s profess “belief in a relation to a Supreme Being involving duties superior to those arising from any human relation.” This new clause was added without committee discussion or floor debate, and its author was not identified. Over the next decade, even during the Korean War, the number of CO’s dwindled to a handful. And none of them challenged the “Supreme Being” clause until Dan Seeger submitted his Form 150 in 1957.



The Queens draft board filed Dan’s form and took no action on his CO application. A year later, when Dan became a part-time

student, the board revoked his student deferment and placed him in the 1-A group, eligible for immediate army induction. Dan then asked for a personal hearing to appeal this classification and entered the labyrinth of Selective Service proceedings. The local board denied his appeal in October 1958 and ordered Dan to report for a preinduction physical examination. The district appeals board upheld this decision several months later. Dan next appeared in September 1959 before John M. Lockwood, an examiner of the Selective Service Hearing Board. For the first time, the government gave Dan a sympathetic ear.

Lockwood had before him at the hearing an exhaustive FBI report on Daniel A. Seeger. Agents had inquired at every school Dan had ever attended and every business which had employed him. Not one person uttered a derogatory word about Dan. The FBI learned from Bayside High School officials that Dan was active in the Newman Club of Catholic students, sang in the school choir, belonged to the Arista honor society, and received the Pi Mu Epsilon award for excellence in mathematics. One former teacher said that Dan was "very intelligent" and had been "interested in human welfare" in high school. Agents also interviewed a Queens College official who described Dan as a "very intelligent person of high moral character" who was active in the Outdoor Club, editor of the college newspaper, and Chief Justice of the Student Court. Supervisors at the Marine Midland Trust Company, where Dan worked as a clerk from 5 P.M. to 1 A.M. for \$60 a week, praised him as a diligent employee. During the summer of '57, Dan worked as a bellhop and bartender at the exclusive Corinthian Yacht Club, where his boss considered him "completely trustworthy" and a "very gentle" person. Agents also talked with neighbors of Dan's parents, reporting their view of a "very fine, exceptionally religious family."

Dan appeared at the hearing with two friends, one of them a Queens College professor, Dwight Durling. John Lockwood first asked Dan to explain the basis of his objection to military service. According to Lockwood's report, Dan answered that research and reading in religious teachings had convinced him "that peace throughout the world could only be accomplished by the laying down of arms by all." Dan told Lockwood that service in the army medical corps would simply be "patching them up to put them back at firing again" but that he could accept alternative civilian service. Lockwood also reported that Dan had "strong

sympathetic support for the Quaker movement." Dwight Durling told Lockwood that he disagreed with Dan's pacifist views but considered him "completely sincere."

Lockwood's report to the Justice Department described Dan as "a truthful, decent young citizen who conscientiously objects to joining in any manner" the nation's military forces. Lockwood added the caution that if Dan were drafted into the army his "extreme intelligence and lucidity would create a problem" by "preaching nonviolent subversion" of the army's missions. Conceding that Dan's views, although religious in basis, were "not responsive" to the Supreme Being requirement, Lockwood still recommended that he be granted CO status and assigned to alternative service.

Lockwood's report failed to impress T. Oscar Smith, chief of the Justice Department's Conscientious Objector Section. Smith issued a brief order in May 1960 which rejected Dan's claim. Dan then took the final step in the Selective Service bureaucracy and asked the Presidential Appeal Board to reverse Smith's decision. He lost again in August 1960. Two months later, Dan's draft board ordered him to report to the Whitehall Induction Center in Manhattan for army induction. Dan showed up on October 20 but refused to take the symbolic step forward into military service. Sent home by army officials, Dan waited two more years, until November 13, 1962, for his indictment by a federal grand jury. Under the draft law, Dan faced five years in prison for his challenge to the Supreme Being clause.



District Judge Richard H. Levet presided at Dan Seeger's trial on March 26, 1963, at the federal courthouse in Manhattan. Levet was almost seventy, a former Republican official in wealthy Westchester county whom President Dwight Eisenhower had placed on the bench in 1956. Kenneth Greenawalt, whose corporate law clients included the Woolworth Company, represented Dan as a volunteer for the Central Committee for Conscientious Objectors. The trial began on a sour note for Dan. Greenawalt asked Judge Levet for a brief trial delay in order to present "a very distinguished theologian" as an expert witness. The witness, who was out of town for a few weeks, would testify that "religious belief is not

confined to a belief in a Supreme Being” and that a person could be genuinely religious without “belief in a Divine Being.” Judge Levet curtly denied the request: “I cannot very well hold this case up for weeks and weeks in order for somebody to come back from a long, long trip. You either have to fish or cut bait.”

Forced to proceed, Greenawalt stipulated that Dan’s religious beliefs were “not based on a supernatural person or a Supreme Being known as God.” He argued, however, that the First Amendment barred the government from conditioning draft exemption on belief in a Supreme Being. Greenawalt cited the recent Supreme Court decision in the *Torcaso* case. The Court held in 1961 that Maryland must give a notary-public commission to Roy Torcaso, who refused to swear his belief in God to secure the public post. Government could not, the Court stated, place its power “on the side of one particular sort of believers—those who are willing to say that they believe in ‘the existence of God.’” The *Torcaso* case, Greenawalt argued, made the draft law’s Supreme Being clause unconstitutional. Dan Seeger needed only to show that his pacifism was based on “religious training and belief” to gain exemption. Ezra Friedman, who prosecuted the case, stipulated that Dan would merit exemption under this standard.

Greenawalt’s argument did not impress Judge Levet. His written opinion noted that military service was not a public office and derided reliance on *Torcaso* as “specious.” Levet wrote that draft exemption “is a matter of legislative grace and not a matter of right.” If Congress could withhold *all* exemptions, it “has a clear right to limit such exemptions” to those who met the Supreme Being test. Levet found Dan Seeger guilty of refusing the draft board’s induction order and sentenced him to a year and a day in prison.

Judge Levet’s opinion did not impress the judges of the U.S. Court of Appeals in New York. Judge Irving Kaufman wrote for a unanimous three-judge panel which reversed Dan’s conviction in January 1964. Kaufman had gained judicial notoriety in 1950 when he sentenced Julius and Ethel Rosenberg to death for passing atom-bomb secrets to the Soviets; his later career was marked by sensitivity to First Amendment claims. Unlike Levet, whose hostility to Dan was obvious, Kaufman praised his “unquestioned integrity and sincerity.” Kaufman also differed with Levet on the *Torcaso* case, holding that it rested on “far broader grounds”

than whether the religious test involved a public office. Kaufman located the proper exemption standard in the *Kauten* draft case, decided by his court in 1943 and cited by the Supreme Court in other significant cases. The *Kauten* standard rested on religious sincerity and not on supernatural belief. Judge Kaufman cited *Kauten* in writing that "for many in today's 'skeptical generation,' just as for Daniel Seeger, the stern and moral voice of conscience occupies that hallowed place in the hearts and minds of men which was traditionally reserved for the commandments of God." Kaufman's opinion concluded that the Supreme Being clause violated the First Amendment and was flatly unlawful.

Dan's victory in the appellate court did not end his case. The government asked the Supreme Court to reverse Judge Kaufman and to review two other draft cases. Arno Sascha Jakobson in New York and Forrest Britt Peter in California had been convicted after their draft boards turned down CO applications. These men differed from Dan Seeger in claiming they *had* met the Supreme Being test. Solicitor General Archibald Cox, who later gained fame when he was fired as Watergate special counsel by President Richard Nixon, argued all three draft cases before the Supreme Court in November 1964.

Cox first told the justices that Dan Seeger's case presented "the basic constitutional issue" on the Supreme Being clause and was "the one with which we are most concerned." His argument was both disarming and unyielding. "I'm impressed with him as quite a fellow," Cox said of Seeger. The rest of Cox's argument belied this concession. He portrayed Seeger's pacifism as "overwhelmingly political" in motivation. "Now, in saying that Seeger's views are not religious," Cox added, "I don't mean to denigrate them." Cox then painted an apocalyptic picture of military threats to "democratic values, Western civilization, the ideals of American life." He claimed that the "life and death" of an "entire nation" depended on the draft. Accordingly, "the community has the right to set its judgment" on conditions for draft exemption. Conceding that religious definitions involved "fine shadings of belief," Cox argued that the "national understanding of what constitutes religion" was based on belief in a Supreme Being.

Archibald Cox's argument did not impress the Supreme Court. The justices listened respectfully to Cox and peppered Kenneth Greenawalt with questions, but their vote to reverse Dan Seeger's

conviction was unanimous. Chief Justice Earl Warren set the tone in the Court's conference room: "I don't know how to define 'Supreme Being' and judges perhaps ought not to do so." Both liberals and conservatives lined up behind Warren. Justice Hugo Black, the Court's "absolutist" on First Amendment issues, said that if a religious objection to war was "honest, conscientious, that's enough." Justice John M. Harlan, who most often deferred to legislators, agreed that Congress could not "pick and choose between religious beliefs."

Guiding the conference discussion, Chief Justice Warren urged his colleagues to frame a narrow opinion which would duck the constitutional issue and allow Dan Seeger to squeeze into the Supreme Being box on Form 150. The sole opponent of this disposition was Justice Arthur Goldberg, who argued that Judge Kaufman had correctly answered the First Amendment question. Goldberg found no converts on the Court and Warren assigned the opinion to Justice Tom Clark, who generally took a crabbed view of First Amendment claims.

The opinion that Clark wrote for the Court, issued on March 8, 1965, held that Dan Seeger "did not disavow any belief" in a Supreme Being in his answers to Form 150. Clark noted Seeger's statement that "the cosmic order does, perhaps, suggest a creative intelligence." Clark ignored Seeger's doubt that "this intelligence is informed with a moral purpose." What impressed Clark, more than any quibble over words, was that Seeger's beliefs "occupy the same place in his life as the belief in a traditional deity holds in the lives of his friends, the Quakers." The Court's opinion freed Dan Seeger from a prison term, but it also allowed the Selective Service System to impose a religious test on war objectors.

The timing of the Court's opinion reveals a great deal about the impact of politics on law. One month later, 20,000 marchers, many of them students facing the draft, gathered at the Washington Monument to protest American bombing of North Vietnam. Paul Potter, president of Students for a Democratic Society, spoke of "increasing numbers of young men who are unwilling to and will not fight in Vietnam." The SDS promised "massive civil disobedience" against the draft. The militant End The Draft movement organized acts of draft-card returning and burning that provoked Congress to make card-burning a federal crime. The Supreme Court upheld this law in 1965 in the *O'Brien* case.

Five years later, ruling on a “Supreme Being” case which was virtually identical to Dan Seeger’s, Justice Harlan confessed his “mistake” in joining that earlier opinion. Three other justices argued that “purely ethical or moral” objections to military service, even those that reflected religious views, should not qualify for draft exemption. The Court’s resolve in the Seeger case buckled under wartime pressures, much as the Court had backed the wartime internment of Japanese Americans in the *Hirabayashi* and *Korematsu* cases. America’s defeat in Vietnam ended the draft, but the revival of Selective Service “registration” has sent CO’s to prison once again. Those who “speak truth to power” as war objectors remain a small minority in an increasingly militarized society. But the conflict between conscience and conscription has not ended.

II. “Check Box Yes, Check Box No”

I was born here in New York City in 1935, the oldest of four children. Just before the Second World War my parents bought a small house in Queens. At that time our neighborhood, where they still live, was in an undeveloped area. It was almost like the country, even though it was right within New York City. It was very rural-looking, and there was a large amount of vacant land in the neighborhood that was semiforested. It was like living in a small town.

My father is the son of German immigrants. He worked as a compositor in a print shop, and he remained in the same small firm for more than fifty years. He gradually became part of the management. My mother was the daughter of Welsh and English immigrants.

My father was the oldest of eight children. He had to help support this family at a very early age, so he only went to grammar school. He's a very centered and calm, serene, wise person, not formally educated but widely read. So it wasn't as if I was brought up in a home where learning was not esteemed. My mother did go to high school, but not to college. Both my parents were readers and were interested in what went on in the world. They tended to be conservative in their views. I remember their strong opposition to the policies of Franklin Delano Roosevelt. But they were not uninvolved or disinterested in the world.

Both of my parents are sincere and devout Roman Catholics. My mother's side of the family was Protestant, but she became a Catholic when she married my father. I associate them with the Catholicism of Pius XII rather than Vatican II. Two of my father's brothers are priests and one of his sisters was a Dominican nun.

I went to school at St. Kevin's Roman Catholic School in Queens. I started school at just about the time we got into World War II. My memories of those years are pretty vivid. We frequently had air-raid drills in first and second grade, so I was certainly aware the war was going on. It was also in the movies a lot. My father used to send us to the movies every Saturday afternoon so he could listen to the opera in peace. So I used to see the war in newsreels, and the comic books we read were all full of 'Japs' and 'Huns' and that kind of propaganda. There was very good reason to be concerned with what was going on in the world, but a lot of what came my way as a child was not, I suppose, very informed or sensitive. The war was a big part of our home life, because we would stamp on tin cans and save them, shopping was difficult because we had to have ration stamps, and there were food shortages. Sometimes there wasn't any meat in the stores. So I had a vivid impression that the war was going on.

I went to St. Kevin's School for eight years and then to a public high school, Bayside High School, and then to Queens College, the local branch of what is now the City University. My attitude toward my religious upbringing has changed with time. At one time, I was almost anti-Catholic because I rebelled against what had gone on in St. Kevin's in the '40s. I say I've mellowed because I've gotten a much greater appreciation for the diversity of Roman Catholicism and for the sweep and depth of different Roman Catholic schools of thought. What I rebelled against was an unresilient, parish-level Roman Catholicism as taught by certain nuns that really wasn't adequate for understanding or dealing with life as I experienced it.

I don't want to criticise my parochial-school education too harshly—the people who were teaching were doing the best they knew how. But it was mainly fear and guilt that we were taught, and a sense of our own depravity, which is really the wrong thing to be teaching small children, as far as I'm concerned. I didn't rebel in grammar school. I was somewhat pious and very devoted to all this. It was only when I got into the environment of public

school at the high-school level that it began to erode. By the time I was in college I had dropped out of Roman Catholicism, much to my parents' dismay.

There was no choice about my going to Queens College. My parents couldn't afford any kind of tuition. The City University was actually free in those days, although you did have to pay for your textbooks. We were all 'day-hop' students; I lived with my parents and took two buses to get to the campus. Queens was a marvelous, fine college—it wasn't Harvard or Yale but it was an excellent educational institution with many fine faculty. I don't know how many of them were celebrated in the world of scholarship, but they were conscientious people who loved their subjects and who were able to transmit their enthusiasm. I especially remember one professor, Dwight Durling, who helped me out with my draft case.

I was a physics major in college. I can't recall how I was attracted to physics. It was just assumed I would be in some branch of the sciences. My parents laid on me the necessity of studying something practical, something that would enable me to make a living. Although I had drifted away from the church, I always remained interested in philosophical and spiritual questions, and I tried to take as many liberal-arts courses as the rather stringent mathematics and physics curriculum would allow, in addition to the required literature and contemporary civilization courses. I wasn't disinterested in physics, by any means. I still remain very interested in science, in figuring out how the world works. Nowadays, we all get very mystical about science and see religious insights creeping out of it everywhere, but that wasn't true in those days. I was just very interested in the way things worked.

One of my required courses at Queens was called Contemporary Civilization, a rigorous and good course that lasted four semesters. We had to read primary source materials, everything from the Magna Carta, excerpts from St. Augustine, Thomas Hobbes, and John Locke—a little taste of this and a little taste of that. For some reason that will probably never be explainable, when we read Gandhi something stuck. I was touched in a very profound way. Not that things didn't stick with me from these other people, but something moved me very deeply about Gandhi's writings, even on the basis of the few little excerpts we were given. It was in one of those textbooks over there, on my bookshelf. I haven't

looked at it in a long time. Let me get it down. Here it is, *Man in Contemporary Society*, which would certainly be an unacceptable title nowadays.

Here's the selection I remembered: Mohandas Gandhi, page 753, 'Indian Home Rule.' The other person in here who was very important was John Dewey. Here is his essay, 'A Common Faith.' Gandhi and Dewey and Henry David Thoreau, for some reason, had more of an impact on me than any others. I'm sure I read more of Gandhi than what appeared in this book, but somehow that got me started. At a certain point I decided, as a result of this course work and this reading, that I wasn't going to serve in the army.

I can't quite believe this in retrospect, but the truth of the matter is that I came to the decision that I wasn't going to serve in the army in a very solitary way, a way that I think these things hardly ever happen. Usually, people are socialized into a point of view. They meet people, and pick things up from the people they associate with. I'm quite positive that my views on military service came from reading. I was bookish in college. I had friends, but I was also introspective. On campus, in those days, conscientious objection was unheard of. It just wasn't part of the atmosphere at all. Those were the days of the McCarthy era, and the big liberal crusade was working to end McCarthyism.

In those days, everyone over the age of eighteen had to register for the draft. I had registered with my local board in Queens in a perfunctory way, without thinking about it very much, when I was eighteen, and then I went off to college. We all had to carry draft cards, and we all got classification cards periodically, that let us know our standing with respect to the possibility of being drafted. The upshot of all this was that at a certain point in college, when I got my periodic card telling me I once again had a 2-S classification, which is a student deferment, I said to myself that I better let them know I didn't intend to serve in the army.

So I wrote a very brief letter to my draft board. I said something like: Dear Sirs, I have given this a lot of reflection and I have decided I am not going to serve in your army and I think you ought to know. It was decently phrased, I suppose—a little sophomoric, I'm sure, but there it was. And I sent it off. I had never heard of a conscientious objector. I didn't know if anyone else had done this or not.

I wasn't aware of the consequences in the least. You know how students are. I couldn't think much beyond the next day. Anyway, I sent this letter off and the draft board did what was suitable; they ignored the letter, because as long as I was qualified for a student deferment the conscientious-objector classification didn't fit. So they kept sending these cards and I just put them in my wallet and went on my merry way.

At the end of my college career I had to finish a few courses, and I lost my student deferment because I was on a part-time program. My draft board began ordering me to preinduction physicals. And I said to myself, Hey, they must have overlooked my letter. What are they trying to do? So I wrote them another letter, reminding them of my earlier letter. And in response, they did the correct thing again, which was they sent me Form 150, the form for conscientious objectors.

Now this was very astonishing to me. It was the first hint I had that other people had this concern also, because this form was printed, and it was obviously produced by the thousands. So I had my first hint—it sounds incredible nowadays, after the Vietnam War and everything connected with that—that there were other people who did this.

The second thing that quite astonished me was that under the letterhead of an agency of the United States government, I was asked, Do you believe in a Supreme Being? Check box yes, check box no. This surprised me, because I didn't make any particular connection between my theological beliefs and my determination not to fight in the army. I didn't quite see them as connected, and everything I had been led to believe about the American way of life was that the government doesn't meddle with people's private religious convictions. So I was startled to get this form.

In my naiveté I thought: I have nothing to hide. I didn't think of the philosophical ramifications of cooperating with them. I was completely unschooled and untutored and uncounseled in any way. So I filled out their form. When I reached the question about belief in a Supreme Being, it said, Check box yes, check box no. So I drew in a third check box, and I wrote, Please see attached sheets. And I then wrote pages and pages of speculative philosophy, expressing a kind of agnostic position about what human beings could or could not know about ultimate reality. I sent the form and my answers back to my local board. Then the

draft board once again did what was appropriate, according to their regulations. Since I had placed myself outside the law with my theological lack of conviction, they continued to order me to preinduction physicals. So I was once again saying to myself, What's going on here?

Then one of my friends at college said, Why don't you look up the Quakers? They might be able to help you. So I looked up the Quakers in the Yellow Pages, and I found my way to the American Friends Service Committee regional office in Manhattan, where I now serve as head of staff. The AFSC was then located in a walkup above a barber shop on Third Avenue. When I got there, I was asked to fill out a form while I was waiting to be counseled by the executive secretary, Robert Gilmore. The office manager, Joyce Mertz, noticed that I had an interesting handwriting. So while I was sitting and waiting she put me to work lettering the bindings of the books in which are kept the minutes of the regional office's governing body. These books, which represented my first volunteer job for the AFSC, are now sitting in my office to remind me of that day when I walked in as a client. We now have a staff of approximately thirty people, so it is a much bigger operation.

Back in those days, Friends would get their 1-O classification as conscientious objectors fairly automatically if they followed procedures, although some Friends refused to cooperate with the system and went to jail. The Quakers were also counseling people who were not Friends, many of whom were conscientious people like themselves, but who were getting sent to jail on theological grounds. This was very painful for the Friends. So when I came along and Robert Gilmore looked at my material, he saw something that was unusual. Usually, spiritually unorthodox objectors had renounced religion as well as war and the draft, whereas I was claiming to be religious.

The crucial thing about my position was that I followed John Dewey, who insisted that one could be religious without necessarily believing in a Supreme Being. Dewey himself was an atheist, which I was not, but he nevertheless had a spiritual approach to life, and he insisted that one could be religious without being theistic. Even though I was waffling on theological questions, I claimed in no uncertain terms that my conscientious objection was a religious conviction. So I had wrapped myself in the mantle of the

First Amendment, without any conscious strategy for doing so, by claiming to have a religious conviction.

Eventually Robert Gilmore asked if I would mind being a test case. He was following advice from the Central Committee for Conscientious Objectors in Philadelphia with respect to my situation, which was nonroutine. I really didn't know what I was doing; I was just a naive student at the time. So I just said, Oh sure, and the whole process of starting a test case began. My initial documentation, on which everything depended, had been developed completely in isolation, but thereafter I had the highest-quality counseling. Everything from there on was done in a very meticulous, legal, careful way.

After deciding to begin a case to test whether the Supreme Being clause, which was section 6(j) of the Selective Service law, was constitutional, I went through all the procedures, from a local board hearing all the way up to President Kennedy. All these hierarchies basically came to the conclusion that I did not qualify under section 6(j), which was a reasonable conclusion for them to reach, given the language of the law.

Once my conscientious-objector application was turned down at the presidential level, I was drafted. My local board sent me the usual induction form and a subway token, instructing me to report to the Whitehall Street Induction Center in lower Manhattan.

This was a very critical point. I had to show up in order to make this a test case. If you don't go through the preinduction process to the very last moment, just before you take the symbolic step forward, they will throw your case out of court because you didn't give the system every chance to make the right decision. At the same time, if you go too far and take the step forward, you wind up in the army, and if you refuse to serve you're given a court-martial rather than having a civilian trial, so no precedent could be established.

So I was educated very carefully, before I went to the Whitehall Center, about this symbolic step forward. I was also told that in previous cases, when one person in a roomful of recruits and draftees had not stepped forward, he simply wound up in a different row. No one believed he had refused to step forward, and so he faced a court-martial anyway. So I was instructed to tell them as soon as I arrived that I wasn't going to take the step.

I showed up at 6 A.M. at Whitehall Induction Center, and there's this cranky sergeant drinking his coffee and all these confused young people coming in. I arrived and announced that I wasn't going to take one step forward. Even though these legal precedents had been established, this sergeant apparently had no idea that anyone could refuse induction and he couldn't believe his ears. He started an incredible tirade. There was a rather bad scene, where I was belittled and maligned and barked at. This was the first opportunity for the military to show these new guys who's boss. There was only verbal abuse, fortunately. I still had to go through the preinduction physical. Then they decided they would separate me out from everyone else so they wouldn't spoil the induction ceremony for the other people.

At the end of the day, all these guys were back in the same waiting room, ready to climb on the bus to Fort Dix. Meanwhile, the Whitehall induction officials had called Washington and learned that this was going to be a test case, and suddenly everything became very proper. I was no longer barked at. I was dealt with by a superior officer, and treated very nicely. At the end of the day, the officer, with all his brass buttons, came to me in front of all the other draftees, shook my hand, and sent me on my way. These guys who had seen me barked at in the morning were utterly bewildered, I suppose, by this whole process. So then I just walked away.

The Central Committee for Conscientious Objectors had established a defense fund, and had gotten a very distinguished lawyer, Kenneth Greenawalt, to be ready to defend me. Mr. Greenawalt was a very able attorney who worked mostly for corporations. I don't believe he was particularly interested in peace issues, as such, but he had a special interest in church-state cases. He was a Congregationalist, a very kind person, but also sharp and clear.

Much to my surprise, the government did not immediately prosecute me. I went home from the Whitehall Center and two years ground by. Everything was in place, and we were all ready to go with this ambitious constitutional test of section 6(j) of the draft law, and we never heard a thing from the government. We were about to fold up the defense committee, send back the contributions, and forget the whole thing, when my indictment finally came in the mail. We quickly went back into action, preparing for my trial in the federal district court in Manhattan.

In the district court, we had a cranky old judge named Levet, who was very unsympathetic, barking all around the place like the sergeant at the Whitehall Center. I was amazed to find the judge acting like a character in a grade-B movie. Judge Levet found against us, as everyone expected. The big issue, as far as Mr. Greenawalt was concerned, was whether we would get certiorari in the Supreme Court. I was just learning about these things, but apparently the Supreme Court picks and chooses the cases it wants to hear; and he was afraid we would have two negative decisions in the lower courts and the Supreme Court would conveniently decide not to hear us, and let the lower-court decisions stand.

We then went to the Circuit Court of Appeals, also in Manhattan. The three-judge panel that heard my appeal was presided over by Judge Irving Kaufman, who had sentenced the Rosenbergs to death. I was not thrilled at all to find him on my case, but it turned out that he wrote a *wonderful* opinion. I attended all the hearings. It was quite a different cut of business than the district court had been. Judge Kaufman wrote a decision that astounded everybody, because the three-judge panel unanimously came out in my favor.

The decision was a marvel, cutting right to the core of the issue and declaring section 6(j) patently unconstitutional. That was wonderful for us, because it meant we were guaranteed a Supreme Court hearing. It was hardly likely the Supreme Court would let one of the circuit courts do this without reviewing the case. So we were suddenly not only given a brilliant and wonderful decision in our favor, but we also knew we would get to the Supreme Court, although the government was now the losing party in the case.

The Court of Appeals decision created a stir. I became one of these celebrities-of-the-moment, and I was on TV talk shows with Basil Rathbone and Phyllis Diller, trotting around to all the studios. The story about my case, with my picture, appeared on the front page of *The New York Times*.

I remember being astounded by my visit to the Supreme Court when my case was argued. My parents, a few friends, Mr. Greenawalt and his family, all went to the Supreme Court with me. The Court was hearing several cases that morning, and we listened to those arguments. One case before mine had to do with the

Musicians Union, and one of the justices disqualified himself because he used to play the flute and belonged to the union. Another case had to do with banking and overseas investment and it was dull, dull, dull. Everyone in the courtroom was going to sleep.

When my case came up, there was a certain stirring of the atmosphere in the courtroom. It was clear that this was going to be more interesting to everyone, including the justices. I was astonished by several things. I was being tried for my religious convictions in a place that was made to resemble a 'pagan' temple, and I couldn't figure out why I was being pilloried for my views in a place like this, although it was lovely architecture. The second thing I noticed was that I was being tried for my convictions in a procedure which began with the words, *Oyez, oyez, oyez*, followed by an appeal for God's blessing on the honorable court. I felt immediately that the cards were stacked against me.

The hearing proceeded and it turned out that Archibald Cox, who argued for the government as the Solicitor General, was wearing a cutaway with striped pants. My lawyer only had a dark blue suit on, and I again felt a little bit at a disadvantage. As it turned out, it was a very fair and good hearing, and there was some very sharp questioning of Mr. Greenawalt by some of the justices. It wasn't hostile, but close questioning, and he was very adept and brilliant, I thought, in his responses. I remember that Justice Goldberg was on the court and he had one of the pages bring a Bible, from which he read passages into the record. He was clearly on my side, and he used Scripture to make his points. I was very pleased at the quality of the justices' grappling with the issues, and I was spectacularly pleased with the fine defense Mr. Greenawalt made.

I had finished college at the time my case was argued in 1964. I knew I didn't want to work in defense, but physics in those days was almost all defense, so I worked first for Sloan-Kettering Institute for Cancer Research, and then for Columbia University, assisting in research. Part of this research was at Los Alamos National Laboratory, where the atomic bomb was invented. I actually only worked in physics for three or four years, and then I joined the AFSC staff in the New York office as the college secretary. At the AFSC, where I was given the volunteer calligraphy job when I first walked in, I undertook more volunteer assignments while I was being counseled about my draft case. I worked for

AFSC in mental hospitals, leading groups of college students in work camps. Then I was put on the youth committee, and then on the executive committee, and then I was invited to join the staff. My draft case took eight years to resolve, I think, and I was working for the AFSC for most of that time.

The Supreme Court decision in my case was a disappointment. We were pleased to win, and it was a unanimous decision, but we would have preferred Judge Kaufman's decision. What the court held was that if the conscientious convictions in the life of a religiously unorthodox objector to military service parallel the place that belief in a Supreme Being holds in the life of a conventionally religious person, then the exemption from service should be granted. This business of construing the Supreme Being clause to be constitutional in this labored way, by reinterpreting its language, seemed very artificial to me, very geometric and forced. Nevertheless, it did have the result that Form 150 was revised and the Supreme Being question, with its checkboxes, was removed from the form. So it had the practical result we had sought, but it didn't have the philosophical neatness of just declaring the law unconstitutional.

After the Supreme Court decision, I thought I would be given an order to do alternative service, but by that time I was well over draft age. In a sense, I got off scot-free from the draft. But the kind of work I had been doing at the AFSC would have been readily recognized as alternative service, so in another sense I had been doing alternative service for many more years than was required. So that was the end of it. As a matter of fact, when my case was over, I more or less forgot about it. It had not been a sole preoccupation in my life for all those eight years, in any case.

I could not by any stretch of the imagination claim to be a martyr. When we consider our own century and what people have had to endure in these times, I appear to be the beneficiary of the American justice system in its most pristine and beautiful form, the way we *expect* it to perform. I am not deluded into thinking this is the way the American justice system *always* works, but I experienced it as it *should* work, administered by people who were conscious of doing something important and who were at their best throughout. So I have absolutely nothing to complain about.

As soon as my case was over, I wanted to move on to other things. I was still fairly young, and I just wanted to get on with the future. So I haven't thought about it that much since then. Of course, many people have been through the Selective Service system in the shadow of my case and have used it. I often meet people who say, Oh, *you're* Dan Seeger, and they seem thrilled because my case was crucial to the government's recognition of their conscientious-objector claim. I don't regret being a test case, but I certainly don't want to live my life as the Seeger case.

I never doubted that my case accomplished something, once it had been won. But I didn't want to dwell on it; I wanted to get on with the next thing. I was just becoming executive secretary of the New York AFSC office, so I had a very challenging job on my hands. The office was growing and needed a lot of management, and I was mainly trying to raise money and offer supervisory support for the staff. During the Vietnam War, we had a huge draft-counseling program, although the issues had moved beyond the Supreme Being clause of the draft law to selective conscientious objection. We counseled many young men who were not opposed to war in every circumstance, but who nevertheless had deep conscientious scruples about fighting in a war like that in Vietnam. The office also encompassed a lot of work in domestic social-justice issues, so I had to give much attention to those important matters also, and I became much more of a generalist.

I eventually joined the Religious Society of Friends, so I am now a Quaker, and a lot of my energy has gone into trying to find ways to understand, articulate, and project the spiritual underpinnings of peace activism and social justice work. I am concerned because a lot of people are in anti-war work for the very sensible and obvious reason that we're going to incinerate ourselves eventually unless we change the course of events. They perceive the corrupting character of this war preparation, which is ruining everything. Even if the war doesn't occur, we're going to fatally undermine our values. What I feel isn't quite clear enough for us to grasp is how we sustain the work for peace and sustain its spiritual quality in spite of years of frustration. The movement for peace and justice suffers repeated bouts of individual and collective burnout.

You and I have seen several sourings of good things—the civil-rights movement, the peace movement too, and a lot of anti-

Vietnam War work. So there's something missing. We went through the anti-Vietnam War movement, and when the war was over there was no peace movement left either. People's peace convictions weren't really rooted in a place that lasted. The Iran hostage crisis occurred, and all of a sudden the mood of the country changed and Reagan was elected. My concern has been to try to find something which holds through thick and thin and doesn't depend on a war to keep people going. That's a dead end, to need a war with its television images to keep you in a state of elevated indignation. That's a horrible way to keep a movement going, a movement that hopes to build a bright new future in a world of peace. Will an era of harmony and peace grow out of perpetual outrage?

I've never stopped trying to winnow out these issues, throwing off and discarding things that might have been suitable for a six-year-old in parochial school but that weren't capable of sustaining growth beyond that stage. Although a lot of my subsequent inner explorations weren't directly connected with my draft case as such, they've been going on pretty constantly since it began.

The philosophical and spiritual position I defined in the material I filed with the Selective Service system hasn't been overruled, it's been deepened and extended. I don't feel I'm in a different place than I was then. But rather, that beginning has taken on a richer and more meaningful coloration as time goes on. It was a little flat at the beginning, and it's a little more three-dimensional now.

We are promised that if we seek we shall find. I've found this to be true. Some people have what might be called conversion experiences, like St. Paul's on the road to Damascus, and they suddenly see a whole new vision of life. But any spiritual growth that has been given to me has come only little by little. But I do think it accumulates, in response to whatever inner stillness I have been able to cultivate, to allow the larger harmonies of the Creation to be heard within my heart. These harmonies can indeed be heard, and occasionally I even resonate to them. Such experiences leave one with a great feeling of hope and optimism. I am certain that a great spiritual reawakening is in the offing. The very tragedies and contradictions all about us are alerting people to the deeper implications of what is occurring, stimulating a questioning about the significance of human life, about the

proper relationship among families, neighbors, and nations, and about the role and responsibility and destiny of humankind in the Creation.

We may be generations away from a shared vision about the things upon which we can build a harmonious, secure, and just future for all of humankind. But if we survive at all, it will come, I really believe. And I think it is fitting that the survival question must remain, for the time, unanswerable. If we knew for sure of an optimistic answer we might be tempted to sloth. If we knew for certain that disaster was inevitable, we would be paralyzed with despair. The fact that human survival is truly hanging in the balance keeps us striving. I can't conceive of a more enlivening and worthwhile thing to do with one's days and energies than to grapple with these great questions.