United States v. Clay: Muhammad Ali's Fight Against the Vietnam Draft

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Prepared for inclusion in the project
Federal Trials and Great Debates in United States History

Federal Judicial Center
Federal Judicial History Office
2018

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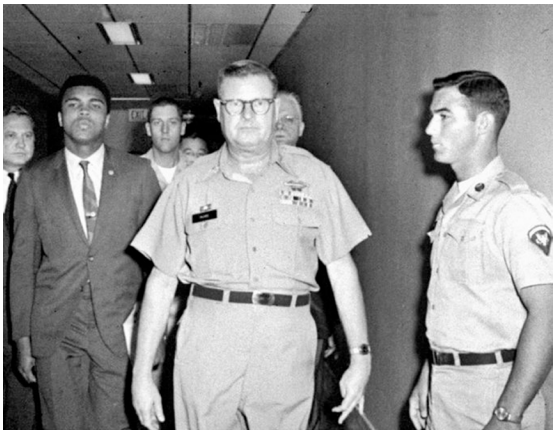
Introduction

On April 28, 1967, forty-six young men walked into a building that had once been a federal courthouse in Houston to report for mandatory induction into the military. It was a scene that replayed itself countless times across the country during the Vietnam era, when federal law required hundreds of thousands of citizens to serve in the armed forces. This induction ceremony, however, was a media event. Outside the building, contending groups of protesters (some possibly assembled by unscrupulous reporters to add to the drama) waved signs and hurled invective. Inside, two military liaisons passed reports to journalists about a single inductee who was the focus of all the attention: he passed his physical; his blood was taken as usual; he refused to eat a ham sandwich at lunch.

The inductee drawing such intense interest was Muhammad Ali, the undefeated heavyweight champion of the world. Over the past three years, Ali had become a national pariah for his views on race, religion, and especially the Vietnam War. Claiming that his beliefs as a member and minister of the Nation of Islam, a controversial sect of black Muslims, precluded him from any form of military service, Ali had already fought protracted battles in the draft bureaucracy and the federal courts in an attempt to avoid induction. He had failed at every attempt.



Ali at the Armed Forces Examining and Entrance Station in Houston

Courtesy: Library of Congress

Now, in a simple ceremony freighted with meaning, a soldier would line him up with his fellow inductees and demand he take a single step forward when he heard his name to signify his entry into the army. Ali knew that if he failed to take this step he would be prosecuted in federal court. Should he lose at trial, he would face a sentence of up to five years in prison and a $10,000 fine.

The soldier called out, "Cassius Marcellus Clay." Ali did not move. Likely aware that Ali considered this, his legal name, a "slave name," the soldier then called out, "Muhammad Ali."[1] Again,

1. These materials refer to Ali as "Cassius Clay" or "Clay" prior to his adoption of his Muslim name and as "Muhammad Ali" or "Ali" thereafter or where necessary to refer to the man in the abstract. However, it should be noted that Ali never legally changed his name and, as a consequence, several of the cases referenced herein refer to him by his former name. These materials refer to the cases by their official titles.

Ali refused to step forward. He was warned of the legal consequences of his refusal to take the step but persisted nonetheless.

After giving his reasons for declining to submit to induction in writing, Ali was led to a press room where the normally exuberant champion declined to speak, instead handing out copies of a prepared statement reiterating that his faith prevented him from joining the military. "I strongly object," the statement continued, "that so many newspapers have given the American public and the world the impression that I have only two alternatives in taking this stand: either I go to jail or go to the Army. There is another alternative and that alternative is justice."

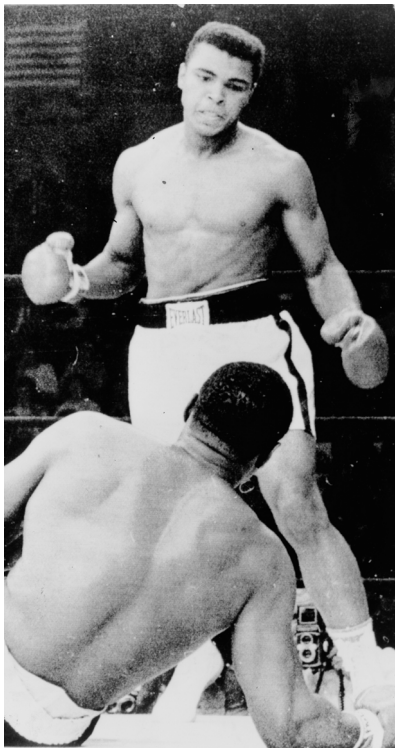
Though Ali eventually secured "justice," he paid a high price for his stand in the meantime. He was tried and convicted of draft evasion in federal district court and sentenced to the maximum penalty. He was stripped of his titles and suspended from boxing during the peak of his career, losing millions of dollars in the process. Mainstream America turned its back on a man who seemed happy to beat people up for money and fame but unwilling to fight for his country. In response, Ali and his legal team launched a lengthy challenge against his conviction that ended with victory in the Supreme Court of the United States in 1971. As the nation's attitudes towards the war shifted during this period, many Americans came to respect Ali's resolve and cheered as the man they had once vilified eventually reclaimed his title.

Several commentators have portrayed Ali's fight against the draft as a victory for freedom of conscience every bit as thrilling, and arguably more important, than his exploits in the ring. And, indeed, the symbolism of a defiant black Muslim taking on the federal government and winning against long odds and at great personal cost resonated throughout the world. Nevertheless, the real story of the case was one dominated by complex procedures and nuanced rulings. Several of Ali's more sweeping legal challenges to the draft failed outright. Indeed, Ali never definitively established that he was a bona fide conscientious objector; he succeeded instead by exposing flaws in the bureaucratic process by which his objections were initially rejected.

In the interest of clarity, this narrative follows the multiple threads of Ali's case separately. It begins by sketching Ali's religious conversion and opposition to the draft, before tracing his conscientious objector claims from the Selective Service System through his criminal trial and multiple appeals. It then reflects on other major legal issues raised by Ali's case. Each of these challenges to his conviction failed. Nonetheless, examining these unsuccessful stands can help teachers enliven otherwise abstract concepts like judicial review of bureaucratic decisions, the politics of the Vietnam era, and the historical theories of contingency and memory. By understanding the meandering path Ali's case took, moreover, teachers and students can gain a more sophisticated appreciation of the ways in which disputes often assume different meanings, and are conducted at different registers, inside and outside the judicial system.

The conversion of Cassius Clay

Cassius Marcellus Clay, Jr., was born in Louisville in 1942. He grew up in modest, but not impoverished, circumstances and began boxing at the age of twelve, showing a natural aptitude for the sport. Though members of the press and federal judges were later incredulous that he could flunk military aptitude exams, Clay was a poor student and seems to have graduated from high school largely thanks to his growing reputation as a boxer. Just weeks after graduation, Clay won gold in the light heavyweight division at the 1960 Olympics in Rome. He subsequently turned professional and worked his way up the ranks until shocking the sports world by defeating heavily favored champion Sonny Liston on February 25, 1964.



Ali in the ring (1965)

Courtesy: Library of Congress

At least from the time he won gold in Rome, Clay was an unabashed self-promoter, known as much for his puffery and self-aggrandizing doggerel as he was for his boxing. This quality presents challenges in gauging the accuracy of claims he subsequently made about his early life and religious conversion. From most of the available evidence, however, it seems that Clay was first exposed to the Nation of Islam in 1959 or 1960. During the early 1960s, he attended events at mosques, but it is hard to say when he became a regular devotee, and accounts have differed accordingly. At a 1967 hearing, Ali's lawyers offered a plausible synthesis of the conflicting evidence by pinning his conversion to the period around the title bout in 1964, while they acknowledged that he had been "wavering back and forth, leaning closer and closer" to the Nation of Islam in the preceding years.

Clay's first official declaration of his beliefs came almost immediately after he was crowned world champion. Having seen Clay's controversial friend Malcolm X cheer him on from a ringside seat the night before, reporters at his post-match press conference asked Clay to confirm or deny rumors that he was a "card-carrying member of the Black Muslims." Though he indicated he believed in "Allah and in peace," Clay's initial answer was both ambiguous and defiant. Rejecting the pressure black athletes had long endured to appear "credits" to their race, he declared, "I don't have to be what you want me to be, I'm free to be what I want."

Malcolm X with Clay shortly after his victory over Liston

Courtesy: Library of Congress

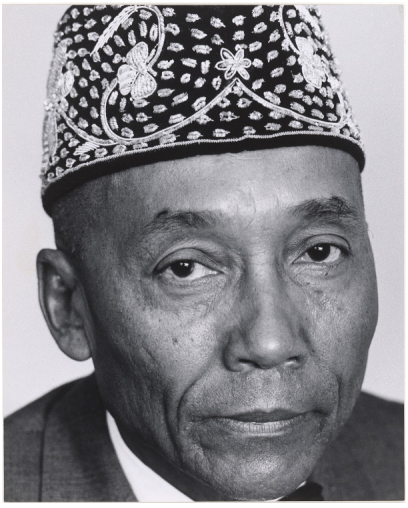
Over the course of innumerable interviews and press conferences in the following months, Clay teased out his beliefs in more specific and controversial ways. His personal philosophy seemed contradictory, even incoherent, at times, but the common threads were a desire to be let alone and a firm belief that African Americans should take pride in themselves and their culture. Rebuffing calls to join the movement for racial integration, for example, Clay asserted he was "happy with [his] own kind." At times this attitude could take a more provocative slant. He castigated blacks who advocated integration—including popular former champion Floyd Patterson—labeling them "Uncle Toms" and worse. He responded indignantly to journalists and promotors who called him by his "slave name" (though most reporters continued to do so for years). Later, he suggested that blacks or Muslims who slept with outsiders should be put to death. He also divorced his first wife on the grounds that she refused to live a devout Muslim lifestyle or wear clothes comporting with Islamic dress codes.

These controversial positions clashed with the expectations of sports fans accustomed to athletes (and especially black athletes) who adopted modest, even banal, media profiles. Jack Johnson, the last black champion to adopt a swagger akin to Clay's, had become persona non grata in white society and was eventually imprisoned on dubious charges. Many predicted a comparable fall from grace for the new champion, and a number of his critics expressed a racially tinged desire for first his boxing opponents and then the judicial system to put him in his place. While Clay

seems to have drawn somewhat more support from African Americans, many of his views flew in the face of respectable black politics at a time when Congress was debating the landmark Civil Rights Act of 1964.

What is more, the religious sect with which Clay was now synonymous was mired in its own controversies and conspiracy theories. The Nation of Islam originated with an obscure Detroit-based preacher named W. D. Fard, who developed a theology that combined elements of Islam, Black Nationalism, and the American premillennialist tradition.[2] Among the few thousand converts Fard amassed by the early 1930s, Elijah Poole, who later adopted the Islamic surname Muhammad, proved a powerful surrogate, taking over the mantle as the group's temporal leader when Ward mysteriously disappeared in 1934. Elijah Muhammad, who was himself imprisoned for refusing to fight in World War II, eventually built up the Nation's following, appealing to a hunger for an ideology of black independence in post-war America. Nonetheless, the group's seemingly anti-white rhetoric, insular community, and strong following among prison populations led many to question its legitimacy, with critics variously labeling the group a cult and a criminal racket.

Though the Nation of Islam expressed ambivalence about boxing and other competitive sports, Clay's rising public profile helped him to meet influential figures in the movement, and he eventually befriended Malcolm X, the charismatic leader of a group of black Muslims in New York City. Malcolm X, who initially served as Clay's most significant spiritual mentor, split with Elijah Muhammad shortly after Clay's title victory. Elijah Muhammad's announcement that Clay would assume a Muslim name, a sign of status in the group, was widely interpreted as an attempt to keep him within the Nation's fold as Malcolm X attempted to form his own movement more closely aligned with traditional Islamic theology. Ali sided with Elijah Muhammad in this feud, apparently deferring to him as a father figure.

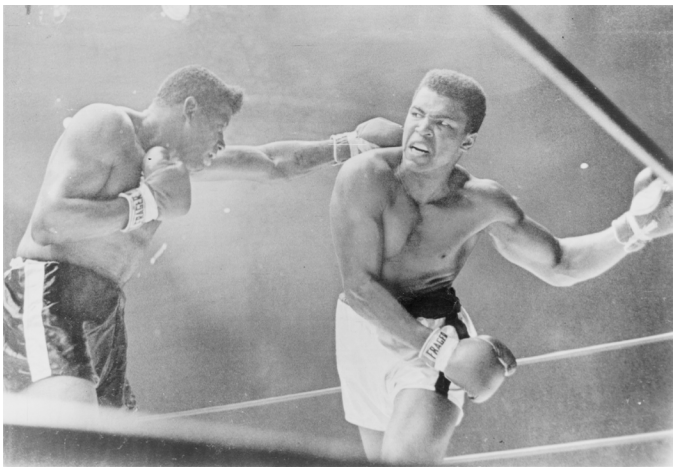


Elijah Muhammad

Courtesy: Smithsonian Institution

Throughout Ali's heyday, there was much speculation about the degree to which he was a pawn of the Nation of Islam. With the benefit of hindsight, it seems that the group often pressured its most famous adherent to adopt certain public positions but that Ali was also fiercely individualistic and unlikely to have been "brain-

2. Fard's name, along with much about his identity and origins, is the subject of much debate and conjecture. He has been variously designated "Farrad Mohammad," "F. Mohammad Ali," "Professor Ford," and "Wali Farrad."



Ali's defeat of Patterson had broader implications

Courtesy: Library of Congress

washed" in the manner some of his detractors suggested. Ali's own approach to the faith seems to have been genuine but selective. He embraced the injunction against eating pork and prayed five times a day, for example, but maintained something of a playboy lifestyle in other respects, acquiring a reputation as a womanizer. Certainly, he shunned calls for humility throughout his career, something that served as partial justification for his temporary suspension from the Nation in 1969. Similarly, while Ali was a vigorous supporter of the ideal of black pride and rejected integration, he often (though not always) disavowed the idea, advocated by some of the Nation's followers, that whites were inherently evil.

Even so, the racial and religious views he did espouse were sufficiently explosive to alienate large swaths of the public and spur a wave of rumors about his involvement in subversive activities. Suspicions that the Nation of Islam had intimidated Liston into throwing the title fight gained such currency that the champion was a five-to-one underdog when the two fought a rematch. Ali knocked Liston out in a matter of seconds in the second bout, prompting even more conspiracy theories. That Liston, who had worked as a heavy for the mob and served time for armed robbery and assaulting a police officer, played the putative "good guy" in the rematch with Ali demonstrates the public's disdain for the latter. When Patterson subsequently challenged Ali, Patterson proclaimed he would "bring the title back to America" and even offered (perhaps facetiously) to fight Ali for free, provided he could "take the title back from the Black Muslim leadership." Many American sports fans lamented Patterson's later defeat.

Ali and the draft bureaucracy

As his public image continued to deteriorate, Ali's draft status became a focus of public scrutiny. The teenage Clay had registered for selective service, as required by federal law, in 1960. At that time, it seems likely he had yet to convert and did not consider the prospect of being called up to the military a serious possibility. The Korean War had ended several years earlier, and like many Americans, Clay was not even aware

there was a conflict in Vietnam in 1960. American involvement in the war escalated as Clay rose to prominence, with an attendant increase in the armed forces' demand for troops. As the war effort intensified, so did attention on the draft status of eligible celebrities and athletes.

The body charged with determining Ali's draft status was his local draft board. The Selective Service System placed a great deal of power and discretion in the hands of these boards, which were staffed by civilians selected by state governors and appointed by the president. These boards determined the eligibility of young men for a series of exemptions and deferments based on such criteria as their employment in protected professions, family or financial hardship, ongoing education, and conscientious objection. The local boards' decisions could be appealed to a board of appeal, which ruled based on a hearing conducted by a judge or an attorney, an investigation report compiled by the Federal Bureau of Investigation (FBI) and a legal recommendation from the Department of Justice (DOJ). If the board members disagreed or the director of the Selective Service System intervened, the National Selective Service Appeal Board (also known as the "Presidential Board") could hear a final appeal.

Importantly, objectors could *not* appeal board decisions in federal court. To facilitate the rapid induction of hundreds of thousands of individuals, selective service legislation specifically excluded the draft bureaucracy from the sort of judicial review applied to decisions of other federal agencies. Even when an objector was criminally prosecuted for failing to comply with an induction order, the judge could only reverse draft board determinations unsupported by any "basis in fact," a standard of review that federal courts often stated was "the narrowest known to the law." Given the inherently ambiguous and abstract nature of the beliefs implicated by conscientious objection claims, government lawyers rarely failed to find some fact supporting a denial of objector status.

Though he was briefly excluded from military service because of a low score on an aptitude test, Ali's local draft board in Louisville classified him 1-A in February 1966, making him eligible for induction. When a group of reporters informed him of the change in his draft status, Ali responded with disbelief, claiming he had been singled out. Asked about the war in Vietnam, he infamously replied that he had "no quarrel with them Vietcong." In early 1966, few public figures were so brazen in their criticism of the war, and Ali's comments elicited a wave of outrage.

Statements of this sort did more than damage Ali's popularity. They jeopardized his ability to make a strong conscientious objection case. Conscientious objector status was protected by statute rather than constitutional right. To make a valid claim under existing statutes and Supreme Court precedents interpreting them, Ali was required to demonstrate: (1) that he objected to *all* wars; (2) that his beliefs were sincere; and (3) that his objections were based on religious beliefs (or at least moral convictions equivalent to such beliefs). In submissions to his local board in Louisville, Ali argued

that he met these standards because the principles of the Nation of Islam forbade him from participating in any war "when not ordered by Allah."

The Louisville board rejected Ali's initial request for a conscientious objector exemption and he appealed. At the next stage in the administrative proceedings, retired Kentucky state court judge Lawrence Grauman conducted Ali's board of appeal hearing, concluding that Ali had sincere religious scruples against participation in all wars. Nonetheless, the DOJ recommended that the board reject Ali's appeal in a detailed legal opinion letter, arguing that Ali failed all three of the conscientious objector criteria. Flawed legal analysis in this letter (an abridged version of which is included in these materials) ultimately provided the basis for overturning Ali's conviction.[3]

The DOJ's lawyers arguably overstated weaknesses in Ali's claim on at least two of the three criteria: sincerity and religious belief. The overwhelming weight of evidence procured by the FBI and Judge Grauman—including statements from dozens of individuals familiar with Ali's character and beliefs—indicated that his objections were sincere. Though the DOJ acknowledged this evidence, its lawyers nevertheless argued that Ali's failure to assert his religious objections until his induction was imminent meant he had not established a record of sincerity. While judicial precedents suggested that the timing of claims was a factor boards might consider when assessing sincerity, there was no rule barring delayed claims in the way the letter intimated, provided they were otherwise genuine. Similarly, the DOJ attempted to parse aspects of the religious, racial, and political tenets of the Nation of Islam's teachings to make the case that "insofar as [Ali's objections] are based upon the teachings of the Nation of Islam, [they] rest on grounds which primarily are political and racial." Given the capacious interpretation of "religious belief" adopted by the Supreme Court, this argument also appears to have been somewhat strained, Ali's statements on Vietnam notwithstanding.

Finally, the letter claimed that as a member of the Nation of Islam, Ali did not object to all military conflict, but only to fighting on the side of the white-dominated American government or, at most, for non-Muslims. The DOJ's position on this issue, often known as "selectivity," was more difficult to gainsay than the others. As Justice William O. Douglas would later point out, although it was Ali's individual beliefs that counted, he adhered to a religious tradition that held to a complex but longstanding doctrine of holy war . Moreover, Ali occasionally seemed to countenance the possibility that he would fight in a war furthering a cause he personally considered just. Shortly before he was charged with draft evasion, for instance, he claimed, "If I thought my joining the war and possibly dying would bring peace, freedom, justice and equality to 21 million so-called Negroes, they would not have to draft me. I would join tomorrow." Hypothetical statements like this might not necessarily have

3. An abridged version of the DOJ letter is included in these materials.

foreclosed Ali's conscientious objector claims. Even so, the ambiguous nature of the evidence on this point suggests it is at least plausible that Ali's conviction might have been sustained had the DOJ relied solely on selectivity.

For the time being, however, there was little sign that Ali's draft eligibility faced any chance of reversal. Apparently acting on the DOJ's recommendation, the board of appeal upheld Ali's classification. Though the board's decision was unanimous, Lieutenant General Lewis Hershey, the director of the Selective Service System, initiated an appeal to the Presidential Board, which again upheld Ali's draft eligibility. As his setbacks began to pile up, Ali increasingly despaired of the chances the government would recognize his objections. "[W]e're over there so that the people of Vietnam can be free," he claimed, "[b]ut I'm here in America and I'm being punished for upholding my beliefs."

Though remarks of this sort remained controversial, Ali's position helped to force the hand of some prominent liberals and civil rights leaders in coming out against the war and the draft system. In the spring of 1967, Martin Luther King, Jr., who had privately criticized the war but previously felt constrained not to condemn American military policy in public, gave a joint press conference with Ali in Louisville. Though Ali had frequently disparaged the ideal of racial integration for which King fought, King acknowledged that, as "Ali has said, we are all victims of the same system of oppression." Shortly thereafter, King gave a series of speeches praising conscientious objectors like Ali and predicting (correctly, as it transpired) that this was "just the beginning of a massive outpouring of concern and protest activity against this illegal and unjust war." Charles Morgan, Jr., a prominent civil rights lawyer who represented both men, later claimed, "When Ali spoke out publicly, he took the consequences, and I believe it had an influence on Martin. Here was somebody who had a lot to lose and was willing to risk it all to say what he believed." As King put it, "no matter what you think of . . . Ali's religion, you certainly have to admire his courage." This view continued to gain credence over the coming years.

Indictment and trial

While Ali was beginning to win important allies, however, he had failed to convince the draft authorities that his beliefs warranted legal protection. To seek vindication in the courts, Ali would now have to either accept induction and sue for his release from the military or refuse to serve entirely and risk prosecution. On April 28, 1967, he chose the latter path by declining to take the step forward in Houston. (Ali had relocated to Houston during the draft proceedings.) Moments after receiving news that Ali had formally refused to enter the military, the New York Athletic Commission, a powerful regulatory body in the boxing world, suspended his boxing license. Other major licensing organizations soon followed suit, making it virtually impossible for Ali to box in the United States. On May 8, 1967, a federal grand jury in the U.S.

District Court for the Southern District of Texas indicted Ali for failure to submit to induction.

Hayden Covington and Quinnan Hodges led Ali's legal team, as they had throughout much of the administrative process. Texas attorney Hodges served as Covington's local counsel and provided assistance at several points during the case. Himself originally from Texas but long since based in New York, Covington had served as general counsel to the Watchtower Tract and Bible Group, the primary national organization of Jehovah's Witnesses, for more than two decades. Although he had won several landmark Supreme Court victories for the Witnesses (who frequently claimed objector status) in the 1940s and 50s, Covington had fallen out with the sect's hierarchy and been "disfellowshipped" in 1963.

Ali surrounded by supporters and press outside the Armed Forces Examining and Entrance Station in Houston

Courtesy: Library of Congress

At trial, Covington opted not to emphasize the potential weaknesses in the DOJ's legal recommendations, primarily relying on other defenses, including arguments that Ali should be classified as a religious minister and that the draft process itself was unfair. Covington likely should have known that the Department's recommendations offered a real opportunity to attack Ali's classification, however. Several years earlier, he had successfully argued an analogous case, *Sicurella v. United States* (1955), in which the Supreme Court reversed the conviction of a conscientious objector because of a flawed DOJ recommendation. Importantly, in *Sicurella*, the Court established a rule to the effect that erroneous advice on *any* element of a conscientious objector claim required reversal of a draft evasion conviction, even if a board might have decided the case on other, valid grounds. The premise of this rule was that because the boards did not produce written opinions stating the rationale for their decisions, it was impossible to tell whether an objector's claim had been denied on proper or improper grounds.

The trial began on June 19, 1967, and lasted two days. After the jury of six men and six women (all of whom white) was selected, it was sequestered in a nearby hotel to avoid the influence of press coverage or other external pressures. The prosecution, conducted by U.S. Attorney Morton Susman and Assistant U.S. Attorney Carl Walker, called three military officers to testify that Ali had reported for his induction but refused to step forward. Susman called a fourth military officer for the purposes of admitting Ali's voluminous Selective Service file, although the jury was not permitted to examine the file in reaching its verdict. Though Covington asked few questions of the first three witnesses, he attempted to establish that the government had rushed through the classification process and could not possibly have considered the thousands of pages of documents in the file in the time it took to decided Ali's initial classification and subsequent appeals.

The defense also called four witnesses. The first two were clerks for the local and appellate boards in Kentucky. Covington attempted to establish through their testimony that the boards had been influenced by a host of negative press clippings and correspondence that was included in Ali's draft record and that they had denied Ali's claims without fully assessing their validity. Judge Ingraham, however, limited this testimony, reasoning that the clerks were not able to testify about the boards' decision-making processes and that the extraneous documents in the record were not material to Ali's guilt or innocence. In what appears to have been a rather embarrassing misstep, Covington also called a member of the Houston-area board of appeals to the stand, only to discover that the individual was not one of the board members who had deliberated on Ali's draft status. After calling a second member of the board of appeals, who testified that he spent approximately an hour and a half reviewing Ali's voluminous file, the defense rested.

The court then heard protracted argument from Covington, Hodges, and Susman as to whether there was a basis in fact for Ali's draft classification. At this stage, Covington arguably missed a chance to drive home the flaws in the DOJ's legal assessment of Ali's sincerity and religious beliefs, again focusing on other arguments. Judge Ingraham ruled that the board had an adequate basis in fact for denying Ali's conscientious objector claims, based largely on the timing of those claims. This logic was similar to that employed by the recommendation letter: the timing of Ali's conscientious objection was too convenient to be credible. At the very least, the judge reasoned, it provided *some* basis for the board's determination, and the court could not go beyond that baseline assessment to evaluate whether the board had in fact reached the "correct" result.

Sentence and travel restrictions

With the basis-in-fact question resolved, the jury retired to determine whether Ali had intentionally evaded military service. There was little surprise when the jury re-

turned a guilty verdict in approximately twenty minutes. Judge Ingraham sentenced Ali to the maximum penalty of five years in prison and a $10,000 fine. In setting the sentence, the judge noted that the case would almost certainly be appealed and that even if the appeal was unsuccessful, the sentence could be subject to a motion for reduction. Without suggesting whether he would be inclined to reduce the sentence at that time, the judge indicated that if he showed Ali clemency in the initial sentence and that sentence were later reduced, it could produce an unduly liberal result. Though there were several other examples of judges imposing the maximum sentence on draft evaders, it appears that Ali's punishment was unusually severe. Covington claimed that the average sentence was eighteen months, and even Susman indicated he would not oppose a lighter sentence. Importantly, however, the judge permitted Ali to remain free on bail during his appeal, which ultimately meant that he was not imprisoned.

The verdict still limited Ali's freedom significantly, however. Shortly after the trial, he filed a motion requesting permission to leave the country for a boxing match in Japan. While Ali had not testified during his trial, he took the stand in support of this motion. Although Ali assured the court he would not flee once abroad, Susman used the opportunity to paint him as a disloyal citizen who would likely stay abroad if permitted to leave. The prosecutor grilled Ali about his participation in a peace rally in California, for instance, suggesting that he had encouraged other young people to follow his example in evading military service. Though Ali insisted that, for all his criticisms of the war, he remained a loyal American, the court denied his motion and ordered him to turn in his passport. Since Ali could neither fight abroad nor at home, this ruling seemed to spell the end of his professional boxing career.

Initial appeal

When Ali appealed his conviction to the Court of Appeals for the Fifth Circuit, he did so without Covington's assistance. It appears the two fell out shortly after the trial. (Hodges took charge of the hearing on Ali's travel request). Covington subsequently sued Ali for approximately $250,000 in fees he claimed Ali had failed to pay him. Though the grounds for this disagreement are unclear and Ali later expressed his gratitude for Covington's work, his legal strategy had not borne much success to that point.

Ali's new legal team was led by civil rights lawyers Charles Morgan, Jr., and Chauncey Eskridge. Morgan had built a reputation as an advocate capable of ruffling feathers in his native South. His most famous victory came in the seminal voting rights case *Reynolds v. Sims* (1964), in which the Supreme Court established the "one person, one vote" standard for electoral apportionment, enhancing the efficacy of urban and African-American votes in many previously gerrymandered areas. Eskridge, who had previously worked with Ali on other legal matters, was among the nation's best-known

black lawyers and had represented the Southern Christian Leadership Conference, an important civil rights organization, along with its founding president, Dr. King.

Morgan and Eskridge focused much of their attention on attacks on the fairness of the trial and administrative procedures. Though they also argued that Ali was entitled to conscientious objector status, the court appears to have given little credence to this argument. Circuit Judge Robert Ainsworth's opinion for the unanimous three-judge panel relied on the evidence presented in the DOJ letter to hold there was an adequate basis in fact for the finding that Ali's beliefs were not "truly held." The court did not, however, delve further into the adequacy of the Department's reasoning, simply stating that "the threshold question of sincerity" was one for the Selective Service bureaucracy rather than the courts.

Though Ali and his lawyers had failed to persuade the court, by the time the Fifth Circuit issued its opinion in 1968, the nation was gradually beginning to reevaluate both the war in Vietnam and the value of objections like his own. When Ali had decried American intervention in Vietnam in 1966, he had spoken for a small minority of the public. At that time, most Americans continued to credit the Johnson administration's argument that the war was essential to stem the spread of Communism in Asia. Indeed, this attitude briefly entered Ali's case, when Susman expressed disbelief that Ali did not consider the Vietnam War a defensive war against Communism. As the death toll began to mount and news from the front became increasingly negative, however, many Americans soured on the war. On March 31, 1968, with anti-war candidate Eugene McCarthy mounting a surprisingly strong primary challenge, President Lyndon Johnson decided not to seek his party's nomination for reelection. Far from clarifying the nation's political situation, Johnson's decision made the Democratic primary even more contentious. The party's convention in Chicago descended into chaos, with police indiscriminately beating anti-war protestors in the streets. Further protests on university campuses across the nation spread a growing sense of dissatisfaction with the war that was not mollified by the election of Richard Nixon. Though Nixon assured the nation that he had a plan to end the war quickly,

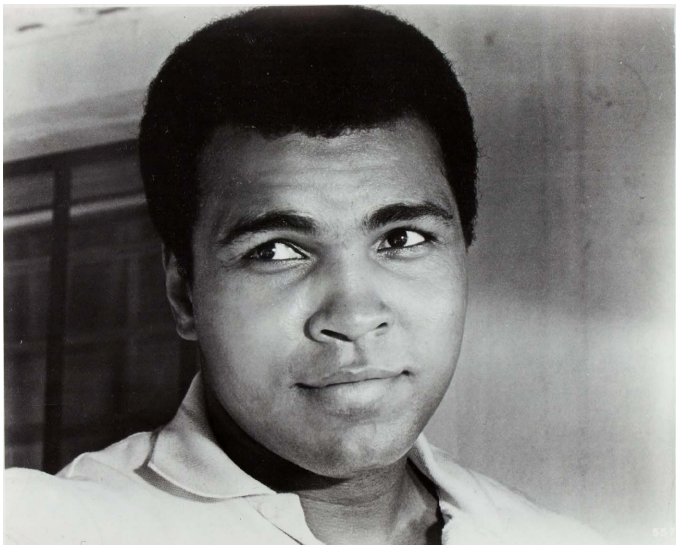
Ali was an early critic of the Vietnam War

Courtesy: Library of Congress

it lingered as the decade came to a close, leading more Americans to question the war's purpose and the draft's legitimacy. As Ali's case wended its way up and down the judicial system during the appeals process, then, it did so against a backdrop of changing attitudes to his claims.

Remand and second appeal

Having been rebuffed by the Fifth Circuit, Ali appealed to the Supreme Court, which remanded the case to Judge Ingraham's court for procedural reasons discussed at greater length below. After a second appeal, Ali again found himself before the Supreme Court in the 1970–1971 term. Though his distinct lack of success at every prior phase of the case might not have augured well for his chances in this final appeal, several developments inside and outside the courtroom may have given the former champion some cause for cautious optimism by 1970. Arguments that conscription unfairly discriminated against racial minorities and poor whites further undermined the legitimacy of the system in the eyes of an increasing number of Americans. As a consequence, views on the fairness of both the war and the draft that had once seemed radical had become increasingly commonplace. In a special message to Congress in 1970, for example, even President Nixon acknowledged that "[w]e all know the unfairness of the present system." Against this backdrop, many began to see Ali's lengthy opposition to mandatory military service as a principled stand against an arbitrary system rather than an act of petulance or cowardice.



Public attitudes toward Ali warmed after initial outrage over his conversion and draft resistance

Courtesy: Smithsonian Institution

Ali channeled this changing mood effectively. He arguably made an attractive symbol for the anti-war movement as his race and manifest masculinity helped to counter the stereotype of the effete, privileged, white objector. He turned this appeal, along with his personal charm and passion for conscientious objection, into a second career, touring the nation's universities to give a popular series of speeches. This, in turn, led to renewed invitations from mainstream television shows for interviews and

self-parodying acting cameos. He endorsed a fast-food chain called Champ Burger. He even appeared on Broadway. Just as the public attitude toward the war had cooled over the course of Ali's legal case, perceptions of Ali himself began to warm as the image of the gregarious former champ displaced that of the militant black radical in the public imagination.

Finally, in 1970, Ali had regained the right to fight. An important part of that process came in a federal civil suit in the U.S. District Court for the Southern District of New York. Judge Walter Mansfield found that the New York Athletic Commission had unfairly singled Ali out for sanctions in violation of the Fourteenth Amendment's Equal Protection Clause. Ali won two bouts before narrowly losing to "Smokin' Joe" Frazier in the "Fight of the Century" just weeks before oral arguments in *Clay v. United States*. For once, Ali would have better luck in court than in the ring.

Clay v. United States *in the Supreme Court*

In contrast to many other phases of the case, which had dealt with multiple legal issues, the Supreme Court focused the appeal in *Clay* on a single question: should Ali's conviction be vacated "because the denial . . . of a conscientious exemption may have been based upon the Department of Justice's erroneous characterization of his objections to participate in wars as 'political and racial' rather than 'religious'?" The justices often limit the questions they will review because appeals can present an array of intricate questions, only some of which are appropriate for review (the Court does not decide state-law matters, for instance). In this instance, Justice William Brennan, an influential figure on the Court from 1957 to 1990, seems to have felt that, in view of the mounting suspicion that the draft process itself was not fairly administered, the Court should not reject such a high-profile conscientious objector claim without at least hearing Ali's arguments. Although he felt the Court's review should have been broader, Brennan apparently persuaded some of his more reluctant colleagues to grant certiorari in *Clay* on this single issue.

Both sets of lawyers seemed intent on broadening their arguments beyond the question presented, however. Solicitor General Erwin Griswold effectively conceded that Ali's beliefs were sincere and religious but attempted to sidestep those issues by arguing that the only real ground on which the DOJ had made its recommendation was that Ali's objections to war were selective. As law clerk Robert Gooding, Jr., noted in a memorandum to Justice Harry Blackmun, this may not have been a "fair reading" of the DOJ's recommendation. Griswold, who had been a long-serving dean of Harvard Law School and was one of few high-ranking officials to serve in both the Johnson and Nixon administrations, likely felt that the selectivity issue provided the government with its strongest argument in light of the weaknesses in the DOJ's earlier analysis.

Arguing the case for Ali, Eskridge argued Ali met all three conscientious objection criteria (Morgan did not participate at the Supreme Court level). Some commentators, and indeed, some of the justices, criticized Eskridge's approach for needlessly confusing the issues in the case. By broadening his arguments to include questions of selectivity, Eskridge also risked playing to the strengths of the government's case. Indeed, the lawyers debated that issue to such an extent at oral argument that Justice Potter Stewart expressed concern that the question they were quarrelling over was not the one for which the Court had granted certiorari. This seemed to suit Griswold's purpose. Since the question of selectivity was a close one, the Court was less likely to overturn the Selective Service System's ruling on that issue, particularly given the level of deference accorded draft classifications.

Following oral argument, the eight justices who heard the case met to deliberate and gave initial indications as to their likely votes. (Justice Thurgood Marshall recused himself because he had been Solicitor General when the DOJ wrote its opinion letter in the case.) It appears a 5–3 majority tentatively voted to affirm Ali's conviction. Notes taken by Justices Blackmun and Douglas, however, indicate that some of those voting to affirm considered the case "very close." Justice Blackmun's interoffice memoranda suggested that he was undecided prior to oral argument but was unimpressed with the case Eskridge laid out (Blackmun, who had a habit of grading lawyers' performances, gave Eskridge a "C"). Similarly, Justice Byron White appears to have acknowledged that he might ultimately change his vote.

Chief Justice Warren Burger assigned the task of writing the Court's majority opinion to Justice John Marshall Harlan II. At the urging of his clerks, who evidently favored reversing Ali's conviction, Harlan read excerpts from Elijah Muhammad's *Message to the Black Man*, which eventually persuaded him that the government's conclusion on the selectivity question was erroneous. Harlan reasoned that the wars countenanced by the Nation of Islam were comparable to the apocalyptic fight between good and evil contemplated by members of other pacifist sects. Ali's testimony at Judge Grauman's hearing confirmed a similar reading of his belief that he should fight only in the unlikely event that Allah, acting through Elijah Muhammad, commanded him to do so. On June 9, 1971, Harlan wrote a letter to the Chief Justice informing him that he had changed his vote and regretted that this left the Court both in a 4–4 tie and with little time before the end of the Court's term to produce a new opinion. Apparently attempting to persuade the other justices in the erstwhile majority, Harlan then circulated a memorandum containing a draft opinion reversing Ali's conviction.

Justice Stewart followed suit by circulating an alternative opinion based on the narrower ground that Griswold had conceded that the DOJ had erred in advising the board that Ali was insincere and that his beliefs were not religious. Since the board could have reached its decision on those incorrect bases, there was no need to decide the harder question of selectivity. Though Harlan felt this reasoning pressed

Griswold's concessions further than intended, Stewart's opinion persuaded a majority of his colleagues, who adopted it as the Court's *per curium* (a brief opinion of the Court as a whole, rather than of any individual justice). Justice Harlan wrote a brief concurring opinion that abandoned his original theory that the DOJ had erred in finding Ali's beliefs selective, and instead reasoned that the DOJ's interpretation of the timing of Ali's claim might be read to set up an improper bright-line rule that barred all conscientious objector claims made shortly before induction. Finally, Justice Douglas also wrote a concurring opinion that argued Ali's objections *were* selective but the statutory distinction between selective and universal objections to war was unconstitutional.

Reception and memory

On the day the Court heard oral arguments in *Clay*, Justice Blackmun privately despaired that "[t]he Court will be excoriated whether it upholds or reverses" Ali's conviction. Some detractors did lament that Ali had avoided the draft largely because he could afford a lengthy legal challenge beyond the means of ordinary inductees. Nevertheless, fading support for the war and Ali's own enhanced popularity ensured that most observers heralded the Court's decision. Even so, reaction to the Court's decision often focused on issues other than those on which the Court had ruled. While some media outlets noted that the Court's decision turned on the DOJ's flawed legal advice, many saw the decision as a broader vindication of Ali's religious rights or a symbolic validation of the ability of one man to speak truth to power, an impression that grew stronger over time.

The memory of Ali's legal triumph was likely influenced by his later accomplishments in and out of the ring. In 1974, he regained his title in a thrilling victory against the heavily favored George Foreman. He went on to win several other memorable victories throughout the 1970s, becoming widely acknowledged as one of the greatest athletes of the twentieth century.

After Elijah Muhammad's death in 1975, the Nation of Islam splintered into two major factions: a moderate movement aligned with the traditional tenets of Islam and led by Elijah Muhammad's son Herbert (who had served as Ali's manager), and a radical wing led by the controversial Louis Farrakhan, who continued the Nation's fierce critique of white-dominated society and courted opprobrium with anti-Semitic remarks. Ali's decision to follow Herbert Muhammad's moderation made his religious and racial views more palatable to a broader range of white Americans than they had been in the mid-1960s. Public portrayals of Ali's draft resistance increasingly deemphasized the more radical elements of his opposition to the war, such that even conservative politicians like Ronald Reagan came to embrace him.

In the mid-1980s, shortly after he retired from boxing for the final time, Ali was diagnosed with Parkinson's syndrome, a nervous system disorder that affects motor

skills. His brave battle against the disease further elevated his public esteem. When the United States hosted the Olympic Games in 1996, Ali, though visibly shaking from the effects of his condition, seemed the perfect choice to light the symbolic flame at the opening ceremony. A number of popular books and films portraying his accomplishments, including the biopic *Ali*, starring Will Smith, and the Academy Award–winning documentary *When We Were Kings*, further inculcated a heroic view of Ali's objections to the draft. In 2005, President George W. Bush awarded Ali the Presidential Medal of Freedom, the nation's highest civilian honor, noting, in language that would have been unthinkable from a conservative leader forty years earlier, that Ali's "deep commitment to equal justice and peace has touched people around the world."

Alternative paths

Despite the widespread admiration Ali eventually gained, his triumph was far from inevitable. Moreover, the legal issues that eventually determined the outcome of the case did not predominate throughout. Indeed, several other issues assumed greater prominence at different stages in the administrative and judicial processes. The following sections examine these issues.

Ministerial exemption

Under the Universal Military Training and Service Act, full-time religious ministers were exempt from military service and training. Covington's experience litigating on behalf of the Witnesses, a disaggregated group that deemed all of its members ministers, led him to advise Ali to seek an exemption as a minister of the Nation of Islam. Because Covington injected this claim partway through the draft proceedings, it had not been subject to the same legal analysis as Ali's conscientious objector claim. Covington evidently saw this as a tactical advantage at trial, since there was a less-developed record for the government to articulate a basis in fact for its refusal to acknowledge Ali as a religious minister. The ministerial exemption also offered a way around some of the difficult questions of proof posed by conscientious objection, since it focused on the objective question whether Ali worked as a minister rather than murkier questions about the nature of Ali's personal beliefs.

Although segments of the press mocked this claim, it was not entirely ridiculous to suggest Ali performed significant ministerial duties. Since his official conversion, he had traveled the nation making speeches at mosques and explaining the tenets of his faith. Elijah Muhammad and several thousand other black Muslims, moreover, had stated in writing that Ali performed full-time ministerial work. Covington argued that this statement was equivalent to the Pope identifying an individual as a Catholic priest—a claim few judges would second-guess.

This approach posed its own difficulties, however. First, to qualify for a ministerial exemption, Ali would have to prove that he spent the lion's share of his time preaching. Notwithstanding Covington's insistence that Ali ministered for 160 hours a month, many board members and government lawyers seemed not to credit this claim on the grounds that Ali plainly had to devote a great deal of time to training. Ali's argument that boxing was merely a part-time "avocation" that facilitated his unpaid ministerial work seemed implausible in view of his remarkable success in the ring. Second, prior to applying for a ministerial exemption in August of 1966, Ali had never claimed to work as a minister. On the conscientious objector form he had filed a few months earlier, for example, Ali listed his profession as "boxer" and his relationship to the Nation of Islam as "member, believer and follower," rather than minister.

Ali attending a speech by Elijah Muhammad

Courtesy: Library of Congress

Judge Ingraham ruled at trial that this evidence provided a sufficient basis in fact for the Selective Service System to deny Ali's ministerial claim. The Fifth Circuit upheld this ruling along similar lines. When the Supreme Court granted certiorari in 1970, the justices declined to hear Ali's ministerial claim.

Covert surveillance

At the time Ali initially appealed to the Supreme Court in 1969, the FBI and DOJ were embroiled in controversy involving the illegal covert surveillance of domestic criminal suspects. In *Alderman v. United States* (1969), the justices ruled that courts could not simply rely on the authorities' assertion that information obtained via illegal surveillance had not influenced the investigation or prosecution of criminal suspects whose rights had been violated. Trial judges had to conduct hearings to determine whether any illegitimate evidence had tainted the process. The DOJ subsequently revealed that several criminal defendants whose cases were then before the Court, including Ali, had been subjected to illegal wiretaps. In *Giordano v. United States* (1969), the Court remanded several of these cases, including *Clay*, to their original trial courts for hearings on the influence of the surveillance.

At issue were five eavesdropped conversations involving Ali and other individuals who had been the primary surveillance targets, including two exchanges with Elijah Muhammad and a discussion between Ali and the now-deceased King. Ali's attorneys argued that the revelation of these conversations warranted substantial investigation into whether the contents of the eavesdropped conversations had tainted the government's handling of Ali's draft case. They demanded access to any other surveillance involving Ali. Judge Ingraham denied these requests but permitted Ali's attorneys to view the contents of four of the conversations and to question the FBI agents involved in the surveillance. He also permitted the lawyers to call to the stand attorneys who contributed to the DOJ's recommendation letter to determine whether any information obtained via improper wiretaps had informed their analysis of the case.

This testimony indicated that the conversations did not influence the determination of Ali's draft appeal. Moreover, Judge Ingraham held that the content of the conversations themselves was so innocuous that it could have had no meaningful impact even if the information had been disclosed to the DOJ lawyers. For instance, in his conversation with King, Ali apparently warned the civil rights icon to "watch out for them whities." Ali's lawyers argued that this use of a pejorative racial term could have contributed to the DOJ's conclusion that Ali's objections to the draft were primarily racial and political, rather than religious. Judge Ingraham, however, reasoned that

> [t]he common slang reference was not within a context which could have had any bearing on the defendant's beliefs. A Negro not a member of the Nation of Islam would be as likely to say the same thing. In addition, if it had been in such a context, and it could be construed to be even viciously derogatory, . . . there was ample evidence from an independent origin before the Department to conclude that the Muslim religion holds the white race in contempt.

Finally, Judge Ingraham ruled that the defense was not entitled to disclosure of one of the conversations on the grounds that its recording had been authorized by the Attorney General for the purposes of gathering foreign intelligence and its continued secrecy was in the national interest. After privately reviewing the conversation, however, the judge ruled that its contents were also unlikely to have prejudiced the government's handling of Ali's draft case. The Fifth Circuit upheld Judge Ingraham's ruling on this issue on the same grounds, and the Supreme Court declined to hear a further appeal on the questions raised by the defense.

Constitutional challenges to the draft system

Ali's legal team attempted to circumvent the draft bureaucracy at several points before his trial by entreating federal district courts in Kentucky and Texas to prohibit

government officials from drafting Ali into the military. Given the limited ability of courts to review individual draft board decisions, these suits did not ask the courts to reevaluate Ali's claims for exemptions. Instead, these cases were distinct constitutional challenges to the fairness of the military selection process as a whole. In particular, Ali's lawyers emphasized the lack of racial diversity on local draft boards, arguing that he had the right to have his eligibility adjudicated in a system that did not exclude African Americans from the decision-making process, much as criminal defendants have the right to plead their case before a jury selected on nonracial grounds.

At first blush, the claim that the boards were composed along racial lines seemed plausible. At the time Ali's case was processed, there were no African Americans in the local or appeals boards for either Louisville or Houston. Although approximately 7% of Kentucky's population was African American, blacks accounted for just 0.2% of the state's local board members. In Texas, a state whose population was 12.4% black, African Americans filled only 1.1% of local board seats. The picture was even starker in some other areas of the country: twenty-three states had no African-American board members whatsoever. Although there was little direct proof that this imbalance was caused by systematic prejudice, the structure of the Selective Service System arguably left it susceptible to invidious motives. The only statutory criteria for the appointment of local board members were that they should come from the area over which they presided and be appointed by the president on the recommendation of their state's governor. State practices for selecting candidates for gubernatorial nomination varied. President Johnson expressed concern that this system might have produced racially discriminatory results and set up a commission to investigate the composition of draft boards and the methods used to determine draft eligibility.

Even so, the courts uniformly ruled against preempting the administrative process before it had run its course and Ali was either inducted or indicted. Covington argued Ali had to be able to raise the racial composition of draft boards as a defense at his criminal trial since he could not raise it beforehand. Judge Ingraham disagreed, reasoning that statistics alone were insufficient to demonstrate unconstitutional prejudice, and curtailed the defense's ability to obtain further proof of racial bias by subpoenaing witnesses or documents from the government on the grounds it would turn the trial into a "fishing expedition." The judge also expressed some hesitancy over the notion that Ali would be entitled to a board that represented his group in any event and ruled against the admissibility of evidence regarding the composition of draft boards in Kentucky and Texas during the trial. It would, Judge Ingraham suggested, be impracticable to select a board of any manageable size that would represent every race and religion in a given area. Moreover, as Susman argued, any problem with the composition of the local boards was not necessarily fatal to the fairness of Ali's selective service classification because the final determination of Ali's draft status had been made by the Presidential Board, one of whose three members was African-American.

Judge Ingraham similarly ruled the defense could not introduce evidence it believed showed that the draft system had singled out Ali for unfair treatment as a high-profile and unpopular objector. Covington argued that statements by General Hershey and South Carolina Congressman L. Mendel Rivers at the time of Ali's administrative appeals unduly influenced board members to deny Ali's conscientious objector and ministerial exemption claims. Hershey had expressed confidence that Ali would be required to join the military, while Congressman Rivers, then the Chairman of the House Armed Services Committee, made a statement that included inflammatory remarks about Ali's draft status. "If the theologian of Black Muslim power, Cassius Clay, is deferred by the Board in Louisville," he fulminated, "you watch what happens in Washington. We are going to do something if that Board takes your boy and leaves [Ali] home to double talk." Covington noted that even more pointed, and frequently obscene and racist, comments from members of the public appeared in Ali's draft file, arguing the outcry against Ali's resistance to the draft had influenced decision makers. Judge Ingraham, however, ruled these statements were immaterial to the proceedings themselves, reasoning that although he too had received a barrage of angry mail about the case, it had had no influence on his decisions.

The Fifth Circuit upheld Judge Ingraham's rulings on these points, and the Supreme Court declined to hear them on appeal. Nonetheless, they framed much of the public debate around the case. Challenges like these helped fuel a robust debate about the fundamental fairness of the draft process, particularly as it became clearer that wealthy white individuals were less likely to be drafted, and less likely to serve in the front lines when drafted, than poor people of color. In this sense, although Ali's racial critique of the war may have complicated the legal status of his conscientious objection claim, it resonated with an increasingly persuasive critique of both the draft and the war in the court of public opinion.

Religious freedom

Similarly, the courts seldom actually ruled on the rights for which Ali told the public he was fighting: religious freedom and liberty of conscience. Even so, these issues formed an important part of the legal context of the case. Although the Supreme Court consistently upheld Congress' power to use conscription to raise an army, it interpreted the laws doing so to avoid constitutional challenges on freedom-of-religion grounds. The Universal Military Training and Service Act under which Ali was charged, for instance, explicitly stated that conscientious objection was not available to individuals whose objections were "essentially political, sociological, or philosophical views or [derived from] a merely personal moral code." This language raised the possibility that Congress was privileging religious beliefs over atheistic or secular principles in violation of the First Amendment's command that "Congress shall make no law "respecting an establishment of religion, or prohibiting the free exercise thereof." In

Ali (one in from left) at a Nation of Islam event

Courtesy: Library of Congress

United States v. Seeger (1965), the Court interpreted the act to include secular beliefs that occupied a similar prominence in one's life to religion. This interpretation arguably made it easier for Ali to meet the "religious belief" criteria for conscientious objection.

While Ali claimed that his beliefs prohibited him from participating in any military service, moreover, his case raised the specter of a second major First Amendment issue because the government characterized his objections as selective. Though the full Court did not reach this issue in *Clay*, Justice Douglas's concurring opinion did. He argued that the rule against selective beliefs impermissibly discriminated against religions that forbade some, but not all, wars. While the Court has not adopted this interpretation of the First Amendment in subsequent cases (although the draft was abolished in 1973, federal courts continue to hear conscientious objection claims from members of the armed forces seeking to end their military service), Justice Douglas's arguments resonated with claims that Ali was treated unfairly because he was a member of an unpopular religious minority.

Themes and questions

United States v. Clay raised a number of questions that can be used to illuminate major themes in history, government, and civics courses. Throughout the first half of the twentieth century, both state and federal governments adopted enhanced regulatory authority to deal with the consequences of urbanization, modern technologies, and economic crises. Though many Americans considered these powers necessary responses to the complexities of modernity and the rise of corporate power, they also came with the risk of abuse. By the early 1940s, reformers emphasized the need for access to the courts to protect fundamental liberties against arbitrary exercises of government power. The draft system remained a notable exception to the judicial review of administrative agencies, however. Ali's case gives these seemingly abstract developments a more tangible form. The case illustrates the possibilities and limitations of judicial review and suggests the potential drawbacks of unchecked administrative power, enabling teachers and students to ask whether the courts should examine military affairs and whether it matters who decides a case.

Ali's case also illustrates the messiness of seemingly straightforward legal ideas like the free exercise of religion, protection of dissenting views, and racial discrimination. Because Ali's belief system interwove a racial critique of American society with religious compunctions against war, students learning about the case will have to recognize the degree to which it is not always easy to say when a government policy interferes with religion. Teachers can push students to reckon with such questions as "Who should decide what constitutes religious belief?" and "Should we privilege religious beliefs over political ideals?" Moreover, the paramount importance of fighting and winning a war presents opportunities for teachers to ask what limits the government can properly place on basic freedoms in times of war or national crisis. Students might also ask what reasonable sacrifices we can expect citizens to make in such times.

Finally, *United States v. Clay* can help introduce students to the otherwise abstruse concepts of memory and contingency. Though commentators frequently mention Ali's stand against the draft—as they did, for example, following his participation in the Atlanta Olympics—they generally do so as part of a heroic narrative. This version of events makes sense given the kudos accorded to the handful of modern athletes with records of accomplishment comparable to Ali's, but it risks both obscuring the historical reality of Ali's situation in the 1960s and eliding the very real chance that he could have lost his legal fight. As they were initially expressed, Ali's critiques of both American racism and the Vietnam War did not neatly fit the mold of pacifism with which most Americans, then as now, were comfortable. It remains unclear, indeed, whether they fully met the legal definition of conscientious objection. Ali's public statements were often provocative and sometimes profane. As a result, he was one of the most controversial public figures in America for a time. Yet the image of Ali's objections that took hold in later years was significantly more palatable to most Americans. Teachers can use this sea change to illustrate the differences between history and memory.

There was nothing inevitable about Ali's triumph. Before reaching the Supreme Court, Ali lost at literally every stage of a lengthy battle in both the federal courts and the Selective Service System. The justices themselves initially voted to uphold his conviction. That Ali could so easily have gone to prison is a useful illustration of the principle that history does not unfold as if preordained. It is also a powerful reminder that legal decision makers do not act like computers, generating perfectly predictable results by applying established formulas. Judging requires judgment. Engaging students in a discussion of how and why the federal courts reached the judgments they did in *United States v. Clay* gives students a fresh appreciation of the forces that guide and inform the judicial process, along with the very real impact the courts can have on people's lives and, indeed, on American history.

The Judicial Process: A Chronology

April 28, 1967

Ali reports for induction at the Armed Forces Examining and Entrance Station in Houston, but refuses to take the step forward symbolizing his entrance into the United States military.

May 8, 1967

A grand jury in the U.S. District Court for the Southern District of Texas indicts Ali for failing to submit for induction.

June 19–20, 1967

Ali is tried in the U.S. District Court for the Southern District of Texas before Judge Joe Ingraham. The jury finds Ali guilty on June 20, 1967, and Judge Ingraham sentences him to the maximum penalty of five years in prison and a $10,000 fine.

July 7, 1967

Ali testifies in support of an unsuccessful motion before Judge Ingraham requesting permission to leave the country.

May 6, 1968

The Court of Appeals for the Fifth Circuit upholds Ali's conviction.

June 6, 1968

The Court of Appeals denies Ali's motion for a rehearing by the court *en banc* (a meeting of all the judges on the court).

July 15, 1968

Ali petitions for a writ of certiorari with the Supreme Court of the United States.

July 18, 1968

The DOJ requests that the FBI disclose any wiretap surveillance involving Ali.

August 8, 1968

The FBI informs the DOJ of five wiretapped conversations involving Ali. The DOJ, in turn, discloses this information to the Supreme Court.

March 24, 1969

The Supreme Court remands Ali's case, along with several other cases involving FBI wiretaps, to the district court for further hearings in *Giordino v. United States* (1969).

June 2–6, 1969

Judge Ingraham presides over hearings into the possibility that illegal wiretaps tainted Ali's prosecution and conviction. He rules that even if the content of the conversations had been shared with the DOJ lawyers handling Ali's case, the conversations were so innocuous that they could not have influenced Ali's prosecution.

July 6, 1970

The Court of Appeals for the Fifth Circuit upholds Judge Ingraham's ruling in the taint hearing and declines to reexamine Ali's objections to his original conviction.

August 19, 1970

The Court of Appeal for the Fifth Circuit denies Ali's request for a rehearing *en banc*.

January 11, 1971

The Supreme Court grants certiorari on a single issue in the case: whether Ali's conviction should be vacated because of erroneous advice by the DOJ to the effect that Ali's beliefs are not religious.

April 19, 1971

The Supreme Court hears oral arguments in *Clay v. United States*.

June 28, 1971

The Supreme Court issues its decision, unanimously reversing Ali's conviction on the grounds that the Department of Justice erred in advising the board of appeal that Ali's beliefs were not sincere and not religious in nature.

The Federal Courts and Their Jurisdiction

United States District Court for the Southern District of Texas

In 1967, Muhammad Ali was prosecuted in the U.S. District Court for the Southern District of Texas for failing to submit for military induction. District Judge Joe Ingraham presided over the trial. Ali was convicted and sentenced to the maximum penalty of five years and a $10,000 fine. After government lawyers revealed on appeal that the FBI had illegally wiretapped telephone conversations involving Ali, the Supreme Court of the United States remanded the case back to the court for a hearing to determine whether information obtained through the use of these wiretaps tainted Ali's conviction. Judge Ingraham determined that the content of the calls was never relayed to DOJ officials advising the draft appeals board on Ali's conscientious objector claims and that even if that information had been disclosed, it was so innocuous it could not possibly have influenced Ali's eventual prosecution and conviction. The Supreme Court of the United States reversed Ali's conviction in 1971 on the grounds that the DOJ had provided erroneous advice to the selective service board of appeals.

The U.S. district courts were established by Congress in the Judiciary Act of 1789. Although Congress has modified their jurisdiction several times since their creation, federal district courts have been in operation continuously from the passage of that Act. Since 1891, they have served as the federal system's primary trial courts. They typically hear two major sets of cases: criminal and civil matters arising under the laws and Constitution of the United States and state-law civil cases between litigants from different states in which the amount in controversy exceeds a statutory minimum. The Southern District was created in 1902 and includes Houston and the surrounding area.

United States Court of Appeals for the Fifth Circuit

Ali twice appealed his conviction to the Fifth Circuit. In 1968, Circuit Judge Robert Ainsworth wrote for a unanimous three-judge panel upholding Ali's conviction against a series of constitutional and procedural challenges. In 1970, the court upheld the district court's rulings on the wiretapping issue in an opinion, also written by Judge Ainsworth, for a different unanimous panel. The Supreme Court overturned Ali's conviction in 1971 on the grounds that the DOJ had provided erroneous advice to the selective service board of appeals.

The courts of appeals were established by Congress in 1891. Congress created a court of appeals in each of the regional judicial circuits to hear appeals from the

federal trial courts, and the decisions of the courts of appeals are final in many cases. When the court heard Ali's appeals, its jurisdiction encompassed Alabama, the Panama Canal Zone, Florida, Georgia, Louisiana, Mississippi, and Texas. In 1980, Congress created an eleventh circuit and divided the states previously in the Fifth Circuit between the two circuits. The Fifth Circuit now contains the states of Louisiana, Mississippi, and Texas.

Supreme Court of the United States

The Supreme Court of the United States dealt with two appeals in Ali's criminal case. Before the Court had decided whether to hear the first appeal, the government disclosed that the FBI had illegally wiretapped parties, including Ali, to cases pending before the Court. The Court remanded the cases in a single opinion in *Giordano v. United States* (1969). In the second appeal, the Court unanimously reversed Ali's conviction after determining that the DOJ had provided erroneous advice to the selective service board of appeals.

The Supreme Court is the nation's highest appellate court. The Constitution grants the Supreme Court original jurisdiction in cases in which states are a party and those involving diplomats, but leaves for Congress to determine the Court's size and appellate jurisdiction. The Judiciary Act of 1789 established a Supreme Court with one chief justice and five associate justices. Congress subsequently increased and reduced the number of justices several times during the early and mid-nineteenth century, though the Court has retained nine seats since 1869. Throughout its first century, the Supreme Court was responsible for deciding most civil appeals, and the justices had little control over a docket that was increasingly overcrowded. The Court gained discretionary power over the bulk of its appellate docket in 1925.

Legal Questions Before the Federal Courts

Was Ali guilty of violating the Universal Military Training and Service Act by refusing to submit for military induction?

The answer to this question turned on two issues at trial: (1) whether there was a basis in fact for the Selective Service System's denial of his conscientious objector and ministerial exemption claims, and (2) whether Ali intentionally refused induction. Judge Joe Ingraham ruled that there was a basis in fact for the denial of Ali's claims. The jury found Ali guilty of intentionally failing to submit for induction. The Court of Appeals for the Fifth Circuit upheld this decision. However, the Supreme Court of the United States later reversed on the grounds discussed in question 2.

Did the DOJ's legal advice to the selective service board of appeal necessitate reversing Ali's conviction?

Yes. The DOJ advised the board of appeals that Ali failed all three of the criteria for establishing a valid conscientious objector claim. Objectors had to show (1) an objection to all wars that (2) was sincere and (3) based on religious belief or training or an equivalent moral conviction. Solicitor General Erwin Griswold conceded and the Supreme Court subsequently held that Ali met the second and third criteria. The Court then determined that the department's erroneous advice required the justices to overturn Ali's conviction. In a previous case, *Sicurella v. United States* (1955), the Supreme Court had held that inaccurate legal advice to the draft bureaucracy was grounds for vacating a conviction even though a draft board might have relied on other, proper grounds to deny a conscientious objector claim. This rule was based on the lack of a written opinion from the board, which meant it was impossible to determine whether the board's decision was based on proper or improper grounds.

Was the selective service regime created by the Universal Military Training and Service Act constitutional?

Yes. Ali mounted several unsuccessful constitutional challenges to the structure of the draft administration system. The most substantial of these challenges was that African Americans were systemically excluded from service on local and appellate draft boards. Both Judge Ingraham and the Court of Appeals for the Fifth Circuit rejected these claims. Ali's attorneys had argued that the boards were analogous to

juries, which Supreme Court precedents established could not be selected according to race. Both courts rejected that analogy, with the Fifth Circuit noting that there was no meaningful similarity between a criminal punishment and military service. The Supreme Court did not address this issue on appeal. Justice William O. Douglas raised an additional constitutional objection to the draft system on appeal, reasoning the requirement that individuals object to all wars to qualify for conscientious objector status improperly prioritized certain types of religious beliefs (total objection to all wars) over others (objections, for example, to "unjust" or "unholy" wars). Although the rest of the justices did not reach this issue, subsequent decisions continued to apply the non-selectivity requirement to conscientious objector claims.

Did the FBI's warrantless wiretaps of conversations involving Ali taint his criminal conviction?

No. After a lengthy hearing on the subject, Judge Ingraham noted that there was no evidence that the content of five wiretapped conversations involving Ali had been disclosed to the DOJ lawyers who wrote the letter advising the selective service board of appeals on Ali's request for conscientious objector status. The judge held that the conversations were, in any event, so innocuous that they could not possibly have influenced the handling of Ali's case. The Fifth Circuit upheld this outcome on the same grounds.

Judge Ingraham denied Ali's defense team access to a fifth wiretapped conversation on the grounds that its disclosure would jeopardize the national interest because the wiretap was authorized by the Attorney General for the purposes of foreign intelligence surveillance. It remains unclear to whom Ali was speaking in this fifth conversation. Judge Ingraham viewed a memorandum reflecting the content of the call in private and determined that, like the other conversations, its content was innocuous. The Fifth Circuit also upheld this decision. Judge Robert Ainsworth, Jr., reasoned that because the wiretap was authorized by the Attorney General for the purposes of foreign surveillance, it was not subject to Supreme Court precedents requiring disclosure of unlawful wiretaps. Moreover, the members of the panel reviewed the log of the wiretap in camera and agreed with Judge Ingraham's assessment that the communication was innocuous. The Supreme Court did not consider these issues on appeal.

Biographies

The judges

Joe McDonald Ingraham (1903–1990)

Judge Joe Ingraham presided over Muhammad Ali's trial for violating the Universal Military Training and Service Act. After Ali was convicted, the case was appealed and remanded to Ingraham's court for a lengthy hearing into the potential influence of wiretapped conversations involving Ali. In both instances, Judge Ingraham generally ruled against Ali on major points of law, but the Supreme Court eventually reversed Ali's conviction on appeal.

Ingraham was born in Oklahoma in 1903. He attended law school at National University (now George Washington University Law School), graduating in 1927. He initially returned to Oklahoma as a solo practitioner before moving to Texas, where he would engage in private practice for the next twenty-six years, with a break for service in the Army Air Corps during World War II. After the war, Ingraham became active in Texas Republican politics. In 1948, he unsuccessfully ran for Congress and later served as the party chairman of Harris County.

In 1954, Ingraham was appointed to the United States District Court for the Southern District of Texas, which included Houston. In late 1969, he was appointed to the United States Court of Appeals for the Fifth Circuit, which then encompassed much of the southern United States. Ingraham retired from active service in 1973. He died in 1990.

Robert Andrew Ainsworth, Jr. (1910–1981)

Judge Robert Andrew Ainsworth wrote two opinions for the United States Court of Appeals for the Fifth Circuit in *Clay*. The first, released in 1968, upheld Ali's conviction for draft evasion. The second, handed down in 1970, affirmed Judge Ingraham's opinion that subsequently discovered wiretaps of conversations to which Ali was a party did not taint the initial prosecution. Though the Supreme Court of the United States reviewed the case on appeal from this second decision, it did not reach the wiretap question and instead

Judge Robert Andrew Ainsworth

Courtesy: U.S. District Court of the Eastern District of Louisiana

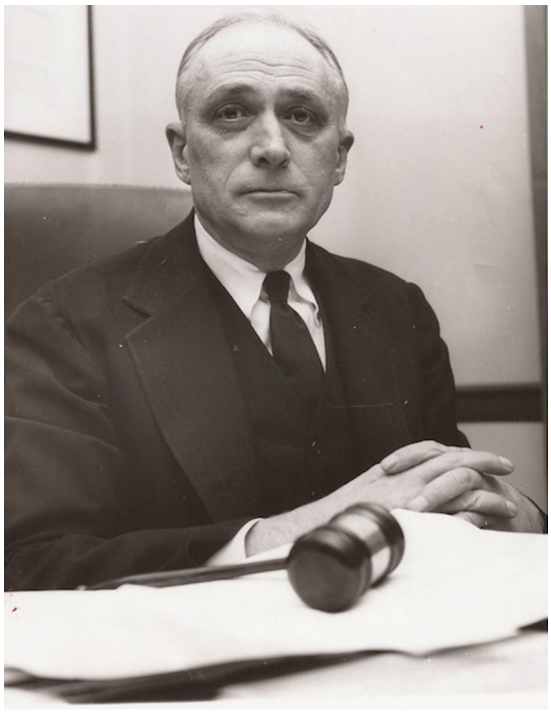
reversed Ali's underlying conviction because the Department of Justice had improperly advised the draft board of appeals that Ali's conscientious objection claims were legally deficient.

Judge Ainsworth was born in Gulfport, Mississippi, in 1910, but moved to Austin, Texas, in 1917 and then to New Orleans, Louisiana, in 1919, where he would remain for much of the rest of his life. Ainsworth attended law school at the city's Loyola University, graduating in 1932, and practiced law there with his brother until 1961, except for a brief stint in the Navy during World War II.

In 1961, Ainsworth was appointed to the United States District Court for the Eastern District of Louisiana. He was appointed to the United States Court of Appeals for the Fifth Circuit in 1966. Ainsworth died in office in 1981.

John Marshall Harlan II (1899–1971)

Justice John Marshall Harlan II wrote a one-paragraph concurring opinion in *Clay* that belied the vital role he played in the case's outcome. Initially assigned the task of writing an opinion for a divided court upholding Ali's conviction, Harlan became convinced that Ali's objections to the draft warranted legal protection. With Justice Potter Stewart, Harlan persuaded the remaining justices to reverse Ali's conviction.



Justice John Marshall Harlan II

Courtesy: Library of Congress

Harlan was born in Chicago in 1899, the scion of a prominent and affluent family of lawyers. His grandfather and namesake, Justice John Marshall Harlan, was one of the most celebrated justices in the Supreme Court's history (the II was not part of Harlan's legal name but is generally used to distinguish him from his grandfather). Harlan attended Princeton University and was a Rhodes Scholar at Balliol College, Oxford, where he began to study law. In 1924, he graduated from New York Law School and entered practice with a prominent Wall Street firm. He continued this practice until 1954, taking several breaks to work as a government lawyer. Heavyweight champion and later vocal Ali critic Gene Tunney was one of Harlan's high-profile clients. During World War II, Harlan served as Chief of the Air Corps'

Operations Analysis Section. On his return to private practice in 1945, he established a national reputation as a litigator, arguing several cases before the Supreme Court.

Harlan was appointed to the United States Court of Appeals for the Second Circuit on February 10, 1954. Less than a year later, President Dwight Eisenhower nominated Harlan to the Supreme Court. Although his confirmation was initially delayed by debate over Harlan's supposedly internationalist leanings and controversy over the Court's recent decision in *Brown v. Board of Education* (1954) (the first Justice Harlan had famously argued against the constitutionality of segregation in the late nineteenth century), he was confirmed by the Senate and joined the Court on March 17, 1955.

In many ways, Harlan was an exception to the norm of the Warren Court (1953–1969). He was a patrician on a court populated by an unusually high number of justices who rose from modest backgrounds. Harlan's restrained view of the federal courts' role in the American system similarly conflicted with the approaches of many of his more avowedly liberal colleagues who saw the Supreme Court as an engine of social progress and guardian of subaltern groups. Harlan's focus on procedural fairness over substantive results led some commentators to label him a conservative voice on the Court. In part as a result of these differences, and perhaps because of his grandfather's dissents in infamous cases such as *Plessy v. Ferguson* (1896) and *Lochner v. New York* (1905), Harlan developed a reputation as the Warren Court's "great dissenter."

Though he differed with his colleagues on several major decisions, Harlan was also widely respected for writing lucid, principled opinions that frequently cut across partisan lines. Some of his positions in selective service cases are exemplars of his willingness to buck assumptions based on his supposedly conservative outlook. For instance, in *Welsh v. United States* (1970), an important precursor to *Clay*, Harlan wrote a concurring opinion that argued a federal statute protecting conscientious objections predicated on religious, rather than purely political or philosophical, grounds was unconstitutional (the plurality opinion in the case upheld the objector's claim on narrower statutory grounds).

Toward the end of his tenure, Harlan suffered from cancer and failing eyesight. Two days after the Court released its decision in *Clay*, Harlan issued his final opinion, dissenting from a decision forbidding prior restraint against the publication of the "Pentagon Papers." His health forced him to retire from active service in September 1971. He died that December.

William Orville Douglas (1898–1980)

Justice William O. Douglas wrote a concurring opinion in *Clay*, arguing that conscientious objectors should be exempted from military service regardless of whether they object to all wars or only certain types of conflicts. Selective objection had been a

major point of contention during oral arguments, but the Court's *per curium* opinion decided the case on other grounds.

The longest-serving justice in Supreme Court history, Justice Douglas is widely regarded as one of the central figures in the Court's transformation from a conservative body hostile to social and economic legislation in the 1930s, to an institution associated with the protection of political and civil liberties in the decades following World War II. Douglas was born in 1898 in Minnesota, but his family soon relocated to a rural area near Yakima, Washington. As a young boy, Douglas contracted polio but succeeded in warding off the symptoms. He claimed to have done so partly by climbing nearby mountains, an account that may have been apocryphal but which suggests the mythos surrounding his western upbringing and rugged individualism that would form an important component of his public persona.

Justice William O. Douglas

Courtesy: Library of Congress

Douglas attended Whitman College and briefly worked as a high school teacher before attending Columbia Law School. He excelled at Columbia and became an adherent of the legal realist jurisprudence for which the school was becoming known. After a brief stint in private practice, Douglas became a professor at Columbia before moving to Yale Law School, another major center of realist jurisprudence, in 1928. At Yale, Douglas established a reputation as one of the nation's leading scholars on corporate regulation and bankruptcy law.

In 1934, Douglas joined the newly formed Securities and Exchange Commission (SEC), initially as the temporary director of a study group. He eventually became an SEC commissioner and, in 1937, the commission's chairman. While at the SEC, Douglas became a confidant of President Franklin Roosevelt, who nominated him to the Supreme Court in 1939, making him the youngest justice since 1811. Douglas maintained his close connections to Roosevelt during his early tenure on the court and was considered for the vice presidency in 1944, a position many thought tantamount to president-in-waiting as Roosevelt's health declined. Harry Truman, who was selected over Douglas at that time, later offered Douglas the vice presidency, but he chose to remain on the Court.

Douglas's views evolved quickly on the bench. He initially affiliated himself with the ideal of judicial restraint that had animated critiques of the Court's decisions

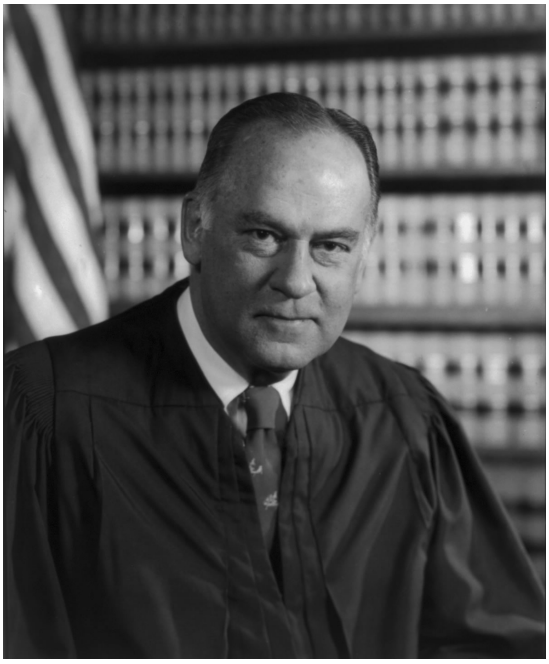
striking down New Deal legislation. Over the course of the 1940s and 50s, however, he increasingly established himself as the Court's most vocal champion of civil liberties and equality, eventually advocating a more robust vision of desegregation, freedom of expression, and criminal procedure protections than most of his colleagues.

Though idolized by many on the political left, Douglas was no stranger to controversy. He was married four times, including two marriages to women approximately forty years his junior that scandalized Washington society. Unlike most justices, he continued to advocate for political and social causes in his extrajudicial writings, becoming a major figure in the environmental movement. In his later years on the Court, he was also a strident opponent of the Vietnam War and "establishment" politics, viewpoints that were arguably reflected in his *Clay* concurrence. Members of the House of Representatives twice tried to impeach Douglas. The first of these initiatives was a response to his unpopular decision to stay the execution of alleged Soviet spies Julius and Ethel Rosenberg. The second, spearheaded by future President Gerald Ford, was likely motivated by the perception that Douglas's views were too radical.

Douglas suffered a stroke on New Year's Eve, 1974, that limited his ability to continue judicial work. He retired from active service in 1975 and died in 1980.

Potter Stewart (1915–1985)

Though the Supreme Court issued a *per curium* opinion nominally written by the Court rather than any individual member, Justice Potter Stewart penned the opinion in *Clay* after he and Justice Harlan convinced their colleagues to join what was initially Stewart's dissenting view that the Court should overturn Ali's criminal conviction.



Justice Potter Stewart

Courtesy: Library of Congress

Like Harlan, Stewart was born into a family with judicial pedigree: his father had been mayor of Cincinnati and then a justice on the Ohio State Supreme Court. Born in 1915 in Michigan, Stewart grew up in Cincinnati before attending boarding school in Connecticut. He attended Cambridge University in England on a yearlong fellowship before receiving undergraduate and law degrees at Yale University. He entered private practice with a New York

City law firm after graduating in 1941. The next year, he joined the United States Naval Reserves, serving aboard oil tankers for much of World War II. He returned to New York after the war, before moving back to Cincinnati in 1947, where he continued to work in private practice in addition to serving on the city council and as vice mayor.

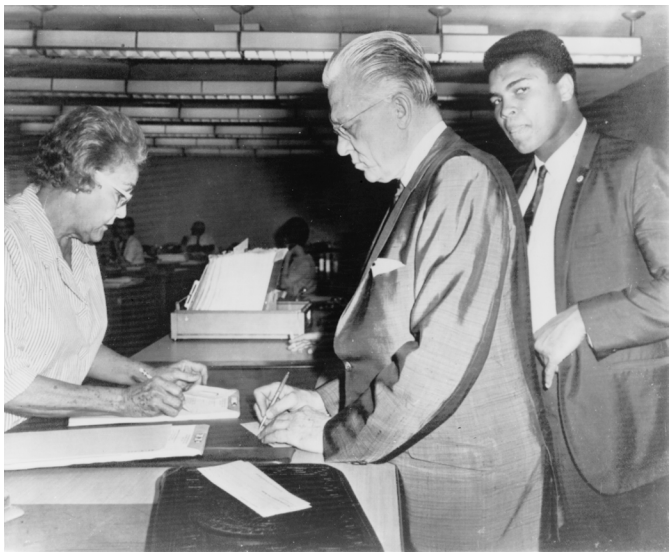
In 1954, he was appointed to the United States Court of Appeals for the Sixth Circuit at the unusually young age of thirty-nine. President Dwight Eisenhower gave Stewart a recess appointment to the Supreme Court of the United States in 1958 (the last recess appointment of a Supreme Court justice to date). He was confirmed by the Senate the next year. On the Court, Stewart established a reputation as a moderate justice capable of building coalitions and of controlling the shape of legal development with skillfully crafted concurring opinions. He was noted for the pithy prose and pragmatic reasoning of his opinions.

Justice Stewart retired from active service on the Supreme Court in 1981 but continued to hear a reduced number of cases in the lower courts. He died in 1985 after suffering a stroke.

The lawyers

Hayden Covington

Hayden Covington was Ali's first lead counsel in federal court and, in that capacity, argued several civil suits attempting to enjoin Ali's conscription, along with the initial criminal trial. Covington pressed for Ali's classification as a minister of the Nation of Islam and attempted to forestall Ali's indictment by seeking injunctions from federal courts in Kentucky and Texas prohibiting his induction. Following Ali's conviction, Covington and Ali fell out, with Covington eventually suing Ali for approximately $250,000 in unpaid legal fees.



Covington with Ali in 1967

Courtesy: Library of Congress

Covington was born and raised in Texas, the son of a Texas Ranger who urged him to pursue a political career.

Though he showed little interest in politics, Covington pursued a successful private practice focusing mainly on business cases, while defending several fellow Witnesses on a pro bono basis.

In 1939, Watchtower President Joseph Rutherford called on Covington to become the organization's general counsel. Covington worked in that position from 1939 to 1963, winning several major cases before the Supreme Court of the United States. In the aftermath of Rutherford's death in 1942, Covington became vice president of the group. Its new leader, Nathan Knorr, initially gave Covington freer license to run the Witnesses' legal campaign, but the two men eventually came to loggerheads. Covington resigned his vice presidency in 1945, though he continued to serve as general counsel until 1963, when he was "disfellowshipped" from the Witnesses. In his later years, Covington seemingly lost his enthusiasm for the law and descended into a period of alcoholism. Shortly before his death, however, Covington reengaged with the Witnesses and actively participated in evangelical work. He died in 1978.

Erwin Griswold

As Solicitor General of the United States, Erwin Griswold argued the government's case before the Supreme Court in *Clay*. He was also a major figure in the development of public law and legal education in mid-century America.

Born in Ohio in 1904, Griswold attended Oberlin College and Harvard Law School. After a brief stint in private practice in Cleveland, Griswold joined the office of the Solicitor General of the United States. There he gained a reputation as a skilled advocate, successfully arguing several complex tax cases before the Supreme Court of the United States.

In 1934, Griswold returned to Harvard Law School as a professor and served as the school's dean from 1946 to 1967. Griswold's leadership of the school has often been celebrated, coinciding as it did with faculty and student body expansions and the first admission of female students. During her Supreme Court confirmation hearings in 1993, however, Justice Ruth Bader Ginsburg criticized Griswold for fostering a condescending attitude toward the first female students at the school.

After he retired from his position at Harvard, President Lyndon Johnson appointed Griswold Solicitor General, a post that called on him to argue the government's positions in many major Supreme Court cases. Griswold remained in his position during the early years of the Nixon administration, advocating on behalf of the new president's more conservative agenda. It was during this period that Griswold argued *Clay*.

In his written and oral arguments to the Court, Griswold conceded that Ali's objections to the draft were sincere and (at least partly) religious. Despite this, Griswold claimed that *Clay* fell within the ambit of precedents that had denied protections

to individuals who selectively objected to some, rather than all, wars. However, the Court ultimately determined that since the DOJ had erroneously advised the board of appeals that Ali's objections were neither sincere nor religious, the basis for the denial of Ali's conscientious objector claims was invalid.

After leaving the Solicitor General's office in 1973, Griswold returned to private practice with a prestigious Washington, D.C., law firm and continued to litigate high-profile cases before the Supreme Court. He died in 1994 at the age of 90.

Chauncey Eskridge

Chauncey Eskridge argued Ali's case to the Supreme Court of the United States. He also worked with Charles Morgan, Jr., on appeals to the Fifth Circuit and the hearing on remand before Judge Ingraham regarding Ali's wiretapped conversations.

One of the nation's most prominent African-American attorneys in the 1960s, Eskridge graduated from the Tuskegee Institute in 1939. Following service as pilot in World War II, he attended John Marshall Law School in Chicago, receiving his law degree in 1949. Eskridge made his name representing the Southern Christian Leadership Conference, a prominent civil rights organization led by Martin Luther King, Jr. He was with King when he was assassinated in 1968. Eskridge also represented the NAACP in Chicago and worked with Ali on legal matters unrelated to his draft case.

Though it ultimately proved successful, some observers have criticized Eskridge's argument before the Supreme Court. Eskridge made the essential points on which the Court eventually decided the case but arguably allowed the arguments to focus on the more difficult question of the selectivity of Ali's objections to war.

In 1981, Eskridge was elected an associate judge of the Cook County Circuit Court in Illinois. He retired in 1986 and died in 1988.

Charles Morgan, Jr.

Charles Morgan, Jr., joined Ali's legal team following his criminal trial. He unsuccessfully represented Ali before the Fifth Circuit and in the hearing on remand before Judge Ingraham regarding Ali's wiretapped conversations.

Morgan was born in Ohio in 1930 but moved to Kentucky and then to Alabama as a child. He attended the University of Alabama, an institution he would later sue to desegregate in one of a long line of cases that antagonized his home state. Arguably Morgan's most influential case was *Reynolds v. Sims* (1964), a landmark suit against gerrymandering in the Alabama legislature that contributed to the Supreme Court's adoption of a "one person, one vote" principle that decreased the power of rural elites in the South and increased the efficacy of black and urban voters.

In addition to his civil right work in Alabama, Morgan also championed the cause of figures opposing the Vietnam War in the mid and late 1960s. Prior to his work on Ali's case, for example, he represented Julian Bond, an African-American civil rights

leader and politician who was improperly excluded from the Georgia state legislature for comments criticizing the Vietnam War.

Though he was respected in national legal circles, Morgan's advocacy of unpopular causes in the South led to a sustained campaign of harassment from groups like the Ku Klux Klan. He was forced to close his legal practice in Birmingham, Alabama, because of threats to his family, though he continued to work on civil rights cases with organizations such as the American Civil Liberties Union (ACLU). Morgan died of complications from Alzheimer's disease in 2009.

Morton Susman

Morton Susman was the U.S. attorney for the Southern District of Texas, which included Houston, from 1966 to 1969. In that capacity, Susman was the lead prosecutor at Ali's trial.

Susman attended Southern Methodist University, receiving his undergraduate degree in 1956 and his law degree in 1958. Prior to the trial, Susman persuaded Judge Ingraham to limit the defense's ability to investigate selective service procedures and to restrict the defense team's arguments about the fairness of that process. At trial, he successfully argued that here was a basis in fact for the denial of Ali's conscientious objector and ministerial claims.

Susman entered private practice in Texas after leaving his post as U.S. attorney in 1969. He retired in 1997.

Media Coverage and Public Debates

Even before his draft case began in earnest, Muhammad Ali was the subject of intense press coverage and media speculation. Arguably the most famous person in the world in his heyday, Ali frequently attracted crowds of children, admirers, and reporters wherever he went. As he once put it, "The only difference between me and the Pied Piper is he didn't have no Cadillac." Ali's public announcements that he had converted to Islam and intended to challenge his draft status intensified this media coverage. This exposure was broadly negative until the late 1960s, when public attitudes toward both the Vietnam War and Ali's opposition to the draft slowly began to shift. Public attitudes toward Ali and his refusal to serve took a similar course, though he may have enjoyed greater support among African Americans and liberal whites even at the nadir of his popularity.

As he rose through the ranks of the boxing world, Ali divided public opinion. Some saw him as a refreshingly colorful personality in an otherwise staid sport;

Howard Cosell interviewing Ali in 1965

Courtesy: Library of Congress

others found him a shameless braggart with little substance to back up his outlandish boasts. Ali's self-promotion and schoolyard poetry did not always gel with the expectation that athletes should maintain modest and self-effacing public profiles. As sports broadcaster Howard Cosell put it, "[o]ld world writers wanted [Ali] to live by their code, the same mythological sports legend that through all these years these non-contemporary men had been propounding. . . . [T]hey wanted another . . . white man's black man." Ali's insistence that he would not "be what [reporters or the public] want me to be" flew in the face of these demands, but it also endeared him to segments of the public yearning for a renegade sports star.

That this rebellion was tied to Ali's religious faith further complicated public attitudes. At the time Ali announced his conversion to the Nation of Islam, most Americans took a dim view of the group. A 1959 television documentary series produced by Mike Wallace entitled *The Hate That Hate Produced* led many to conclude that the Nation of Islam was either a bizarre cult or a hateful terrorist organization. Featuring inflammatory public speeches by Malcolm X, the documentary informed many Americans' perceptions of the Nation for years to come. This impression became calcified in the minds of many critics when Malcolm X was gunned down by a group of Nation members in 1965. Given the widespread opprobrium trailing the Nation, it is little surprise that coverage of Ali's conversion was largely unflattering. Popular sports columnist Jimmy Cannon wrote that, by joining the Nation of Islam, Ali had embraced a "more pernicious hate symbol than [German former champion Max] Schmeling and Nazism."

The editorial staffs of most newspapers, including the *New York Times*, initially refused to refer to Ali by his Muslim name, a policy that became a major sticking point in his relations with the press. Most individual journalists also insisted on calling Ali "Cassius Clay" or adopted the compromise position (also employed by Hayden Covington at Ali's trial) of simply referring to him as "champ." When *Times* reporter Robert Lipsyte apologized to Ali for using his birth name in his articles, Ali responded by mockingly patting his head and reassuring him that he understood that Lipsyte was "just the white power structure's little brother." In other instances, however, Ali could be curt or cross with journalists and others who referred to him by his "slave name."

Ali's stand against the draft elicited the strongest outcry, however. After Ali first claimed that he had "no quarrel" with the Vietcong, he faced a wave of critical editorials across the spectrum of the American press. When he made these remarks in early 1966, the war was popular among the public and the press, and Ali's comments appeared both unpatriotic and selfish. Both Ali's draft board and Judge Joe Ingraham's chambers were inundated with complaints about Ali's conscientious objection claims, and many public figures expressed dissatisfaction with the speed of both the draft process and Ali's criminal prosecution. In August 1966, for instance, the *New York Times* reported that influential Congressman L. Mendel Rivers promised a "'thor-

ough overhaul' of the religious deferment section of the draft law" if Ali's draft board upheld his claim. Likewise, when Ali set up a title defense in Miami, a local councilman objected, claiming he "had a right to resent Clay's refusal to serve in the Army with the claim he's a Black Muslim minister" because "the Black Muslims are no credit to this country."

Ali speaking to reporters in 1970

Courtesy: Smithsonian Institution

Jackie Robinson, another legendary black athlete who sometimes defended Ali's right to take controversial positions, summed up the nation's mood when he told reporters that Ali was "hurting the morale of a lot of young soldiers in Vietnam. The tragedy is that he's made millions of dollars off the American public and now he's not willing to show his appreciation to a country that's giving him a great opportunity. This hurts a great number of people." Following Ali's refusal to submit to induction in 1967, the *New York Times* opined that "[c]itizens cannot pick and choose which wars they wish to fight any more than they can pick and choose which laws they wish to obey. . . . [I]f Cassius Clay and other draft objectors believe the war in Vietnam is unjust," the paper's editorial board argued, "they have the option of going to jail for their beliefs."

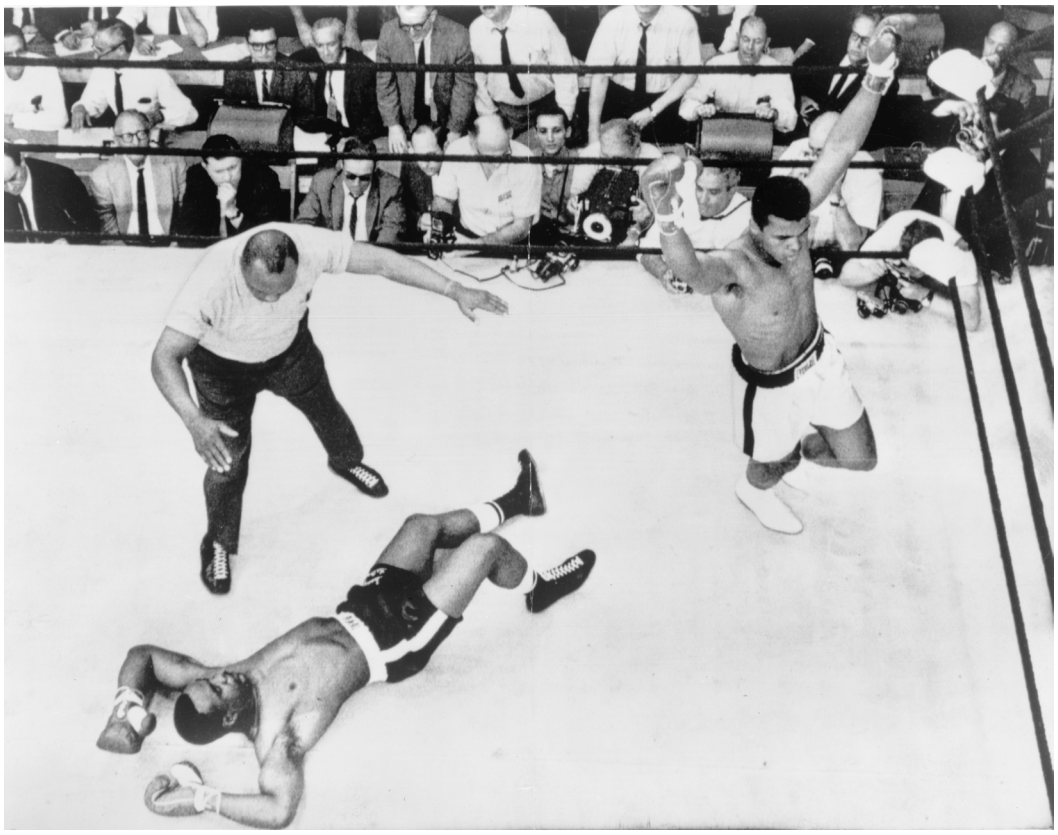
A minority of Americans, however, supported Ali's stance. In the aftermath of Ali's refusal to take the step forward, the *New York Amsterdam News*, a paper with a predominantly African-American readership, printed the reactions of dozens of "persons-on-the-street," for example, with responses ranging from outrage, to begrudging respect for Ali's conviction, to ringing endorsements of his anti-war sentiments. Similarly, some liberal whites, including the prominent author Norman Mailer, made early shows of support for Ali's resistance.

Ali's criminal trial was the subject of intense press scrutiny. Judge Ingraham noted the large media presence both during the trial and, to a lesser extent, at the remand hearing in 1969. He also sequestered the jury overnight during the trial to prevent jurors from being influenced by the press coverage of the proceedings and instructed court marshals to ensure newspapers in the jurors' hotel were clipped to remove stories about Ali. Many members of the public were outraged that Ali remained free during his appeal, even though he was sentenced to the maximum penalty. One letter to Ali's draft board (which had no influence over Judge Ingraham's decision to continue Ali's bail) called the board members "[s]kunks" and "yellow-bellied scum." Another argued that "[t]hat Black Bastard Cassius Clay should be in Vietnam right now with our fighting men instead of hiding behind some phony heathen religion.

He is a disgrace to the sports world[,] his race[,] and his country—and so are you for letting him get away with such crap."

Anger of this sort was not likely to subside easily and, indeed, Ali continued to inspire a substantial number of detractors into the 1970s. Nonetheless, the public mood gradually began to shift over the course of the late 1960s and early 1970s. Ali later stated that the "biggest mistake" he made was announcing his criticisms of the war "too early." As it became clear that racial minorities and poor whites were bearing the brunt of the draft and suffered higher casualty rates in combat, a growing number of Americans began to question the fairness of the draft. Indeed, both President Lyndon Johnson and his successor, Richard Nixon, acknowledged inequities in the Selective Service System. In this climate, Ali's claims that the system treated African Americans unfairly and his critique of the number of African-American board members across the nation seemed more palatable to a broader audience.

When the Supreme Court overturned Ali's conviction, then, the response was broadly positive. The *Washington Post*, for example, called Ali's court victory "his biggest mismatch," arguing that "it was never possible to believe that Muhammad



Ali is associated with many famous images

Courtesy: Library of Congress

Ali received fair and impartial treatment from his draft board." The *Los Angeles Sentinel*—another publication with a majority-black readership—wrote that the "ruling overthrowing [Ali's sentence] . . . represents a new milestone in race relations in this country . . . right along with the historic 1954 school desegregation decision." Even so, not all major news outlets hailed the decision. An editorial in the *Boston Globe*, for example, argued that Ali had received special consideration because of his wealth and celebrity, though even this piece conceded it might be better to free Ali than to make him a martyr.

While he did not become a martyr, Ali did become a hero to many. As his public persona and racial views mellowed and he continued to score remarkable victories in the ring (in 1978, he became the first person to win the heavyweight title three times), this view gained increasing currency. Ali's photogenic looks and playful manner helped create a range of indelible images that further reinforced his popularity.

When Ali, visibly shaking from the effects of Parkinson's syndrome, was the surprise honoree chosen to light the flame at the 1996 Olympic Games opening ceremony, he elicited a widespread outpouring of acclaim not just for his status as a great sportsman, but for the legacy of his battle against the draft. As an editorial in the *Baltimore Sun* asked, "Who could have imagined Ali being recognized as a visionary when once he was dismissed as a draft dodger?"

Historical Documents

Universal Military Training and Service Act, 65 stat. 75 § (6)(j) (1951)

The Universal Military Training and Service Act was the primary selective service law in effect when Ali was charged with draft evasion (the Act was amended and renamed later in 1967). The section of the Act included below sets forth the criteria for conscientious objection and the procedure for appealing unsuccessful claims for objector status.

[Document Source: 65 stat. 75 § (6)(j) (1951).]

Nothing contained in this title shall be construed to require any person to be subject to combatant 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. 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. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into

the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors.

Department of Justice Legal Recommendation Letter, November 25, 1966

Until 1967, the DOJ was required by statute to issue legal recommendations to selective service appeal boards on conscientious objector claims. This recommendation, which took the form of a letter written by a lawyer from the DOJ, along with the records of a hearing conducted by a legally trained appointee (in this case, a retired state-court judge from Kentucky), was transmitted to the appeal board for its ultimate decision. In Ali's case, the judge conducting the hearing into Ali's claim concluded that he was sincere and should be reclassified as a conscientious objector. Unusually (though not uniquely), the DOJ disagreed with this conclusion in its recommendation to the board. This recommendation letter was to become a pivotal issue in Ali's Supreme Court appeal. Arguably a strained construction of Ali's background and legal standing at the time, the letter's interpretation of the law of conscientious objection was further contradicted by subsequent Supreme Court opinions adopting a broad interpretation of "religious training and belief."

[Document Source: T. Oscar Smith to Chairman, Appeal Board, Nov. 25, 1966 reproduced as Defendant's Exhibit No. 103 in *United States v. Cassius Marsellus Clay, Jr. Also known as Muhammad Ali*, Case no. 67H94, Criminal Case Files, 1908–1979 (48SO69A); Records of the United States District Courts for the Southern District of Texas, Record Group 21; National Archives at Fort Worth, Texas, folder 9.]

Dear Sir:

As required by Section 6(j) of the Universal Military Training and Service Act, as amended, an inquiry was made by the Department of Justice in the captioned matter and an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant by Judge Lawrence S. Grauman, a Hearing Officer for the Department of Justice.

. . .

The Hearing Officer concluded that the registrant is sincere in his objection on religious grounds to participation in war in any form and he recommended that the conscientious objector claim of the registrant be sustained.

It should be noted that while the résumé statement of the attorney for [a group of Louisville businessmen sponsoring Ali's boxing career] did, as noted by the Hearing Officer, express the opinion that registrant sincerely believes that he is conscientiously opposed to military service, the résumé also reflects that the attorney believed that registrant would be sincere in his claim as a conscientious objector "to the extent that registrant can be sincere in a belief." The résumé further reflects that the attorney "could not be sure how deeply any human conviction goes with the registrant" and that he is "not certain as to what motivates the registrant in this respect." The attorney added that in view of his past experiences with the registrant changing his mind, he would not be surprised "if a year from now the registrant becomes disenchanted with the Muslims and voluntarily joins the United States Marines." The member of the sponsoring group, it should be noted, stated that "I'll go to my grave believing registrant is basically a good boy and was brainwashed first by his father and then by the Muslims."

The registrant's claimed conscientious objection appears to be based essentially upon the teachings of the Nation of Islam as interpreted by Elijah Muhammad, and registrant's expressed objection to participation in the Vietnam War.

. . .

Elijah Muhammad, whom the registrant listed as a reference as well as the person upon whom he relies most for religious guidance, is reported in the résumé as stating that he is the spiritual advisor of the registrant, that he had explained the teachings of the Nation of Islam to the registrant, and had advised him that the teachings preclude any member of the Nation of Islam from participation in any form of military service "of the United States." Similarly, other coreligionists stated that the Nation of Islam's religion prohibits service in the military "of the United States." These statements do not appear to preclude military service in any form, but rather are limited to military service in the Armed Forces of the United States.

. . .

Both "Message to the Blackman" and *Muhammad Speaks* express essentially the view of the Black Muslims that the white man is their enemy, and that the black man should disassociate himself from the United States Government and its institutions and secure an independent nation for the black man within the United States.

It seems clear that the teachings of the Nation of Islam preclude fighting for the United States not because of objections to participation in war in any form but rather because of political and racial objections to policies of the United States as interpreted by Elijah Muhammad.

Asked by the Hearing Officer whether the registrant would fight in any war which Elijah Muhammad directed him to fight in, the registrant replied that if Elijah Muhammad:

> "looked me in my face and he who I believe is directly from Allah, Almighty God Allah, and if he looked at me and advised me, which I'm sure he wouldn't, to fight in any kind of war, if he advised me to I would."

The registrant testifies as follows concerning his objections to participation in noncombatant service:

> " . . . I wouldn't raise all this court stuff and I wouldn't go through all of this and lose and give up the millions that I gave up and my image with the American public that I would say is completely dead and ruined because of us in here now, and so I wouldn't turn down so many millions and jeopardize my life walking the streets of the South and all of America with no bodyguard if I wasn't sincere in every bit of what the Holy Qur'an and the teachings of the Honorable Elijah Muhammad tell us and it is that we are not to participate in wars on the side of nobody who—on the side of nonbelievers, and this is a Christian country and this is not a Muslim country . . . and the outright, everyday oppressors and enemies are the people as a whole, the whites of this nation. So, we are not, according to the Holy Qur'an, to even as much as aid in passing a cup of water to the—even a wounded. I mean, this is in the Holy Qur'an, and as I said earlier, this is not me talking to . . . dodge nothing. This is there before I was borned and it will be there when I'm dead, and we believe in not only that part of it, but all of it."

It is therefore our conclusion that registrant's claimed objections to participation in war insofar as they are based upon the teachings of the Nation of Islam, rest on grounds which primarily are political and racial. These constitute only objections to certain types of war in certain circumstances, rather than a general scruple against participation in war in any form. However, only a general scruple against participation in war in any form can support an exemption as a conscientious objector under the Act.

The registrant has expressed his objections to the particular war in Vietnam. Following the reclassification of the registrant from 1-Y to 1-A on February 17, 1966, the *Chicago Daily News* quoted the registrant as stating:

> "I am a member of the Muslims and we don't go to no war unless they are declared by Ali himself.[4] himself. I don't have no personal quarrel with those Vietcongs."
>
> "Let me tell you, we Muslims are taught to defend ourselves when we are attacked. Those Vietcong are not attacking me. These Vietcong are fighting a very nasty war over there. There is a lot of people getting killed. Why should we Muslims get involved? Besides, I am fighting for the government every day. I am laying my life on the line for the government. Nine out of ten soldiers would not want to be in my place in the ring. It is too dangerous."

Questioned at the hearing whether he made that statement, the registrant admitted he had, although he stated that he had been condemned by Elijah Muhammad for making "such a wild boastful statement."

. . .

. . . Neither the fact that he has no "personal quarrel" with the Viet Cong nor his related objection to the Black Muslims getting involved in the Vietnam war constitute an objection which the Act recognizes. To qualify for exemption as a conscientious objector, the registrant's objection must be a general scruple against "participation in war in any form," not merely an objection to participation in a particular war.

Moreover, the registrant has not consistently manifested his conscientious-objector claim. Such a course of overt manifestations is requisite to establishing a subjective state of mind and belief. As noted earlier, he made no conscientious-objector claim at all prior to being reclassified 1-A in February 1966. Even after that event, the record of his efforts to have the local board reconsider his classification indicates that the registrant's primary concern was not his conscientious-objector claim, but the financial hardship which would result from his induction into the Armed Forces. In his letter to the local board on March 17, 1966, registrant stated that his classification from 1-Y to 1-A is legally unjustified and imposes "grave hardships upon me as heavyweight champion of the world at now age 24."

In another letter to his local board, dated April 16, 1966, registrant discusses financial obligations and commitments, including money which he owes the Louisville Sponsoring Group, which he made during the time he was 1-Y and before he was classified 1-A.

. . .

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4. Although the DOJ letter uses the name Ali here, it seems probable, given the context, that Ali either referred or intended to refer to Allah.

The main thrust of registrant's letters to his local board following his reclassification from 1-Y to 1-A appears to be more of an argument for one of several classifications other than 1-A, rather than valid support of his conscientious-objector claim. In his 8-page letter of April 16, 1966, he devotes three and one-half pages to a discussion of why he should not have been classified from 1-Y to 1-A.

. . .

It should also be noted that the registrant did not claim conscientious-objector status until after he had been reclassified 1-A in February 1966, although in his testimony at the hearing he variously fixed the time when he became a conscientious objector as: 1) three weeks before the first Sonny Liston fight on February 25, 1964, 2) the hour when he first heard the teachings of Elijah Muhammad in November 1960 and 1961, 3) "the first time I had to go get tested", and 4) "after I first heard the teachings of . . . how the so-called Negro was treated[.]"

He explained to the Hearing Officer that he did not claim to be a conscientious objector when he first became one because war was not pending at that time and he had nothing to worry about and had nothing about war on his mind. But a registrant has not shown overt manifestations sufficient to establish his subjective belief where, as here, his conscientious-objector claim was not asserted until military service became imminent.

The burden of clearly establishing his conscientious-objector claim is upon the registrant. The Department of Justice concludes that this registrant failed to sustain that burden.

With due regard for the recommendation of the Hearing Officer, the Department of Justice finds that the registrant's conscientious-objector claim is not sustained and recommends to your Board that he be not classified in Class 1-O or in Class 1-A-O.

. . .

Sincerely,
T. Oscar Smith
Chief, Conscientious-Objector Section

New York Times *Report, April 28, 1967*

This New York Times *report recounts the events around Ali's induction ceremony and his refusal to enter the military on religious grounds. Though this is a news story rather than an editorial, it is worth noting that the author, Robert Lipsyte, was initially one of the few major journalists covering Ali's case to indicate there was any substance to Ali's claims.*

[Document Source: Robert Lipsyte, "Clay Refuses Army Oath; Stripped of Boxing Crown," *New York Times*, 29 April 1985, 1.]

Houston, April 28—Cassius Clay refused today, as expected, to take the one step forward that would have constituted induction into the armed forces. There was no immediate Government action.

Although Government authorities here foresaw several months of preliminary moves before Clay would be arrested and charged with a felony, boxing organizations instantly stripped the 25-year-old fighter of his world heavyweight championship.

"It will take at least 30 days for Clay to be indicted and it probably will be another year and a half before he could be sent to prison since there undoubtedly will be appeals through the courts," United States Attorney Morton Susman said.

Statement Is Issued

Clay, in a statement distributed a few minutes after the announcement of his refusal, said:

"I have searched my conscience and I find I cannot be true to my belief in my religion by accepting such a call." He has maintained throughout recent unsuccessful civil litigation that he is entitled to draft exemption as an appointed minister of the Lost-Found Nation of Islam, the so-called Black Musli[m] sect.

Clay, who prefers his Musli[m] name of Muhammad Ali, anticipated the moves against his title in his statement, calling them a "continuation of the same artificially induced prejudice and discrimination" that had led to the defeat of his various suits and appeals in Federal courts, including the Supreme Court.

Hayden C. Covington of New York, Clay's lawyer, said that further civil action to stay criminal proceedings would be initiated. If convicted of refusal to submit to induction, Clay is subject to a maximum sentence of five years imprisonment and a $10,000 fine.

Mr. Covington, who has defended many Jehovah's Witnesses in similar cases, has repeatedly told Clay during the last few days, "You'll be unhappy in the fiery furnace of criminal proceedings but you'll come out unsinged."

As a plaintiff in civil action, the Negro fighter has touched on such politically and socially explosive areas as alleged racial imbalance on local Texas draft boards, alleged discriminatory action by the Government in response to public pressure, and the rights of a minority religion to appoint clergymen.

Full-Time Occupation

As a prospective defendant in criminal proceedings, Clay is expected to attempt to establish that "preaching and teaching" the tenets of the Muslims is a full-time occupation and that boxing is the "avocation" that financially supports his unpaid ministerial duties.

Today, Clay reported to the Armed Forces Examining and Entrance Station on the third floor of the Federally drab United States Custom House a few minutes before 8 A.M., the ordered time. San Jacinto Street, in downtown Houston, was already crowded with television crews and newsmen when Clay stepped out of a taxi cab with Covington, Quinnan Hodges, the local associate counsel, and Chauncey Eskridge of Chicago, a lawyer for the Rev. Martin Luther King, as well as for Clay and others.

Half a dozen Negro men, apparently en route to work, applauded Clay and shouted: "He gets more publicity than Johnson." Clay was quickly taken upstairs and disappeared into the maw of the induction procedure for more than five hours.

Two information officers supplied a stream of printed and oral releases throughout the procedure, including a detailed schedule of examinations and records processing, as well as instant confirmation of Clay's acceptable blood test and the fact that he had obeyed Muslim dietary strictures by passing up the ham sandwich included in the inductees' box lunches.

Such information, however, did not forestall the instigation, by television crews, of a small demonstration outside the Custom House. During the morning, five white youngsters from the Friends World Institute, a nonaccredited school in Westbury, L.I., who had driven all night from a study project in Oklahoma, and half a dozen local Negro youths, several wearing Black Power buttons, had appeared on the street.

Groups Use Signs

Continuous and sometimes insulting interviewers eventually provoked both groups, separately, to appear with signs. The white group merely asked for the end of the Vietnam war and greater efforts for civil rights.

The Negro eventually swelled into a group of about two dozen circling pickets carrying hastily scrawled, "Burn, Baby, Burn" signs and singing, "Nothing kills a n----r like too much love." [Slur omitted]. A few of the pickets wore discarded bedsheets and table linen wound into African-type garments, but most were young women dragged into the little demonstration on their lunch hours.

. . .

Sadly, too, 22-year-old John McCullough, a graduate of Sam Houston State College, said: "It's his prerogative if he's sincere in his religion, but it's his duty as a citizen to go in. I'm a coward, too."

46 Called to Report

Then Mr. McCullough, who is white, went up the steps to be inducted. He was one of the 46 young men, including Clay, who were called to report on this day. For Clay, the day ended at 1:10 P.M. Houston time, when Lieut. Col. J. Edwin McKee, commander of the station, announced that "Mr. Muhammad Ali has just refused to be inducted."

In a prepared statement, Colonel McKee said that notification of the refusal would be forwarded to the United States Attorney General's office, and the national and local Selective Service boards. This is the first administrative step toward possible arrest, and an injunction to stop it had been denied to Clay yesterday in the United States District Court here.

Clay was initially registered for the draft in Louisville, where he was born. He obtained a transfer to a Houston board because his ministerial duties had made this city his new official residence. He had spent most of his time until last summer in Chicago, where the Musli[m] headquarters are situated, in Miami, where he trained, or in the cities in which he was fighting.

After Colonel McKee's brief statement, Clay was brought into a pressroom and led into range of 13 television cameras and several dozen microphones. He refused to speak as he handed out Xeroxed copies of his statement to selected newsmen, including representatives of the major networks, wire services and The New York Times.

. . .

The statement, in part, declared:

> "It is in the light of my consciousness as a Muslim minister and my own personal convictions that I take my stand in rejecting the call to be inducted in the armed services. I do so with the full realization of its implications and possible consequences. I have searched my conscience and I find I cannot be true to my belief in my religion by accepting such a call.
>
> "My decision is a private and individual one and I realize that this is a most crucial decision. In taking it I am dependent solely upon Allah as the final judge of these actions brought about by my own conscience.
>
> "I strongly object to the fact that so many newspapers have given the American public and the world the impression that I have only two alternatives in taking this stand: either I go to jail or go to the Army. There is another alternative and that alternative is justice. If justice prevails, if my Constitutional rights are upheld, I will be forced to go neither to the Army nor jail. In the end I am confident that justice will come my way for the truth must eventually prevail. . . . "

Pretrial Hearing Excerpts, June 8, 1967

To streamline trial proceedings, many important legal issues are resolved by the judge prior to a federal trial. In United States v. Clay*, many of these issues centered around the defense's attempts to show that the Selective Service System deliberately excluded African Americans from draft boards and that it discriminated against Ali. The following excerpts from the two-day pretrial proceedings in* Clay *illustrate the nature of those claims and the government's successful objections to them. The*

issues were raised as a result of the defense team's attempt to subpoena evidence from several individuals and the government's motion to quash the subpoenas. The individual identified as Colonel Hays was Lieutenant Colonel Robert Hays, a senior military legal official specializing in selective service cases.

[Document Source: Transcript of Proceedings, *The United States v. Cassius Marsellus Clay, Jr. Also known as Muhammad Ali*, May 8, 1967; Case no. 67H94, Criminal Case Files, 1908–1979 (48SO69A); Records of the United States District Courts for the Southern District of Texas, Record Group 21; National Archives at Fort Worth, Texas, folder 4.]

MR. SUSMAN: Your Honor, our motion to quash the subpoenas *duces tecum* has been filed with a short but complete and comprehensive brief. We understand from a pleading filed yesterday by Mr. Covington and Mr. Hodges that they are abandoning their subpoena directed towards the President.

. . .

MR. COVINGTON: [T]he Court of Appeals for the Sixth Circuit held that when we get to the point of defending the indictment we could go into and urge as a defense this matter of imbalance of Negro[es] on the Board and the discrimination. . . . How can we prove the discrimination unless we get the subpoenas obeyed?

. . .

THE COURT: You said something about a Negro on the Board. I didn't get what you said, that there was not a Negro on the Board.

MR. COVINGTON: There was no Negro on the Local Board at Louisville at the time this process was processed. There was one put on afterwards. There was no Negro on the Appeal Board here in Houston that considered his case.

THE COURT: How many members were on those boards you refer to?

MR. COVINGTON: Three on the Board in Louisville, a panel, but there is six members of the total Board in Louisville and about 7 or 8 in the Board of Appeals here in Houston, and there are 3 on the national board. Incidentally, one member of the national board is a Negro.

THE COURT: On the national board of three, is there a Catholic on that board?

. . .

MR. COVINGTON: I think so.

THE COURT: Is there a Jew on that board or a Presbyterian?

MR. COVINGTON: I can't answer that.

THE COURT: Or a Baptist or a Lutheran? There are so many categories.

MR. COVINGTON: We're talking here about something that the Supreme Court of the United States ruled on in the case of the juries, Your Honor.

THE COURT: Suppose some Presbyterian—

MR. COVINGTON: We are talking about color or religion.

THE COURT: People do specify religion and I understand you are going to speak of religion, too, in this case.

MR. COVINGTON: We are going to show the man is a minister. But our allegations—

THE COURT: I will try to project my thoughts and get straight on the subject. Suppose there is no Presbyterian on that board; can we draft Presbyterians?

MR. COVINGTON: I don't think it is analogous.

THE COURT: You mean a Presbyterian doesn't have equal rights? If not, I am left out because I am a Presbyterian.

. . .

THE COURT: You say you want to show there were no Negroes on certain boards?

MR. COVINGTON: On the local board and on the appeal board here in Houston.

THE COURT: Can't that be stipulated?

MR. COVINGTON: If they will stipulate it constituted discrimination.

THE COURT: You don't stipulate as to conclusions, as I understand it. You stipulate only facts.

MR. COVINGTON: We want to also get the record to show that there has been an imbalance in the drafting of Negro registrants, too, and if they will stipulate to the imbalance—

THE COURT: Well, imbalance again is a conclusion.

MR. COVINGTON: Well, Your Honor, we are entitled to make our proof, I respectfully submit, and that is what the subpoena power of the court is for is to enable us to make our defenses. How can we prove our defense if our subpoena power is taken away?

THE COURT: If you want to prove there was or was not a Negro on a particular board, or the number thereof, I should think that would be stipulated. I know of no better proof than a stipulation.

MR. COVINGTON: That's right, but we want to prove a systematic exclusion by the Government.

THE COURT: There again you get into conclusions.

. . .

MR. HODGES: May I address myself to the Court on one point, rather than discuss it with Mr. Covington and then state it?

The President of the United States made in one of his press conferences an admission that there has been a discrimination all up and down the line, and he for that reason appointed the Burk Marshall Commission, on selective service to study the method by which draft board members are selected and the makeup of them. We have the published part of the Commission's report which they wanted published, but

we do not have the notes, the records from which this was taken and we don't know what it contains. We have subpoenaed Bradley Patterson to bring those records here.

. . .

If the situation is so bad the President of the United States admits publicly there was discrimination we want to show the discrimination against this man, the Defendant here, and if he has been discriminated against the order is void and his not guilty plea should be respected and he should be found not guilty. We can't simply stipulate with Mr. Susman one isolated fact of the composition of the Texas Selective Service Appeal Board. We want to show there is a systematic—

THE COURT: I think what you want to do is stipulate conclusions, from listening to you and Mr. Covington, rather than facts.

MR. HODGES: We want to make our proof rather than stipulate to a single isolated fact. If then we can show from the records of the Burk Marshall Commission there is an overall discrimination—

THE COURT: You said the President said there is discrimination all up and down the line. You said someone said the situation is bad. That is a conclusion. Certainly it is indefinite. I don't know what that means. I don't know that anything ever pleases everybody.

MR. HODGES: But the President was ill informed.

THE COURT: I have heard opinions at times that he is ill informed and I hear that from various sources.

. . .

MR. SUSMAN: I would like to say from the remarks of counsel today it appears Mr. Covington would like to turn this procedure from a judicious trial into a congressional investigation into the Selective Service System. I would like to suggest to the Court that because of that it is more properly a congressional matter than judicial matter. I understand Mr. Covington is from New York where there is a congressional vacancy. I might suggest he pursue that at a different place and time.

. . .

. . . Now, I think we can lay the matter to rest by advising the Court that the classification of Cassius Clay, which is at issue in this case, was his final classification. His final classification was by the presidential Appeal Board, which is one-third Negro. All the classifications that happened before then are just wiped out. They are immaterial because he was classified by the presidential board *de novo*, and that board's classification was unanimous . . . .

. . .

I would like to say I don't know whether there has been systematic exclusion or not. Every time someone is appointed by the President or the Governor—

THE COURT: Everyone else is excluded except that one person. Every time one appointment is made millions of Americans are excluded.

MR. SUSMAN: I understand Eisenhower systematically excluded Democrats from many appointments.

THE COURT: He didn't exclude enough.

MR. SUSMAN: And Democratic presidents have systematically excluded Republicans.

. . .

I think in the face of the argument these subpoenas are nothing but an attack on the whole Selective Service System, which is a congressional function. I have made the suggestion as to how that could be pursued.

With that, we close.

MR. COVINGTON: . . . Your Honor, the very fact there may be a Negro on the Appeal Board in Washington doesn't cure the absence of one in Louisville or one on the Appeal Board here. A man is entitled to be fairly tried at all levels.

THE COURT: I'm wondering if that is the way they decide appeals. I know very little about the working of the draft boards. I registered with the draft board in World War II and then volunteered for service. I was never called in the draft. But do people line up according to race in determining these matters? Do members line up according to the race? Does a Negro member—say if this is a young man, a Negro, and here is a white man, and I will send him in the service; is that the way they do it?

MR. COVINGTON: I don't think so, Your Honor. I think that the thing is that the Negro representation on the local board and the Appeal Board would help avoid the imbalance of Negroes in the service. I mean, it is quite manifested, the remarks that President Johnson made being based on the records we are trying to get here, and he found there was systematic exclusion of Negroes from the boards and also found that there was systematic discrimination in the Negroes in the service because there are a larger number of Negroes in Vietnam than there are whites, in proportion to the population.

. . .

Properly you have said that that is a conclusion that was reached by the President, but his conclusion was based on the proof that was before his commission . . . . What we want is the proof that that Commission had before them and when we have that proof that was before them then we will have proof adequate to make our defense stand up here that there has been systematic exclusion of the Negro from the local board. That is what it is, Your Honor.

That is only one of our points, though, we still come back to the entirely different matter—

THE COURT: What will we do, stop drafting Negroes?

MR. COVINGTON: I don't think that is the necessary conclusion at all. We are only concerned here with this one case, and it is not a matter of what's going to happen. This is a matter for Congress. We are here to determine whether or not there has been violation of the law. . . .

. . .

I respectfully submit that this is a very, very serious matter and one that the Government is trying to treat as a trivial matter. But when we start denying a litigant the subpoena process of the court it comes close to being a denial of justice . . . . If they had some governmental privilege against this they would have pleaded it. They didn't have governmental privilege and they are nonetheless making the subpoenas be quashed. We will be woefully and dreadfully harmed and denied the due process of law upon the trial of this case if we are not allowed to make our proof. The right to be heard is a fundamental right and a right that cannot be frittered away on grounds of inconvenience.

. . .

THE COURT: . . . An analogy was drawn between draft boards and juries, and everyone gives great lip service to constitutional rights of trial by jury and most everyone charged with crime wants trial by jury. They never seem to be satisfied with the jury they get. The way it works in practice is they want their jury, but they don't want it.

. . .

. . . [I]t is immaterial what the President says. Certainly what the President says is not law. It is likewise immaterial what a member of Congress says. We all know that Congressmen speak out on both sides or on all sides of every subject, both on the floors of Congress and elsewhere. There are 535 members of Congress, and of course we get a great divergence of views on every subject. So I am of the firm belief that it is immaterial what the President said or members of Congress may have said. It is immaterial what other persons have said in other places.

What we are interested in in this trial, as in every trial, is what the Defendant did or failed to do in this district and division. I will grant the Government's motion to quash the subpoenas *duces tecum*.

. . .

MR. HODGES: . . . [W]e ask the Court if the Court would reconsider our motion for discovery in view of your denial.

. . .

THE COURT: You want to discover what the President said and what the congressmen said and what other people said.

MR. COVINGTON: We want to get a discovery of all the things we described in our application. We have here what the President said in the documents that have been produced for me in Washington, but we want to discover what records they have in the Selective Service System with respect to the discrimination of the Negro in the System which was called for in our motion for discovery and inspection. . . .

THE COURT: Colonel Hays is here. Won't he know about discrimination?

MR. COVINGTON: I don't know. It would depend on the records anyhow, Your Honor. We want the records.

THE COURT: What records did you furnish[,] Colonel Hays? What records can your office furnish him?

COLONEL HAYS: May it please the Court: the only way you would know if there was a Negro on the local board would be to see the board members in person. The only way you would know whether the particular registrant was a Negro is to see the registrant in person.

THE COURT: Maybe you couldn't tell them apart anyway, if they looked like Adam Clayton Powell.

COLONEL HAYS: That is true, Your Honor. The statuses and regulations do not require any such information. We have bandied around the term "discrimination." The President did not say there was discrimination, nothing in his reports that there was discrimination. The only thing he has ever said is to make every attempt to see local boards are truly representative of areas, and this is a fishing expedition that would not assist the Court in my opinion in any way. Those records would not be available unless you could subpoena the records of 33 million registrants from 4,000 local boards.

MR. COVINGTON: We have this [government report, "In Pursuit of Equality: Who Serves if Not All Serve"], on page 80. . . . [T]he Selective Service System did compile it for the Burk Marshall Commission. For the State of Kentucky[:] 641 board members in the whole state, 2% are negro.

Then on page 81 of this same report it shows in reference to Texas[:] 656 board members, of which 1.1[%] are Negro.

There is bound to be a record some place or they never would have had this. . . .

. . .

Here are the President's remarks, based on the Marshall Commission specifically mentions the subject of discrimination right here in this document.

THE COURT: Well, I wish I could define discrimination or I wish someone could. Like Colonel Hays, it puzzles me. I can remember when I was a young man people would say, "He is a gentleman of discriminating taste." That was supposed to be complimentary. It meant a man of discriminating taste was a man of good taste. If you draft the Jones boy and don't draft the Smith boy, are you discriminating against the Joneses?

Then sometimes it works the other way. I recall in World War II after our entry into the war and many of the young men were offering their services and I had a friend, a young lawyer here—he is still at this bar but he is not as young as he was—who had been a varsity football player at Bryan University and in a football accident had broken his forearm and it wasn't set properly. He was a picture of health and robustness and he volunteered and couldn't pass the physical.

Well, he felt discriminated against because of, as he said, all the little hollow-chested fellows they were taking and they rejected him. So it is hard to know how to please people. It is hard to know which way discrimination works.

MR. HODGES: Well, Your Honor, may I comment on that? The way I view it, the man with discriminating taste is the man who is very selective.

THE COURT: That's right, and this is the Selective Service Act. They select some and reject some.

MR. HODGES: We are trying to prove they deliberately selected white people to serve on these boards and by doing so they have discriminated against our client.

THE COURT: And they deliberately select physicians and dentists and veterinarians and people with other qualifications.

MR. HODGES: In Alabama 275 board members, and not one is a Negro. I think Alabama is 40% Negro.

THE COURT: Yes.

MR. COVINGTON: I would like to just mention what the President found here. He says, "Unquestionably in the field of Selective Boards in the draft machinery—there has been discrimination against minority groups."

Those are his words. Based in this—

THE COURT: Do you know anyone who doesn't belong to a minority, one or more minority groups?

MR. COVINGTON: Well, Your Honor, I can't say that I can answer that categorically. All I can say is our purpose at this moment is to try to prove this defense that we have to the indictment, that there has been discrimination. . . .

Your Honor, the only way that we can make our defense is to see the documents and to make the inspection and do the copying of the material on which this report was made, and I think that our request to have the discovery and inspection reconsidered is—

THE COURT: Well, how would you know when you had everything that went into making the report?

MR. COVINGTON: Well, we would take it that the Government has preserved—I mean the Commission has preserved the records that they developed in which the report was made, and it would be a simple matter to make these available in this case.

THE COURT: What says the prosecution?

MR. SUSMAN: We object to it, Your Honor. First of all, the report and all the accompanying evidence would be rank hearsay. It wouldn't have any place in a

Court of Law. This is more a matter for a congressional committee or a presidential committee. It is a fishing expedition, it is not covered by Rule 16.
Rule 16 relates to evidence in the hands of the Government or under the Government's control. This is a presidential commission. It is hardly considered under the control of the Department of Justice.

On the face of the motion it is not relevant or material to any issues in this case. We discussed fully this morning discrimination. I think we all agreed when someone is drafted and someone else is not drafted someone might feel discrimination. When someone is appointed to an appointive position someone is left out, and they feel discriminated against.

I think counsel has his record. He has made a record and if we get to that point the Court's decision can be tested. This is getting pretty far afield from trying Cassius Clay.

THE COURT: I agree, and the objection is sustained.

Posttrial Testimony of Muhammad Ali, July 7, 1967

Ali did not testify during his trial but did take the stand shortly after his conviction in support of a motion to permit him to leave the United States to fight in Japan. These excerpts from his testimony suggest both the strength of his convictions and the legal difficulties those convictions posed.

[Document Source: Transcript of Proceedings, *The United States v. Cassius Marsellus Clay, Jr. Also known as Muhammad Ali*, May 8, 1967; Case no. 67H94, Criminal Case Files, 1908-1979 (48SO69A); Records of the United States District Courts for the Southern District of Texas, Record Group 21; National Archives at Fort Worth, Texas, folder 4.]

BY MR. HODGES:

Q: State your name for the record.

A: Muhammad Ali.

Q: You are also known in this case as Cassius Clay, Jr.?

A: Yes, sir.

. . .

Q: And your avocation is that of a professional boxer?

A: Yes, sir.

. . .

Q: Did you have any other source of income other than fighting?

A: No, sir.

. . .

Q: I hand you what has been marked Defendant's Exhibit Number 2 and I ask you if this is a photocopy of a letter agreement between Main Bout, Inc., actually between you through your manager and the Art Life Association of Tokyo, which provides that if you are granted permission by this Court to leave the country you must first fight under the auspices of that promoter?

A: Yes, sir. That is it.

Q: . . . [A]re you able to arrange the fight, get the promotion without the permission of the Court first?

A: No, sir.

. . .

Q: Now, do you have any purpose at all for leaving the continental United States other than to engage in one boxing enterprise and come back immediately? . . .

A: No, sir.

Q: Tell the Court that if the Court will grant you this written permission to leave the country, tell the Court in your own words that you will go directly to where the Court permits you to go for the period of time the Court permits you to go and come directly back during the period of time the Court might see fit. I want you to tell the Court that you will do that if the Court will grant you permission.

A: Well, Your Honor, I was told the other day that someone thought I might be intending to flee the country or make bad remarks about the country, which is not so. I will be willing to report daily to an American Embassy of whichever country we go to to show how I feel. I would have no reason to flee the country or leave America or say bad things about it. Not one word will come from me on such.

. . .

Q: The Government has filed in reply to your motion that they are concerned that you might flee the jurisdiction of the Court. In your motion have you advised the Court that subject to the Court's order that any monies that are paid to you for your fighting will be paid in this country in trust or in escrow?

A: Yes, sir.

Q: And have you further asked the Court to consider those monies as additional

bail, supplementing your regular bail, conditioned upon your physical return to the United Sates.

A: Yes, sir.

Q: You are willing to do this?

A: Yes, sir.

Q: You do own property in this country?

A: Yes, sir.

Q: And you understand should you flee the country that property would be subject to confiscation by the Government?

A: Yes, sir.

. . .

BY MR. SUSMAN:

Q: Is it true you have traveled to Japan in past years?

A: No, sir.

Q: You have never been to Japan?

A: No, sir.

Q: Have you been to Egypt?

A: Yes, sir.

. . .

Q: Who invited you to Egypt?

A: Some Islamic Council, religious group.

Q: They are your friends?

A: Sir?

Q: You know those people and have friendly relations?

A: Yes, sir.

Q: Is it true that . . . several years ago you made the public announcement that you would like to fight on the Egyptian side?

A: No, sir.

Q: You deny making that statement?

A: Yes, sir.

Q: Now, it was reported in the newspaper in the last day or so that you have signed or autographed draft cards, is that correct?

A: Yes, sir.

Q: Where was that?

A: In California.

Q: What part of California?

A: Los Angeles, for the students that handed me a couple of them.

Q: Was that at a big rally?

A: I don't know what it was. I was invited. It was called a peace rally. I was invited to say a few words. I didn't talk on none of the war problems, I just talked about boxing.

Q: Isn't it true that you did sign draft cards of some of the students?

A: Yes, sir.

Q: Is it true that they subsequently at that rally burned the draft cards?

A: No, sir. I did not see that.

Q: Did you see that?

A: No, I'm sure they didn't.

. . .

Q: Did you say that was at a peace rally?

A: Yes, sir.

Q: By that you mean it was a demonstration against the war in Vietnam?

A: I don't exactly know what it was. I was invited to say a few words and I stayed five minutes and left. They wanted me to march, but I left.

. . .

Q: Have you ever participated in burning a draft card?

A: No, sir.

Q: Now, isn't it correct that you have made statements as to the fact that you have no quarrel with the Viet Cong and you would refuse to fight against them?

A: This was a few years ago, yes, sir. At the time I was wrong. I admit saying that but it was out of place, but I did say it.

. . .

Q: Now, you understand you have been convicted and sentenced to five years in prison?

A: Yes, sir.

Q: Am I correct in assuming you had rather not go to prison?

A: Yes, sir.

Q: You now have a valid United States passport, do you not?

A: Yes, sir.

Q: I can't understand why you went to this peace rally and signed the draft cards if it was not for the purpose of encouraging those people in doing what you have done in avoiding the draft?

A: No, sir. I made it known to all the cameras and the networks that my being here is not to encourage you, and whatever you do is with your own conscience and you will pay the penalty. I told them I'm not here to lead you, I'm here as an athlete and sports figure, and I'm glad to be here. I understand this is a peace rally and there wouldn't be no violence when you did march. They wanted me to lead and I said, "I'm not leading or encouraging nobody." That is on tape, I told them that.

Q: You knew what a peace rally was and you went and signed draft cards?

A: I didn't go to sign draft cards. I imagine I signed nine or ten hundred autographs and one or two happened to be a draft card and they took pictures of it and blowed that up. One of them was just a card and I didn't know what it was.

Q: You deny making the statement that the *New York Times* reported that you would fight on the side of the Egyptians?

A: Yes, I deny that, yes, sir.

Q: Is there any other country you would be willing to fight for besides the United States?

A: I'm not in no other country. I have no reason to fight any other country.

. . .

Q: Can you honestly tell the Court that you don't have a greater loyalty to the Muslim countries than you do to the United States?

A: Sir?

Q: Your religion is the Muslim religion?

A: To my people in America, first to the people here in America, my people who are struggling for freedom, justice and equality. I am not a citizen of no country other than America.

. . .

Q: You are personally opposed to the war in Vietnam?

A: Not only Vietnam, but any war, I'm not just picking on Vietnam, but any war.

Q: Didn't you tell Judge Hannay that you would fight if there were holy wars[?]

A: No, sir. I was mentioning that the Holy Koran mentions that we fight in wars declared by Almighty God or a prophet of God, but I'm sure there will be no holy wars around here.

Q: Do you recall Judge Hannay asking you which side you would be on if it was a war between the Communists and the United States, which side would you be on?

A: Naturally I would be against Communism and whoever is fighting against them.

Q: I thought you told Judge Hannay you would be neutral?

A: If Communism was coming into America and fighting us, but as far as joining up with anyone I would be neutral. If we were attacked and they came in here, naturally I would have to fight for my own life.

Q: You mean under those circumstances you would be willing to go into the army?

A: Well, if something like that happened I would be forced to, yes, sir, if they attacked us. If there was any army to help keep them out of this country.

Q: Why was it you were not willing to go into the army on April 28th?

MR. HODGES: I think that is immaterial, Your Honor.

THE COURT: Sir?

MR. HODGES: I objected on the grounds of immateriality and irrelevancy as to why.

THE COURT: Overruled.

Q: . . . [Y]ou say now that you would be willing to fight if the Communists were invading this country—

A: If this country was physically attacked and we were all in trouble, everybody's religion and belief means nothing.

Q: Don't you realize we have half a million soldiers in Vietnam now fighting against Communism.

A: I don't know that's what they were fighting against. I'm talking about coming here. I wouldn't have to join nothing, I would just pick up a rifle and fight if they attacked us.

Q: You are willing to serve in the armed forces now?

A: Anything against my religious beliefs, yes, sir.

Q: You claim this is against your religious beliefs?

A: We don't believe in being the aggressor. We believe in defending ourselves if attacked, that is the way it really is. That is what we are taught. We don't believe in being the aggressor, but defending ourselves if we are attacked.

Q: Haven't you made statements that you are sympathetic with the Viet Cong?

A: No, sir.

Q: Well, the newspapers have said that.

A: They lied, sir. They lie all the time at me. I didn't say that.

Q: What did you say about that?

A: I didn't say nothing about it.

Q: How do you feel about it?

A: I don't know why you have to put words in my mouth. I was just wanting permission to go to Japan and box. I'm not going to run away. I'll answer your questions to the best of my knowledge, but you could ask me a lot[.]

Q: I think your loyalty to the United Sates is on that—

A: My basis on what I'm doing is my religious beliefs, and anybody who studies the Holy Koran. I'm not bucking or talking against the country. I'm just sticking to my religious beliefs. I'm not saying I don't like the country, but I'm standing up for my religious belief.

Q: Do you think that the war in Vietnam is a war against Communism?

A: I tell you the honest to God truth, I don't know nothing about it.

. . .

Q: You said a moment ago you would be willing to fight against Communism?

A: I didn't say that. I said that if America was attacked, if it's Communism or who it is attacking America, I would have to fight.

Q: You don't believe the war in Vietnam is a war to protect America?

A: I don't know. I'm not a politician. I don't know nothing about Vietnam or nothing. I would be lying to you. I swore and took an oath to tell the truth.

. . .

BY MR. HODGES:

Q: . . . Among other things, Mr. Susman said that you had rather not go to prison. None of us would want to go to prison. Did you not tell me the day that the

jury was out that you were ready to go that day, that night, when we were sitting up in the Clerk's office?

A: Yes, sir.

Q: Did you tell Mr. Covington and me that?

A: Yes, sir.

Q: All right. Now, as far as this no quarrel—

THE COURT: We could accommodate him if that is what he wants and commit him now.

MR. HODGES: Certain statements were made during the discussion, but he was demonstrating his sincerity to us that if this is what the Court wants and the country wants, he'll do it. We explained to him his legal rights as to that.

Q: I want to ask you a question as an expert. You are and have been and still are in the eyes of many people the heavyweight champion of the world. I am assuming you are qualified to testify on professional boxing. Could you get anybody of any substance to fight you abroad if you went abroad and fleed the jurisdiction and were branded by this country a fugitive?

A: No, sir.

Q: All right. Are you still recognized as the heavyweight champion of the world in many countries?

A: Yes, sir.

Q: If you did leave this country and jump your bond or bail, do you as an expert in this field—would you tell the Court whether or not you could get anybody to fight you that would bring a gate big enough to make it worthwhile?

A: I think that leaving this wealthy, good, comfortable country just to box in some poor, swampy country that's being take care of by America—even if I did go to prison here and serve the full limit I would just be thirty years old when I came out and be free—I would be crazy to spend the rest of my life in another country with twenty-two million Negroes, which I dearly love, and be considered a coward in leaving the country when I could do three years or five years and then I'd be free, I'd be crazy to leave the country for life just for that.

. . .

BY MR. SUSMAN:

Q: . . . [D]idn't you make a statement at your trial here last month that you would never see a day in prison?

A: Sir? No, sir. That statement was made by Hayden Covington and my manager didn't like him. We criticized him for it. It only proved that the Court could make us go just for saying it. He said two or three times that I would never see the inside of jail cell, but it never came from me.

Q: Do you know the only way you can avoid seeing the inside of a federal court is to run off?

A: No, sir. There is justice. I'm sincere in my faith and ministry. If the Supreme Court grants me permission we won't have to go. I don't think it is right to say that we won't see the jail when we are still before the Court. I think there is a possibility. Then if I do, I will just have to go.

. . .

Court of Appeals for the Fifth Circuit Opinion in Clay v. United States

This opinion rejected the initial appeal from Ali's criminal conviction for draft evasion and covers issues such as Ali's allegations of systematic bias in the draft system and a lack of procedural protections during the trial itself. After the court denied each of these claims, Ali appealed to the Supreme Court of the United States, which sent the case back to the trial court on other grounds. Internal citations have been omitted where appropriate, as have sections of the opinion dealing with evidentiary matters and Ali's claim that the lack of judicial review accorded Selective Service System decisions amounted to a bill of attainder. Citations have been omitted.

[Document Source: 397 F.2d 901 (1968).]

AINSWORTH, Circuit Judge:

. . .

Cassius Marsellus Clay, Jr., also known as Muhammad Ali, heavyweight professional boxing champion of the world, was convicted after trial by jury on an indictment charging violation of 50 U.S.C. App. § 462, for knowingly and willfully refusing to report for and submit to induction into the armed forces of the United States. Clay's draft case has been through practically every phase of selective service procedure, beginning with the date he registered on April 18, 1960, until he was ordered to report but declined to submit to induction on April 28, 1967, and was thereafter convicted by jury trial held on June 19, 20, 1967. On four different occasions he was classified 1-A (Available for military service) by his local board, twice by two different appeal boards (in Kentucky and Texas) and once by the National Selective

Service Appeal Board (the Presidential Appeal Board). In every instance the vote of the boards was unanimous.

There has been no administrative process which Clay (Ali) has not sought within the Selective Service System, its local and appeal boards, the Presidential Appeal Board and finally the federal courts, in an unsuccessful attempt to evade and escape from military service of his country. Being entirely satisfied that he has been fairly accorded due process of law, and without discrimination, we affirm his conviction.

. . .

I. THE ALLEGED SYSTEMATIC EXCLUSION OF NEGROES FROM SELECTIVE SERVICE BOARDS

. . .

[T]he racial composition of the local and appeal boards about which appellant complains, because of the absence of a proportion of Negroes in accordance with their ratio to the population, results from appointment by the President upon recommendation of the governor of each state. . . .

. . . It was stipulated in the present record that one of the three members of the Presidential Appeal Board was a Negro. However, there was no Negro member on any of the local or appeal boards which considered appellant's draft case.

According to the report of the National Advisory Commission on Selective Service (the Marshall Commission), in Kentucky, only 0.2% of 641 local board members is Negro, though 7.1% of the total population is Negro. In Texas, only 1.1% of local board members is Negro, though 12.4% of the total population is Negro. In the City of Louisville, the total population (1964) is 389,044, of which the white population is 310,717 and the Negro population 78,245, or 21% of the total population. The Jefferson County, Kentucky, total population (1960) number 610,947, of which there are 532,057 whites and 78,350 Negroes, or 12.8% of the total population. In Harris County, Texas, of a total population of 1,243,158, 19.81%, or 246,351, is Negro.

According to the Marshall Commission Report, the unequal percentage of Negroes on draft boards was not peculiar to Kentucky, Texas or the South, but the imbalance was nationwide. Only in the District of Columbia and in Delaware were there substantial percentages of Negroes on the boards. In twenty-three states, there were no Negroes on draft boards, the Report stated.

Nevertheless the Marshall Commission said significantly in its report, "There is no evidence that the variability of the Selective Service System leads to any systematic biases against poor people, or Negroes, insofar as the final proportion of men serving in the Armed Forces is a measure of this."

. . .

Appellant argues that the quoted statistics evidence racial exclusion in the composition of draft boards, in violation of the Fifth Amendment. . . . He concludes that

if systematic exclusion of Negroes is constitutionally barred in the composition of juries, their exclusion in the Selective Service System likewise infringes his rights and requires a holding that draft boards, such as those in Kentucky and Texas which considered appellant's case, have no jurisdiction over appellant or in fact over any Negro. Thus he argues that the local boards have acted beyond their jurisdiction and may not act as to that class of registrants (including appellant) against whom it is claimed the appointing process has discriminated. Appellant concedes that considerable progress in rectifying this disparity in the several states has been made since the President's March 6, 1967, message to Congress on Selective Service, but contends that Negroes should not be selected in the future until the alleged systematic exclusion of members of that race from draft boards has ceased.

. . .

. . . We do not justify the failure to include substantial numbers of Negroes on [draft] boards. The Selective Service System must not only be fair, it must likewise have the appearance of fairness. Negro draftees should be selected for military service by a system which gives Negro citizens a full participation in the selection process. The Marshall Commission affirmed the necessity of greater participation by Negroes who are underrepresented as a class on local draft boards. The Commission said that the Negro's position in the military manpower situation is in many ways disproportionate, even though he does not serve in the armed forces out of proportion to his percentage to the population. The President in his March 6, 1967, message to Congress said in this regard: "The Nation's requirement that men must serve, however, imposes this obligation: that in this land of equals, men are selected as equals to serve. A just nation must have the fairest system that can be devised for making that selection." We concur with these remarks to the fullest. But nothing we have said justifies exemption from service in the armed forces for Negro registrants.

It is undeniable, as appellant contends, that conscription deprives an individual of his liberty and may even take his life. But we cannot properly compare the military draft to a criminal prosecution. There is no stigma attached to wearing the military uniform of the United States. To the contrary, it is a badge of the highest honor. Service under the flag of our country cannot properly be likened to imprisonment in a penitentiary. A proud nation with a long tradition of valor and bravery on the battlefield, with vivid memories in modern times of distant places . . . where Americans have fought and died to preserve freedom, would never permit a comparison so odious. It is the same willingness of Americans to sacrifice their lives in the military service of the country which has made it possible to establish the United States as a free nation, and which has successfully warded off the encroachments of its enemies. "The knowledge that military service must sometimes be borne by—and imposed on—free men so their freedom may be preserved is woven deeply into the fabric of

the American experience." President Johnson, Message on Selective Service to the Congress, March 6, 1967.

. . .

Nor is appellant's argument meritorious that composition of draft boards is similar to that of grand and petit juries. The right to trial by jury has specific constitutional authority. However, nothing in the Constitution or the Universal Military Training and Service Act requires racially proportionate selective service boards. . . . The boards are administrative agencies with specific duties, many of them purely ministerial, which are provided for by the Act and Selective Service Regulations. A jury's verdict arrived at by secret deliberation has a finality which is not at all applicable to selective service classification and induction. As we shall see, draft board appeals are considered de novo and are not judicial proceedings.

The war powers of Congress to raise and support armies are constitutionally authorized and are of paramount public importance because they directly involve the protection and preservation of the nation itself. . . . It has been long established that there is no constitutional right to exemption from military service by virtue of conscientious objection or religious calling. These exemptions do not spring from the Constitution but from the Congress. . . .

. . .

. . . Any error or invalidity in the selective service procedures up to and including the Presidential Appeal Board was cured by de novo consideration by that board which acted in the place and stead of the President himself. One third of the membership of the Presidential Appeal Board (one of three) was a Negro, which is obviously a greater proportion than Negroes bear to the total population. The decision of the board was unanimous that appellant should be classified 1-A, which action thereby cleared the way for his induction into the armed forces. Nowhere in the record in this case or in appellant's brief do we find any specific charge or evidence of discrimination against appellant because he is a Negro. There are conclusory allegations that the absence of Negroes from local and appeal boards (other than the Presidential Appeal Board) in and of itself establishes discrimination. But we have been unable to find any evidence which shows in the slightest particular that the treatment accorded Clay (Ali) by any board or member thereof was different from that given to any other registrant. Afforded every procedure known to the Act and the regulations, and an appeal to the Presidential Appeal Board to which he was not specifically entitled, appellant's refusal of induction and subsequent trial and conviction by a jury are the result of his own voluntary choice to violate the law of the land.

. . .

III. DENIAL OF THE MINISTERIAL EXEMPTION

Scope of Review. In considering the propriety of appellant's classification, and the denial of a ministerial exemption and conscientious objector status, we must keep in mind that the Act provides that decisions of the local boards are final.

. . .

[T]he scope of review of local board decisions in draft cases is very limited and the range of review is the narrowest known to the law.

. . . Congress gave the courts no general authority of revision over draft board proceedings, and we have authority to reverse only if there is a denial of basic procedural fairness or if the conclusion of the board is without any basis in fact.

. . .

The Ministerial Exemption. We turn now to the question of the denial of a ministerial exemption to appellant who claims to be a minister of the Lost Found Nation of Islam (Black Muslims). The Act provides that regular or duly ordained ministers of religion shall be exempt from service.

"The term 'regular minister of religion' means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister."

. . . Each registrant must satisfy the Act's rigid criteria for the exemption. Preaching and teaching the principles of one's sect, if performed part-time or half-time, occasionally or irregularly, are insufficient to bring a registrant under § 6(g). These activities must be regularly performed. They must, as the statute reads, comprise the registrant's 'vocation.' And since the ministerial exemption is a matter of legislative grace, the selective service registrant bears the burden of clearly establishing a right to the exemption."

. . .

Appellant was certified as a minister by the National Secretary of the Lost Found Nation of Islam and by its leader, Elijah Muhammad. He contends that he spends 90% of his time on his ministerial duties. He submitted 43 affidavits and documents said to contain the signatures of 3,612 people testifying to his ministerial activities. Finally he states that there was no evidence in his file upon which a "basis in fact" could be found to support his 1-A classification by the board. We are unable to agree with his statements or contentions. The file indicates that appellant joined his religious sect in January 1964. He has apparently earned his living as a professional boxer for a number of years and became professional heavyweight boxing champion of the world on February 25, 1964. Some years earlier he had won the world light

heavyweight boxing championship at the Olympics at Rome. He contends that he became a minister of the Muslims in early 1964. In the first information which he supplied to his local board on selective service forms, his occupation was shown to be that of "professional boxer" and "professional prizefighter." The Report of Medical History dated January 24, 1964 showed his usual occupation to be "boxing." During all this time he made numerous trips to foreign countries to engage in professional bouts which he stated required daily physical training and exercise in preparation for these prizefights. His Current Information Questionnaire dated February 2, 1966 listed his occupation as a "professional boxer" and his work as "professional fighting." Then, on February 17, 1966, the eventful and important date in this case, his 1-Y classification was changed by the local board to 1-A. Clay (Ali) had never stated to his board or claimed to be a minister or a conscientious objector prior to that time. He wrote Local Board No. 47 on February 14, 1966, just three days prior to his reclassification that "My occupation is professional boxer, and I am at present the Heavyweight Champion of the World." Even when he filled out the Special Form for Conscientious Objector dated February 28, 1966, though claiming to be a member of the Nation of Islam, he did not claim to be a minister. His letter of March 17, 1966 to Local Board No. 47 protested that his reclassification imposed "grave hardship upon me as heavyweight champion of the world at now age 24." When he appeared in person before Local Board No. 47 on March 19, 1966, boxing was listed as his livelihood. The evidence which the local board had before it was much more than necessary to constitute a "basis in fact" for his 1-A classification and denial of the ministerial exemption. His vocation is clearly that of a professional boxer.

IV. DENIAL OF CONSCIENTIOUS OBJECTOR STATUS

Appellant's claim that he is a conscientious objector began on February 18, 1966, one day after his reclassification to 1-A, at which time he was furnished the Special Form for Conscientious Objector. He was granted a personal appearance before Local Board No. 47 on March 19, 1966, pursuant to his request. The board's record of that appearance reflects that he claimed hardship on account of taking care of his parents and paying alimony to his former wife. The board's record states, "His religion teaches them not to take part in any way with infidels or any nonreligious group. They fight only in self-defense, not war. Boxing is considered his livelihood." Also, "Clay objects to being in service because he has no quarrel with the Viet Cong. Clay stated that he could not, without being a hypocrite [*sic*], take part in anything such as war or anything that is against the Moslim religion." He wrote a lengthy letter to his local board dated April 16, 1966, in which he repeated his hardship request as the sole support of his mother and on account of having to pay alimony to his first wife. He protested that two years of military service would cause him serious financial loss in being unable to pursue his livelihood as a professional boxer. The local

board nevertheless reaffirmed the 1-A classification and the registrant appealed to the appeal board. On May 6, 1966, the complete file was reviewed by the Kentucky Board of Appeals which tentatively determined that the registrant should not be classified in Class 1-O (conscientious objector) or in a lower class.

The Department of Justice then requested a Federal Bureau of Investigation investigation and a special hearing on the character and good faith of the conscientious objections of the registrant. The special hearing was held on August 23, 1966, at Louisville, Kentucky, before former Circuit Judge Lawrence Grauman as hearing officer. The hearing officer reported to the Department of Justice that the registrant stated his views in a convincing manner, answered all questions forthrightly, that he was impressed by the statements, believed the registrant was of good character, morals and integrity and sincere in his objection on religious grounds to participation in war in any form. He recommended that his conscientious objector claim be sustained. However, the Department of Justice in a detailed and comprehensive letter opposed his claim and recommended to the Kentucky Board of Appeals that it not be sustained. The Department of Justice concluded that registrant's objections to participation in war insofar as they are based upon the teachings of the Nation of Islam "rest on grounds which are primarily political and racial. These constitute objections to only certain types of war in certain circumstances, rather than a general scruple against participation in war in any form." The Department of Justice pointed out that only a general scruple against participation in war in any form can support a claim for conscientious objector status. The Department of Justice said that the registrant had not consistently manifested his conscientious objector claim and had not shown overt manifestations sufficient to establish his subjective belief where his claim was not asserted until military service became imminent, not having been made at all prior to being reclassified 1-A in February 1966. Numerous statements by the registrant made from time to time were quoted by the Department of Justice in justification of its recommendation against the registrant's conscientious objector claim.

. . .

Whether the registrant's beliefs are "truly held" is the threshold question of sincerity which must be resolved by the board. The "basis in fact" test applied to the conscientious objector claim of registrant was fully met in this case. There was more than adequate evidence to justify the rejection of his claim.

. . .

The conviction and sentence are, therefore, affirmed.

Leonard Schecter, "The Passion of Muhammad Ali" (1968)

This excerpted long-form feature on Ali, written during the appeal process when Ali was banned from boxing and apparently assumed he would be imprisoned, attempts to outline the boxer's inimitable personality and complex beliefs.

[Document Source: *Esquire*, April 1968, 126.]

The ex-heavyweight champion of the world fools around in Chicago these days, more or less in exile, because he won't go. He isn't kidding.

. . .

Muhammad Ali, shirtless, dressed in jeans and chukka boots, sat in the corner of his blue velvet couch. He ran his hands over his milk-chocolate torso, caressing, slapping, pinching the new flesh around his middle. The color television, set into a marble fireplace opposite him in this narrow living room, was tuned to a morning game show. He had used the remote-control gadget to turn the sound off but the animated lollipops on the screen continued their mindless charade. His eyes, big and brown, kept drifting back to the screen. He was talking about how busy he was.

. . .

The expression on his face turned to one of bemused pain. His handsome face, unmarked but for a thin white scar in his left eyebrow (the result of a childhood accident), is as mobile as that of a rubber puppet and he tugs and twists at it to underline emotion. When he is surprised his eyes pop out of his head and show white all around the pupil. When he is sad, his face collapses and one can almost see the tears forming. When he is happy his face glows like a pinball machine and his even white teeth gleam free games. He uses his voice the way he does his face; he never merely quotes anybody, he imitates. He drops it and whispers, he raises it to sound like a woman. He straightens up and tightens his throat and enunciates his g's and d's and he sounds like a white man. He is a performer and he glances often at the mirrored wall behind the fireplace to see how he's coming across.

"It's impossible for me to dry up and have nothing to do," he is saying. "I mean I just don't represent boxing. I'm taking a stand for what I believe in and being one thousand percent for the freedom of the black people. Naturally those who have the same fight, but on a smaller scale, they come to me," and here he whispers, "'You speak for me, too, brother, you speak for me too. I make my money from Charley but I'm with you. Man, I just jump and shout every time I see you tell them.'" Now

he raises his voice again. "So I got hundreds of places to go and talk and I'll always have them as long as I'm talking for freedom."

Ah, freedom. He now is free to talk. He used to be free to fight and he was something to see, the speed of him and the beauty of his motion, his huge, smooth body gliding in a ballet of boxing, his white ring shoes becoming a furry flurr. He was perhaps the best anybody has ever seen, because he had the modern athlete's body, as swift as it was large, and no boxer ever had one like it before. But then a sergeant in a Houston Selective Service office asked him to take a step forward and he refused because, he said, he was a minister of the Muslim faith in the Nation of Islam. The boxing commission revoked his title as heavyweight champion of the world. Rumors started, around the fight business first and then in newspapers. Rumor: he was stony-broke, living on heaven knows what, and what had happened to his money? Rumor: he had earned more than two million dollars in the ring—his gross earnings as a champion were probably twice that, except that fifty percent is conceded to his managers—but his co-religionists had stolen it, extorted it, conned him out of it. Rumor: and guess who put up the $135,000 for a mosque in Miami?

"I'll tell you one thing about that," Muhammad Ali said. Then he told a lot of things. They poured out of him like one of his sermons, most of which he excerpts from *Message to the Blackman* by Elijah Muhammad, the self-anointed Messenger of Allah. "Many reporters and many people ask me, they say, 'Champion, how you gonna live? Champion, how you eating? How you gonna make it?' I have this to say to all the reporters and all the critics who want to know why I don't fall and when I'm gonna fall. They seem to want to see that. The power structure seems to want to starve me out. I mean the punishment, five years in jail, ten-thousand-dollar fine, ain't enough. They want to stop me from working, not only in the country but out of it. Not even a license to fight an exhibition for charity. And that's in this twentieth century. You read about these things in the dictatorship countries where a man don't go along with this thing or that and he is completely not allowed to work or to earn a decent living. So this is my position. I rely on Allah. I leave it up to Allah. I believe that there is no God but Allah and I believe Elijah Muhammad is his own true messenger and I'm standing up for my religion and my salvation. If it means suffer, if it means get out of the house, give up the cars, I'll do it. Just give me a pair of blue jeans and a leather jacket, give me a stick with a rag on the back with some food in it and say, Get on the railroad tracks, and I will do it. I believe that Allah would lead me to a gold mine on the train. I might find a million-dollar bill."

. . .

He has been saying this sort of thing for years and finally it is apparent that he believes it. He is burning with fervor. He might even believe that Allah, if not the judicial

system, will save him from prison. "I am looking for Allah to do something," he says. "I am his servant. *Allah, they're punishing your servant.*"

Not all the Muslims are this fervent. Says Herbert Muhammad, one of Elijah Muhammad's eight children and a man who acts as Muhammad Ali's manager: "Yes, we believe Allah will provide. We also believe that Allah helps those who help themselves."

. . .

I wondered if anybody had encouraged him, offered him a deal perhaps, told him if he would just go into the Army he could spend two years entertaining troops, fighting exhibitions and the like.

"Every day," he said. "Everybody. Wherever I go. Businessmen. Black and white. They all tell me that. But we don't take part in no war regardless of who America is fighting."

I pointed out that pacifism could hardly be part of his religion. Moslems had been fighting, often fiercely, for centuries.

"Well, if it was their country at war, like if I was an Egyptian or Arabian or Sudanesian and I lived there and it was under attack, well naturally you'd fight."

He added that he had been urged to protest on grounds other than his religion. "Every day people call me and say, 'Why don't you make a protest?' Joe Namath ain't in. He's playing football on TV every weekend. George Hamilton ain't in. He has to support his mother and he has twelve bathrooms in the house. Negroes want me to say these things. Why should I? If two men rob a bank and I get caught, how come I should say, Well, you didn't get George. We roll the dice, we'll finish the game.

"Look, the government is nice enough to let me out on bond and travel the country. They could confine me to Houston if they want to. So I'm not going to get up and talk against the country and do all that protesting. I'm at their mercy."

If this sounds contradictory, it's only because it is. On the one hand, he says the government is nice to let him travel. And on the other he adds: "You got airplanes worth eight million dollars apiece taking off every minute on the minute. You're just loaded with wealth and bus lines and farmland, and one little Negro, who wasn't nothing, you fix it now he can't make a dollar or two. Imagine, because he don't go along with your way, and he's not an Uncle Tom for you, the whole nation takes more press time with him than a plane crash with a hundred of your white people on it. See how devilish this makes this race look?"

On the one hand he says he has lost interest in boxing. "It's a barbaric European sport," he says in his haughtiest manner. "The more religious I get, the more I don't miss it." And on the other hand, when he catches a glimpse of himself in a mirror

as he walks by, he'll whirl, strike a fighting pose, and start throwing his lightning punches. "Pow, pow, pow!" he says. He likes the way it looks and the way it feels and he does roadwork to keep his belly in bounds. If he looks forward to anything at all, it's climbing into the ring with the winner of the heavyweight elimination now being staged to replace him as champion. "Look, there's the championship belt." It was at the bottom of a small china cabinet in the dining room. "It ain't worth a quarter. But it say I won the championship from Sonny Liston. What is it going to say on the belt of the other champion, that this title was taken from Muhammad Ali with a[n] ink pen?"

. . .

On the one hand he says, "What's the use complaining? One man complains because he got no shoes. One man complains because he got no feet." But he complains that the U.S. Government is trying to starve him into being an Uncle Tom and he complains about not being accepted as a minister of his faith. "My leader has recognized me as his minister," he says. "It's not for the white man to say this is not your servant, Allah. If Pope Paul wrote a letter over here tomorrow that said this man is my priest, what you think would happen? *What you think would happen?*"

. . .

We found ourselves going over some old ground about why he had decided to refuse to be drafted. He groped for a new analogy. "You're Jewish," he said, "right? Well, suppose you was the heavyweight champion of Germany and Germany was going to war against Israel and you had a chance to make ten million dollars leading the Germans against Israel. What would you do?"

Although it was a thoughtful, even disturbing analogy, I did not believe it quite held together. He would not, I said, *could* not, identify with the Vietnamese as closely as a German Jew would identify with Israel. He cheerfully conceded this was true and then went on to explain what he had told a delegation of well-known Negro athletes who had come to discuss his views with him and perhaps prevail upon him to accept military service. When they met, Muhammad Ali said that he would talk first and then he would answer questions. He talked for an hour. This is some of what he said: "I love my people. The little Negroes, they catching hell. They hungry. They raggedy. They getting beat up, shot, killed, just for asking for justice. They can't eat no good food. They can't get a job. They got no future. They was nothing but slaves and they the most hated people. They fought in all the wars, but they live in the worst houses, eat the worst food and pay the highest rent, the highest light bill, the highest gas bill. Now I'm the one's catching hell, too. I could make millions if I led my people the wrong way, to something I know is wrong. So now I have to make a decision. Step into a billion dollars or step into poverty. Step into a billion dollars and denounce

my people or step into poverty and teach them the truth. Damn the money. Damn the heavyweight championship. Damn the white people. Damn everything. I will die before I sell out my people for the white man's money."

Muhammad Ali turned toward me, taking his eyes off the road. They were clear and luminous. His face was tight-lipped, serious. "They cried," he said. "They put their head down and they said, 'You're right, we're with you.' And one of them said, 'One day we might have to do the same thing. Would we be man enough to stand up for what we believe?'"

The important thing for Muhammad Ali, despite the hate he manages to engender, is to be loved. On the night before a fight he will walk through the Negro district, stopping to chat with people on stoops, sit on a garbage can and hold court for a large group of open-mouthed little boys and giggling girls. "My people love me," he says, "because they know I gave up all I had for them." But it's equally true that Muhammad Ali needs their love.

. . .

There were two more things I wanted to discuss with him. I asked him what he wanted out of his life. He said that was easy. "All I want is to be a well-versed minister in the Islamic faith. I'd rather be that than have ten million in cash or be the greatest fighter in history. I'd rather live in one room with just enough food to eat and drive a Volkswagen and be a minister."

The other thing had to do with something I remembered from a cold, grey morning while he was training to fight Zora Folley in New York. We had taken a taxi to the Central Park reservoir where he did his roadwork. Then, coming back to the hotel, his steamy bulk filling the front of the cab, he turned around suddenly. I was sitting in the back with James Ellis, his sparring partner, and Drew Brown, who had the unofficial title of assistant trainer. "They let you read the papers in jail?" he asked. It was then I knew for certain, although he had not yet announced it, that he would not accept induction, that he had made up his mind. And now I wanted to ask him how he felt, what he thought, now that he was faced with the reality of prison again, as he must have been, suddenly, on that cold morning.

"Who wants to go to jail?" he said. "I'm used to running around free like a little bird. In jail you got no wife, no freedom. You can't eat what you want. I know I'll get sick. Because I'm used to eating a certain way every day for six years. And now, being in prison every day, looking out of the cell, not seeing nobody. After getting so used to traveling around the country, different countries, eating good every day and sleeping good." A slight pause. "And going off by yourself if you want. A man's got to be serious in his beliefs to do that."

Judge Ingraham's Ruling on Wiretaps, June 6, 1969

After the Supreme Court remanded Ali's case, along with several others, in Giordano v. United States *(1969), Judge Ingraham conducted a lengthy hearing to determine whether illegally intercepted telephone conversations involving Ali had tainted the Department of Justice's handing of his case. In the opinion excerpted below, he reasoned there was no evidence that DOJ lawyers were aware of the content of the calls and that the content itself was so innocuous that it could not have influenced their handling of the case in any event.*

[Document Source: *United States v. Clay*, 386 F. Supp. 926 (1969).]

[T]he only manner in which the . . . conversations were argued relevant to the defendant's conviction centered around the rejection of the defendant's conscientious objector claim. This was a plausible argument, for if the recommendation by the Department of Justice to deny the claim was based upon illegally obtained evidence, the "basis in fact" which this court found for his classification would have been defective. Without such a "basis of fact," the defendant could effectively challenge the jurisdiction of the draft board which classified him and ordered him to report for induction. The specific relevancy sought between the defendant's classification and the overheard conversations involves the statement in the Department of Justice's recommendation that "registrant's objections to participation in war insofar as they are based upon the teachings of the Nation of Islam 'rest on grounds which are primarily political and racial. These constitute objections to only certain types of war in certain circumstances, rather than a general scruple against participation in war in any form.'" The defendant attempted to show first, that because Log 2 reflects Elijah's wish that Clay become a minister, and because Log 4 reflects Clay's reference to 'them whities', the logs would have a bearing on the Department's conclusion that the defendant's beliefs were political and racial, rather than religious. He secondly attempted to demonstrate how this information was transmitted upward through F.B.I. channels, through the Department of Justice and into the recommendation, and back to the draft appeals board.

As to the second argument, that the information was used by the Department of Justice in making its recommendation, there was positive testimony that the logs were not used at all in the preparation of the report. Only the most strained construction of the cross-examination testimony would support a contrary finding. But the court need not reach this question, for it believes, and so holds, that the logs are so totally innocuous they could not have had any bearing on the defendant's conviction under any circumstances. This is because, first, as regards Log 2, the Department of Justice's duty was to submit a recommendation concerning the defendant's status as a conscientious objector, not a minister. It is obvious that the Department could have, had it believed it was warranted, recommended that the defendant be granted

a conscientious objector deferment despite the fact that he was not a minister of his religion. Moreover, even if this issue had been before the Department, it is clear that the evidence that he was not a minister up to at least March 19, 1966, is overwhelming. Thus examining this log in a light most likely to demonstrate prejudice to the defendant, there is more than enough evidence to dispel possible taint. The conclusion that the defendant should not have been entitled to a ministerial exemption springs clearly from an "independent origin."

Defendant's attempt to link Log 4 to his conviction must similarly fail. To construe a passing reference to "them whities" as being the Department's basis, or even partial reason, for holding the defendant's beliefs to be political and racial is completely untenable. The conversation was not a theological discussion. The common slang reference was not within a context which could have had any bearing on the defendant's beliefs. A Negro not a member of the Nation of Islam would be as likely to say the same thing. In addition, if it had been in such a context, and it could be construed to be even viciously derogatory, again there was ample evidence from an independent origin before the Department to conclude that the Muslim religion holds the white race in contempt.

As regards Logs 1 and 3, they are so totally innocuous even defendant's counsel could not point to any specific language which could bear on the defendant's conviction. The thrust of defendant's argument concerning these logs, as well as Logs 2 and 4 was that there must have been other matters discussed by the parties which were relayed to the Department of Justice. The court does not credit this argument. The testimony was clear that the original tapes were erased immediately after the logs were typed, and that the logs received in evidence were the only ones prepared. The individuals who monitored the conversations in Phoenix testified that they communicated no other information to anyone.

Jimmy Cannon, "Cassius Clay is the Sixties" (1970)

In this piece, leading sports writer Jimmy Cannon attempts to sum up his time and the controversy swirling around Ali and his conscientious objector claim by arguing that Ali represented much of what was wrong about the 1960s.

[Document Source: Gerald Early, ed., *The Muhammad Ali Reader* (New York: Harper Collins), 81.]

The athlete of the decade has to be Cassius Clay, who is now Muhammad Ali. He is all the sixties were. It is as though he were created to represent them. In him is the trouble and the wildness and the hysterical gladness and the nonsense and the rebellion and the conflicts of race and the yearning for bizarre religions and the cult

of the put-on and the changed values that altered the world and the feeling about Vietnam in the generation that ridiculed what their parents cherish.

Even Malcolm X is part of what Clay was in the sixties and the historians already have celebrated the force of his philosophy on his times. It was Malcolm X who persuaded Clay to be a Black Muslim. But Malcolm X was shot in a New York dance hall by guys with X's in their names and Clay would discuss his old friend as a traitor.

The kids shriek when they protest, and Clay would open that immense mouth and scream. He goes along with the proposition that reality should be avoided and ducks into the cave of his imagination. He seriously discusses great religious philosophies and stands up for segregation and often sounds like he is shilling for the Ku Klux Klan when he explains his theories of race.

The character he used as a contender for the heavyweight championship would have been all wrong in any other decade. He called himself the greatest and the prettiest and demeaned the guys he had to fight and attempted to humiliate them. He was conceited and never stopped bragging, and then suddenly he claimed he was a minister of the Black Muslim sect and they convicted him for draft evasion.

The urge for celebrities to be martyrs was another symptom of the sixties and Clay went along with the play and seems eager to go to jail for being a devout Muslim. He never went to college but he made that scene and now travels around lecturing at universities to students who understand his conman comedy and the unsophisticated evangelism and kindergarten philosophy.

It was logical he would be called the greatest champion in all the ages of boxing. This was a decade when the critics were afraid of things they couldn't understand and honored chaos in the arts. They praised Clay with a wild irresponsibility. He is the best around but his reputation was established by two fights with Sonny Liston.

The old head-breaker out of the St. Louis mobs quit, sitting in his corner the first time. In the second fight, an effete looping right hand knocked him out in the first round, as Clay yelled down at him that people would think it was fake if he didn't get up.

The Sixties were a bad time, but some of the years were wonderful. And, because I make my living writing sports, Cassius Clay is the sixties for me.

Oral Arguments in Clay v. United States*, April 19, 1971*

The oral arguments in Clay *reveal the complexities of the case. The Supreme Court asked the lawyers to argue a single question: whether the Department of Justice's characterization of Ali's beliefs as political and racial, rather than religious, necessitated reversing Ali's conviction. Both attorneys, however, attempted to broaden their arguments. Solicitor General Erwin Griswold attempted to reframe the question by arguing that the government had never characterized Ali's beliefs as nonreligious, but had merely made the more defensible claim that his religious objections to war were selective. At one point, Justice Potter Stewart ex-*

pressed frustration with this approach and some of the justices privately grumbled that the case had been poorly argued. After a lengthy recitation of the complicated procedural history of the case, Ali's attorney Chauncey Eskridge included arguments about Ali's sincerity and the nature of Islamic pacifism. The excerpt of the oral arguments below begins with this.

[Document Source: Transcribed from a digital recording of oral arguments available at https://www.oyez.org/cases/1970/783.]

Justice Douglas: To what extent do the black Muslims follow the teachings of the Qur'an? I'm not the world's best authority on the Qur'an, although I've read most of it, and as I read it, the Qur'an itself provides for participation in so-called holy wars?

Chauncey Eskridge: Yes, sir. The holy war—

Justice Douglas: . . . I don't know about the black Muslims, do they adopt the Qur'an or—

Chauncey Eskridge: They adopt the Qur'an, especially the one that's edited by Muhammad—you see, there's two names; Maulana Muhammad Ali, that's their official version. And it—they use it and they couple it with the black man's experience in the United States. Hence, there's somewhat, it's not clear as to how much they interpret from the Holy Qur'an, how much they interpret from the Bible or from the *Message to the Black Man*.

Justice Douglas: Are you familiar with the *Negre* case recently decided by this Court?

Chauncey Eskridge: I am, sir.

Justice Douglas: There, there was a—apparently the historic relation of that church involved in that case was a segregation of just war. Is this *jihad* in the Qur'an, the equivalent of the just war—

Chauncey Eskridge: Right.

Justice Douglas: As opposed to the unjust war?

Chauncey Eskridge: Your Honor, this is the first time that I had ever heard anybody suggest that black Muslim theology came from any just or unjust wars.

Justice Douglas: I'm talking about the *jihad* which is in the Qur'an as a war that the Qur'an embraces as the kind of war. I didn't agree with the Court in the *Negre* case, but I'm just wondering the relevancy of that here?

Chauncey Eskridge: That war means a theocratic war which is the same as the kind of war that *Sicurella* war. The Jehovah's Witnesses, they believe in the war of Armageddon, which is a war against right versus wrong.

Justice Douglas: I think the Mediterranean littoral has seen *jihads*, well maybe not for several hundred years, but historically there've been quite a few, haven't there?

Chauncey Eskridge: There may be, but I doubt that they would be what the Muslims speak of as the Nation of Islam. What they mean by that is not a territorial area, but it means the religious group.

Justice Douglas: Yes. Well I'm not trying to attribute to the black Muslims this teaching of the Qur'an because I just don't know, but my question is does the record show what the Black Muslims believe in this respect?

. . .

Justice Stewart: Well, "Muslim," as I understand it, is the Nation of Islam . . . [it] certainly cannot be acquainted with the Muslim religion in such nations as Iran and Pakistan and the Arab countries of the Middle East.

Chauncey Eskridge: No, sir.

. . .

Justice Stewart: And isn't it not . . . largely confined to North America, the United States of America?

Chauncey Eskridge: It is totally confined.

. . .

Justice Stewart: Right. And so when there's talk of the defense of Islam, we're not talking necessarily about a war in which a Muslim country would be involved in, such as Iran or Pakistan?

Chauncey Eskridge: No, sir. The defense—where they use the word defense, they mean the defense of Islam. They mean the defense of religion, not persons.

. . .

Now, we go further. We say that if you read this advice letter in which the Department of Justice disparages the religion, and then . . . they say that his religion is racist and political. Then they go on and [say] . . . "The main thrust of the letter that he had written in which he claims other, other classifications." Then they say there's something wrong with this, that he has shifted his position, but remember he was 1-Y all the way up to February 1966, so that he had no occasion to apply for a lower qualification because conscientious objector is higher. . . .

But notwithstanding that, they go on and say "The registrant has not shown . . . overt manifestations sufficient to establish his subjective belief whereas here, his conscientious objector claim was not asserted until military service became imminent." In other words, you're saying that he had a lack of sincerity. Now, not only did this mislead the appeal board, we say, but this even misled the Fifth Circuit, because in

the last opinion of the Fifth Circuit on page 249, footnote 9, the Fifth Circuit on its opinion says, "The Kentucky appeal board thereafter continued the 1-A classification of Clay. That there was also a basis of fact for the numerous local boards, state appeal boards and Presidential Appeal Board's classification of Clay, thereby including an adverse determination of the question of Clay's basic sincerity."

So that this language, we say of his sincerity threw off not only the appeal board, but threw off the Fifth Circuit. We're asking the Court to take into account that *Sicurella* also said that where two erroneous positions or one erroneous position was given to an appeal board or local draft board that this requires a reversal of a man's conviction because the Court has no way of knowing whether or not one—which one the draft board accepted because here, the record does not indicate which one of the grounds that the appeal board rested upon.

Chief Justice Burger: Thank you, Mr. Eskridge. Mr. Solicitor General?

. . .

Erwin Griswold: May it please the Court. This is an appeal from a judgement sustaining a conviction for refusal to report for induction. The defense, of course, is the question whether the order to report for induction was valid. In the posture of the case as it now stands that turns on the propriety of the action of the Selective Service System with respect to a claim of conscientious objection.

. . .

Now the transcript of the hearing [during Ali's selective service appeal] is in the appendix, but I think it is very important for the Court to bear in mind what the nature of that hearing was. It was not an adversary proceeding. The government was not represented except through the hearing officer who it is perfectly plain acted in the most impartial way and asked questions for the purpose of clarifying things for his own mind, but not in an adversary way. No evidence was offered on behalf of the government at this hearing, either with respect to the beliefs of the black Muslim sect or the beliefs of the petitioner, except insofar as that may appear from the resume of the F.B.I. report which was made as a part of the hearing.

Chief Justice Burger: Are you speaking now, Mr. Solicitor General, of the hearing officer appointed in Kentucky?

Erwin Griswold: The hearing officer appointed by the Department of Justice who held a hearing in Louisville, Kentucky. In this situation it's perhaps surprising that there is as much evidence as there is of the selective nature of the petitioner's objections.

There has been one other case before the Court involving a black Muslim. That's the case of United States against Carson, in which this Court denied certiorari in 396 U.S. 865 and where the Solicitor General in his brief in opposition took the ground

that the objection of the black Muslim was essentially a selective objection and I can refer to that in connection to what this Court said in the *Gillette* opinion. There is a danger that as between two would-be objectors, both having the same complaint against the war, that objector would succeed who is more articulate, better educated or better counseled.

Justice Stewart: I think it is common ground, however, Mr. Solicitor General, is it not, that the dispositive question is the particularized beliefs of this individual registrant, or that individual registrant, rather than the basic tenets of the religious sect to which he adheres?

Erwin Griswold: Yes, Mr. Justice. I fully agree it is the—

Justice Stewart: And it goes both ways, there are two sides to that coin?

Erwin Griswold: I agree that is the beliefs of this individual, except that in this case, this individual has stated unequivocally that he accepts the beliefs of the sect, and there has been introduced at the hearing as establishing his beliefs documents showing the beliefs of the sect and I don't see how he can disassociate himself from these materials which he has offered in support of his position.

. . .

Justice Stewart: What I'm interested in learning is what among the various possible bases, what was the basis in fact? Now the various possible bases, at least in this case were: (A) that he was insincere; (B) that his objection was not religiously rooted or grounded; (C) that his objection was selective, and it was not to war in any form, but to . . . a particular war, some wars, but not other wars, there may be others. But which of those first three [was the] basis in fact?

Erwin Griswold: Well, I believe that the only one that is before the Court now is the latter one. That is the only question—

Justice Stewart: Selective objection?

Erwin Griswold: That is the only question that is covered by the grant of certiorari, whether petitioner's conviction should be vacated in the light of this Court's decision in *Welsh*, because the denial to petitioner of a conscientious objector exemption may have been based upon the Department of Justice's erroneous characterization of his objections to participation in wars as political and racial, rather than religious.

Justice Stewart: Well then, we're not involved with selective objection, are we?

Erwin Griswold: . . . There is in this record a basis in fact for the conclusion that the petitioner's objection, though religious, is selective. Now that is that he is not opposed to participation in war in any form as statute requires, but that is in fact to oppose to fighting what he regards as the white man's wars, although having no

religious or conscientious scruples against participation in war which would defend the black man's interest.

Justice Stewart: You don't question the sincerity of Mr. Ali?

Erwin Griswold: No, Mr. Justice, we do not.

Justice Stewart: Nor as I understand that the fact that it was religiously rooted?

Erwin Griswold: Certainly not, Mr. Justice. We assert that it was religiously rooted, just as we did in *Negre*. No one could conceivably have contended in *Negre* that his objection was not religious.

Justice Stewart: You haven't—I assume you're going to deal with the *Sicurella* case, Mr. Solicitor—

Erwin Griswold: Yes, Mr. Justice.

Justice Stewart: Very Good.

Erwin Griswold: The petitioner just doesn't want to fight the white man's wars, and I can understand that. But it's not the same sort of belief as the opposition to participation in war in any form which is held by the pacifist, and is required by the statute. Now surely as has been pointed out, the traditional, historical Muslim religion is not pacifist. One need only refer to the crusades and to the more recent Seven Days War as adequate evidence of that fact. And although my—counsel for the petitioner here differentiated his client from the traditional Muslims, I would point out that they introduced in evidence in support of his position a modern standard translation of the Qur'an, a translation by a Pakistani, not by a member of the black Muslims.

It's equally sure it seems to me that the black Muslim religion is not regarded as pacifist, in the sense at least that the Quakers and the Mennonites are pacifists. As this record shows, there are strong racial undertones in the black Muslim religion, and in the petitioner's beliefs. Now, there is thus a basis in fact for a conclusion exactly parallel to that already reached by the Court in *Negre* that the objections of the petitioner here, though undoubtedly religious as *Negre*'s were are in fact selective.

A different selection to be sure than that made by *Negre*, but nevertheless selective, and thus not within the statutory prescription which allows conscientious objection to those who are opposed to participation in war in any form.

Justice Stewart: To what wars do you understand the record shows that he would not be opposed?

Erwin Griswold: He would not be opposed to wars in which the black Muslims were attacked or involved, and nor would he be opposed to—

Justice Stewart: That would be a civil war, wasn't it? That would necessarily be a civil war, if this religion is pretty well confined in the United States of America?

Erwin Griswold: That would presumably be some kind of a civil war, but might not necessarily be. Again I would like to point out that the record shows that the petitioner went to the Middle East, was accorded the great distinction of being allowed to enter the temple at Mecca. His disassociation with the traditional Muslim religion is by no means complete, and it's by no means clear that if the domestic hierarchy of the black Muslims decided that its members should participate in general Muslim wars that he would not participate.

Justice Stewart: Well that's—I had difficulty with this. Are you submitting that this record shows that this registrant would fight in a war in which say Algeria, or Jordan, or Iraq, or Pakistan or Iran were engaged? Do you think that's what—?

Erwin Griswold: Well, he says so. He says specifically that . . . if Elijah Muhammad ordered him to do so, which he didn't think he would, but if Elijah Muhammad ordered him to do so, he would and that I think is inconsistent with a pacifist position.

. . .

Justice Stewart: Mr. Solicitor General, the question, the case you've argued is not that that was covered by our limited grant of certiorari, is it?

Erwin Griswold: To the best of my ability, Mr. Justice, it has been. I'm sorry if—

Justice Stewart: Well, I just point out that the question to which we limited this grant of certiorari was whether petitioner's conviction should be vacated because the denial to him of a conscientious objector exemption may have been based upon the Department of Justice's erroneous characterization of his objection to participation in wars as political and racial, rather than religious. And as I understand it, you've begun this argument this morning by conceding that they were religious—

Erwin Griswold: And so we have all the way along, Mr. Justice. This is nothing—

Justice Stewart: And that the—you argued the question as to whether or not he was a selective objector, which is not the question in which we granted certiorari?

Erwin Griswold: That, Mr. Justice, I think is precisely the situation in the *Negre* case. Our position in the *Negre* case, in those words in our brief was that *Negre*'s essential objection was political and philosophical, and though based on religious grounds was not the kind of religious objection which was covered by the statute and that is precisely the argument which we make here. We have never contended that Clay's objections were not religious. We have always contended that the nature of Clay's objections is so infused with, so intertwined with political and racial considerations that his religious objections do not make the test of the statute namely that he is opposed to participate in war in any form. And I have been endeavoring to try to develop my argument within the terms of the grant of certiorari, believing or contending that our position here is exactly parallel with that in *Negre* where the contention was undoubtedly religiously motivated.

Supreme Court Opinion in Clay v. United States *(1971)*

The Supreme Court's per curium opinion, written by Justice Stewart, reversed Ali's conviction on the grounds that the Department of Justice had erroneously advised Selective Service System officials that Ali's conscientious objector claims were not sincere and did not derive from religious beliefs. Justices William O. Douglas and John Marshall Harlan II wrote separate concurring opinions. Internal citations are omitted where appropriate.

[Document Source: *Clay v. United States*, 403 U.S. 698 (1971).]

PER CURIAM.

The petitioner was convicted for willful refusal to submit to induction into the Armed Forces. The judgment of conviction was affirmed by the Court of Appeals for the Fifth Circuit. We granted certiorari to consider whether the induction notice was invalid because grounded upon an erroneous denial of the petitioner's claim to be classified as a conscientious objector.

I

The petitioner's application for classification as a conscientious objector was turned down by his local draft board, and he took an administrative appeal. The State Appeal Board tentatively classified him I-A (eligible for unrestricted military service) and referred his file to the Department of Justice for an advisory recommendation, in accordance with then-applicable procedures. The FBI then conducted an "inquiry" as required by the statute, interviewing some 35 persons, including members of the petitioner's family and many of his friends, neighbors, and business and religious associates.

There followed a hearing on "the character and good faith of the [petitioner's] objections" before a hearing officer appointed by the Department. The hearing officer, a retired judge of many years' experience, heard testimony from the petitioner's mother and father, from one of his attorneys, from a minister of his religion, and from the petitioner himself. He also had the benefit of a full report from the FBI. On the basis of this record the hearing officer concluded that the registrant was sincere in his objection on religious grounds to participation in war in any form, and he recommended that the conscientious objector claim be sustained.

Notwithstanding this recommendation, the Department of Justice wrote a letter to the Appeal Board, advising it that the petitioner's conscientious objector claim should be denied. Upon receipt of this letter of advice, the Board denied the petitioner's claim without a statement of reasons. After various further proceedings which it is not necessary to recount here, the petitioner was ordered to report for induction. He refused to take the traditional step forward, and this prosecution and conviction followed.

II

In order to qualify for classification as a conscientious objector, a registrant must satisfy three basic tests. He must show that he is conscientiously opposed to war in any form. He must show that this opposition is based upon religious training and belief, as the term has been construed in our decisions. And he must show that this objection is sincere. In applying these tests, the Selective Service System must be concerned with the registrant as an individual, not with its own interpretation of the dogma of the religious sect, if any, to which he may belong.

In asking us to affirm the judgment of conviction, the Government argues that there was a "basis in fact," for holding that the petitioner is not opposed to "war in any form," but is only selectively opposed to certain wars. Counsel for the petitioner, needless to say, takes the opposite position. The issue is one that need not be resolved in this case. For we have concluded that even if the Government's position on this question is correct, the conviction before us must still be set aside for another quite independent reason.

III

The petitioner's criminal conviction stemmed from the Selective Service System's denial of his appeal seeking conscientious objector status. That denial, for which no reasons were ever given, was, as we have said, based on a recommendation of the Department of Justice, overruling its hearing officer and advising the Appeal Board that it "finds that the registrant's conscientious-objector claim is not sustained and recommends to your Board that he be not [so] classified." This finding was contained in a long letter of explanation, from which it is evident that Selective Service officials were led to believe that the Department had found that the petitioner had failed to satisfy each of the three basic tests for qualification as a conscientious objector.

. . .

In this Court the Government has now fully conceded that the petitioner's beliefs *are* based upon "religious training and belief," as defined in *United States v. Seeger*: "There is no dispute that petitioner's professed beliefs were founded on basic tenets of the Muslim religion, as he understood them, and derived in substantial part from his devotion to Allah as the Supreme Being. Thus, under this Court's decision in *United States v. Seeger*, his claim unquestionably was within the 'religious training and belief' clause of the exemption provision." This concession is clearly correct. For the record shows that the petitioner's beliefs are founded on tenets of the Muslim religion as he understands them. They are surely no less religiously based than those of the three registrants before this Court in *Seeger*.

The Government in this Court has also made clear that it no longer questions the sincerity of the petitioner's beliefs. This concession is also correct. The Department hearing officer—the only person at the administrative appeal level who carefully ex-

amined the petitioner and other witnesses in person and who had the benefit of the full FBI file—found "that the registrant is sincere in his objection." The Department of Justice was wrong in advising the Board in terms of a purported rule of law that it should disregard this finding simply because of the circumstances and timing of the petitioner's claim.

Since the Appeal Board gave no reasons for its denial of the petitioner's claim, there is absolutely no way of knowing upon which of the three grounds offered in the Department's letter it relied. Yet the Government now acknowledges that two of those grounds were not valid. And, the Government's concession aside, it is indisputably clear, for the reasons stated, that the Department was simply wrong as a matter of law in advising that the petitioner's beliefs were not religiously based and were not sincerely held.

This case, therefore, falls squarely within the four corners of this Court's decision in *Sicurella v. United States*. There as here the Court was asked to hold that an error in an advice letter prepared by the Department of Justice did not require reversal of a criminal conviction because there was a ground on which the Appeal Board might properly have denied a conscientious objector classification. This Court refused to consider the proffered alternative ground . . . .

. . .

The doctrine thus articulated 16 years ago in *Sicurella* was hardly new. It was long ago established as essential to the administration of criminal justice. . . . The long established rule of law embodied in these settled precedents thus clearly requires that the judgment before us be reversed.

It is so ordered.

MR. JUSTICE MARSHALL took no part in the consideration or decision of this case.

MR. JUSTICE DOUGLAS, concurring.

I would reverse this judgment of conviction and set the petitioner free.

In *Sicurella* the wars that the applicant would fight were not "carnal" but those "in defense of Kingdom interests." Since it was impossible to determine on exactly which grounds the Appeal Board had based its decision, we reversed the decision sustaining the judgment of conviction. We said: "It is difficult for us to believe that the Congress had in mind this type of activity when it said the thrust of conscientious objection must go to 'participation in war in any form.'"

In the present case there is no line between "carnal" war and "spiritual" or symbolic wars. Those who know the history of the Mediterranean littoral know that the *jihad* of the Moslem was a bloody war.

This case is very close in its essentials to *Negre v. Larson*, decided March 8, 1971. The church to which that registrant belonged favored "just" wars and provided guidelines to define them. The church did not oppose the war in Vietnam but the

registrant refused to comply with an order to go to Vietnam because participating in that conflict would violate his conscience. The Court refused to grant him relief as a conscientious objector, overruling his constitutional claim.

The case of Clay is somewhat different, though analogous. While there are some bits of evidence showing conscientious objection to the Vietnam conflict, the basic objection was based on the teachings of his religion. He testified that he was

> "sincere in every bit of what the Holy Qur'an and the teachings of the Honorable Elijah Muhammad tell us and it is that we are not to participate in wars on the side of . . . nonbelievers, and this is a Christian country and this is not a Muslim country, and the Government and the history and the facts shows that every move toward the Honorable Elijah Muhammad is made to distort and is made to ridicule him and is made to condemn him . . . and the outright, every day oppressors and enemies are the people as a whole, the whites of this nation. So, we are not, according to the Holy Qur'an, to even as much as aid in passing a cup of water to the—even a wounded. I mean, this is in the Holy Qur'an, and as I said earlier, this is not me talking to get the draft board—or to dodge nothing. This is there before I was borned and it will be there when I'm dead but we believe in not only that part of it, but all of it."

At another point he testified: "[T]he Holy Qur'an do teach us that we do not take part of—in any part of war unless declared by Allah himself, or unless it's an Islamic World War, or a Holy War, and it goes as far—the Holy Qur'an is talking still, and saying we are not to even as much as aid the infidels or the nonbelievers in Islam, even to as much as handing them a cup of water during battle."

"So, this is the teachings of the Holy Qur'an before I was born, and the Qur'an, we follow not only that part of it, but every part."

The Koran defines *jihad* as an injunction to the believers to war against nonbelievers:

> "O ye who believe! Shall I guide you to a gainful trade which will save you from painful punishment? Believe in Allah and His Apostle and carry on warfare (*jihad*) in the path of Allah with your possessions and your persons. That is better for you. If ye have knowledge, He will forgive your sins, and will place you in the Gardens beneath which the streams flow, and in fine houses in the Gardens of Eden: that is the great gain."
>
> . . .
>
> War is not the exclusive type of *jihad*; there is action by the believer's heart, by his tongue, by his hands, as well as by the sword. . . .
>
> . . .
>
> The *jihad* is the Moslem's counterpart of the "just" war as it has been known in the West. Neither Clay nor Negre should be subject to punishment because he will

not renounce the "truth" of the teaching of his respective church that wars indeed may exist which are just wars in which a Moslem or Catholic has a respective duty to participate.

What Clay's testimony adds up to is that he believes only in war as sanctioned by the Koran, that is to say, a religious war against nonbelievers. All other wars are unjust.

That is a matter of belief, of conscience, of religious principle. Both Clay and Negre were "by reason of religious training and belief" conscientiously opposed to participation in war of the character proscribed by their respective religions. That belief is a matter of conscience protected by the First Amendment which Congress has no power to qualify or dilute as it did in § 6 (j) of the Military Selective Service Act of 1967 when it restricted the exemption to those "conscientiously opposed to participation in war in any form." For the reasons I stated in *Negre* and in *Gillette v. United States*, that construction puts Clay in a class honored by the First Amendment, even though those schooled in a different conception of "just" wars may find it quite irrational.

. . .

MR. JUSTICE HARLAN, concurring in the result.

I concur in the result on the following ground. The Department of Justice advice letter was at least susceptible of the reading that petitioner's proof of sincerity was insufficient as a matter of law because his conscientious objector claim had not been timely asserted. This would have been erroneous advice had the Department's letter been so read. Since the Appeals Board might have acted on such an interpretation of the letter, reversal is required under *Sicurella*.

Jim Murray, "It's Okay to set Ali free—Many others have paid the price" (1971)

While the Supreme Court's opinion in Clay *was generally well received, some critics complained that Ali's privileged position had enabled him to challenge the draft system in ways that were denied to ordinary inductees. This editorial, written days after the Supreme Court announced its decision, is an example of that critique.*

[Document Source: *Boston Globe*, July 1, 1971.]

OK, everybody up! Let's hear it for the Supreme Court!

Do you realize what these guys have saved us from? The martyrization of Muhammad Ali, that's what! I get a headache every time I think of it, him caged and

chained, a national ulcer on the body of America, a suppurating wound on our prostrate republic. He would be Dreyfus, Joan of Arc, the prisoner of Shark Island, John Brown's Body—a tragic victim of history. Leavenworth would have become another Uncle Tom's Cabin. No matter where you went in the world, you would not dare criticize anything, or your host would flare up and say, "Nuts to you! What about Muhammad Ali?" He would have been an international embarrassment.

Besides, what's one more soldier? We got plenty of kids we can draft, right? They've only killed over 40,000 over there, and most of those left still have most of their arms and legs. You going to make a Federal case out of one guy?

Of course, none of this weighed in the deliberations, if any, of the court. They decided it on law alone. I have great respect for the justices of the Supreme Court, even the one who writes for Playboy.

I will say I was startled at the alacrity with which they turned our pugilist loose. It was a shutout; the ex-champ won every round on the card of all eight judges—8–0. Usually, these guys vote 6–3 on what time it is. Usually, somebody writes a searing dissent opinion scolding the whole world, but this tribunal found Ali "sincere" in not wanting to go to war. Well, I would guess so!

Like I say, I applaud the decision. The United States would have bred a king-size scab for itself by imprisoning Robin Hood. Still, I can't help wishing the decision could be retroactive to spare the 140,414 Union soldiers who lost their lives in the Civil War. Or the 291,557 killed in World War II. I don't think the guys who went to Shiloh or Tarawa were too crazy about it, either.

Now, don't get me wrong. I think it's a swell idea if a guy can go to a war of his choice and say, "I pass," on the others.

The Supreme Court, by ruling the Justice Department and the rest of the cognizant jurisprudence in his case were "simply wrong as a matter of law," summarily makes them look like a bunch of bumptious bigots. To be sure, the highest court in the land has the wisest barristers, but, surely, some of the lesser beings along the way must have looked up some law? Alas, perhaps not. Perhaps the learned justices are the only eight people in the United States with the mental capacity to grasp the Constitution. At any rate, they're the only eight who count.

The argument is posed Ali had suffered enough anyway in his three-year banishment from the ring. Well, that's true enough. He was down to his last Rolls-Royce. And he was gone so long that Joe Frazier, a journeyman in-fighter, was able to build himself up to a $20 million gate with Ali. Had Ali fought him in the normal course of events along the way, it would have been a Friday night fight on TV.

Anyway, I'm glad for reasons other than patriotism that our No. 1 pacifist can now go around beating the bejabbers out of people for a few million dollars. A lot o[f] my rich friends were getting cynical about the court. They were beginning to

think only the poor or the criminally guilty were entitled to the full protection of the law. Now we see a millionaire from Cherry Hill, N.J., is getting equal treatment with convicted murderers, street rioters and people who sell government secrets. They said when President Nixon appointed a court, it would be a rich man's court and darned if they weren't right! As usual.

Les Matthews, "Hail Ali's Victory: Free At Last" (1971)

This piece from the front page of one of the nation's oldest black newspapers attempted to capture more positive reactions to the Supreme Court's decision by asking New Yorkers for their responses to the outcome of the case.

[Document Source: *New York Amsterdam News*, July 3, 1971.]

The fans are happy over Muhammad Ali's biggest victory—the 8–0 decision Monday by the U.S. Supreme Court.

Mrs. Dorothy LaRoach, business woman, 125th St: "They knew all the time that he was not guilty. I think they should have handed up their decision earlier and it would have saved Muhammad Ali and the government a lot of time and money.

Mrs. Grace Olds, nurse, 135th St: "I was very happy that the Supreme Court handed up the decision freeing Muhammad Ali. I was also very proud of him for standing his ground. There are so many more who would fight for their convictions but cannot foot the bill."

Lou Lutour, public relations coordinator for Community School District 5: "Each person is entitled to his beliefs, that is why God gives us that inner feeling. Mr. Ali felt that he should be exempted from the draft because of his religious holdings and God saw to it that he won his case."

Vernone E. Johnson, director of "A Beautiful Experience["] Repertory Theatre: "It is about time that a black man has truly won in the courts[.] Ali was sincere in his beliefs and he should be respected for this. Because he did have the money to fight in the court enabled him to accomplish something that a poor man could never do."

. . .

Larry Jamison, a clerk in a liquor store on 86th Street and Amsterdam Avenue: "If that's his religion, what else can he do? He seems fully aware of his religion, so why not?

. . .

Happy after scoring his biggest victory when the Supreme Court reversed the draft evasion conviction and ruled that Muhammad's Muslim faith qualified him

as a conscientious objector, Ali is looking ahead to a return with Joe Frazier the heavyweight champ.

. . .

The victory for Muhammad Ali was also a victory for boxing since his presence give[s] the sport a spark and now that he is able to move about freely he will give the sport the lift it needs. The versatile Ali, inside and outside the ring, is now being recognized by the World Boxing Association which withdrew its recognition after he was sentenced to spend five years and pay [a] $10,000 fine.

. . .

Muhammad Ali gives a lot of credit to the Court decision to his lawyer Chauncey Eskridge and Elijah Muhammad, the leader of the Moslem Nation to which Ali will return after hanging up his gloves. . . .

Muhammad Ali, Foreword to Muhammad Ali's Greatest Fight *(2000)*

In this brief forward to a book published in 2000 about his resistance to the Vietnam draft, Muhammad Ali reflects on the lessons he took away from his legal battle.

[Document Source: Howard L. Bingham and Max Wallace, *Muhammad Ali's Greatest Fight: Cassius Clay vs. the United States of America* (New York: M. Evans, 2000), 9.]

I never thought of myself as great when I refused to go into the army. All I did was stand up for what I believed. There were people who thought the war in Vietnam was right. And those people, if they went to war, acted just as brave as I did. There were people who tried to put me in jail. Some of them were hypocrites, but others did what they thought was proper and I can't condemn them for following their consciences either. People say I made a sacrifice, risking jail and my whole career. But God told Abraham to kill his son and Abraham was willing to do it, so why shouldn't I follow what I believed? Standing up for my religion made me happy; it wasn't a sacrifice. When people got drafted and sent to Vietnam and didn't understand what the killing was about and came home with one leg and couldn't get jobs, *that* was a sacrifice. But I believed in what I was doing, so no matter what the government did to me, it wasn't a loss.

Some people thought I was a hero. Some people said that what I did was wrong. But everything I did was according to my conscience. I wasn't trying to be a leader. I just wanted to be free. And I made a stand all people, not just black people, should have thought about making, because it wasn't just black people being drafted. The government had a system where the rich man's son went to college, and the poor man's son went to war. Then, after the rich man's son got out of college, he did other things to keep him out of the army until he was too old to be drafted. So what I did was for me, but it was the kind of decision everyone has to make. Freedom means being able to follow your religion, but it also means carrying the responsibility to choose between right and wrong. So when the time came for me to make up my mind about going into the army, I knew people were dying in Vietnam for nothing and I knew I should live by what I thought was right. I wanted America to be America. And now the whole world knows that, so far as my own beliefs are concerned, I did what was right for me.

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