

WHITEHEAD & VOGL

ATTORNEYS AND COUNSELORS

314-18 COLORADO BUILDING

DENVER, COLO.

PHONE 3110

May 23, 1918.

Mr. Walter Nelles,
70 Fifth Avenue,
New York City.

Our 3385.

Dear Sir:

When Benj. J. Salmon's case was taken to the Circuit Court of Appeals on writ of error, he was released on bond furnished by his mother, Catherine Salmon, and James T. Smith. The bill of exceptions has been approved and the record is now prepared and ready to go to the Circuit Court of Appeals and will be sent on Saturday of this week, as it must be in St. Louis by May 29th.

On May 16th the local board issued an order of induction into military service, reciting that: "Having submitted yourself to a local board composed of your neighbors for the purpose of determining the place and time in which you can best serve the United States in the present emergency", etc., and thereupon ordering Salmon to report to the local board at 7:30 P. M. on May 19th.

On the afternoon of Saturday, May 18th, Salmon's bondsmen took him to the United States Marshal and delivered him to the Marshal. The Marshal refused to accept him, and went to see the Clerk of the Court and also the United States District Attorney. It was the opinion of the Clerk that the Marshal should accept Salmon, but the District Attorney advised him not to do so. Nevertheless the bondsmen left Salmon in the Marshal's office and he stayed there until the office closed and he was turned out. Thereupon he asked our advice and we advised him to go and remain in the custody of his mother, Catherine Salmon, who was one of his bondsmen. He did so, and remained either in her custody or in the custody of his other bondsman until he was arrested on Monday afternoon, the 20th, as hereafter recited.

On Saturday, the 18th, I believe it was, he telephoned one or two of the members of the Board and asked them whether they had made a mistake, and they told him they had not and that they had sent out the order after conferring with District Attorney Tedrow and Judge Lewis, both of whom had advised them to follow the regulations, ^{though} the members of the Board confessed that they were not sure whether they were exactly following the regulations, or not. They did

not say that Tedrow and the Judge had directed them specifically what to do, but had simply told them to proceed according to the regulations, and this was the nearest they could come to following the regulations. They admitted freely that Salmon had not submitted himself to the Board but that they had used a form reciting that he had submitted himself to the Board for the reason that that was the only printed form that they had, and they admitted that the order might be void or might be voided.

I believe it was on Sunday, the 19th, that Salmon telephoned one of the members of the Board and that they were called together for 7:30 P. M. on the 19th, for instructions, but that the train would not leave until nine o'clock the following morning and they would not do anything with him for failure to appear on the evening of the 19th, but would arrest him if he did not appear at nine o'clock on Monday morning, the 20th.

Salmon did not appear at the train on Monday morning, the 20th, but instead he sent to the Board a letter, a copy of which we enclose. This letter was delivered to one of the members of the Board at the train, and at that time Salmon was in the custody of his bondsman, James T. Smith, at 312 Colorado Building, and remained at the office of James T. Smith until arrested in the afternoon. No

At the opening of Court on Monday morning, Mr. Vogl appeared with Mrs. Salmon and asked Judge Pollock, who was sitting in place of Judge Lewis, to order Salmon into the custody of the Marshal. Judge Pollock was of the opinion that the District Court had no jurisdiction and that the case was entirely within the jurisdiction of the Circuit Court of Appeals and therefore that he could issue no order, and he gave us until two o'clock to present authority to him.

We could find no direct authority on the point, so Mr. Vogl appeared again at two o'clock, but the Judge was not there, and although he waited quite a long time, the Judge did not appear.

Between eleven o'clock and noon we sent a letter to the local board stating where Mr. Salmon was and stating that he was about to leave for his home with his mother, his other bondsman.

About that time we learned that a police officer was out looking for Salmon, and we telephoned the Chief of Police and told him Mr. Salmon was in the custody of his bondsmen at 312 Colorado Building. The Chief of Police inquired very carefully about his being in the custody of his bondsmen and expressed some hesitation about arresting him under such circumstances. We told him that we did not think they had any right to arrest him, but we did not want it to appear that Salmon was evading or hiding in any way.

Thereafter Salmon waited at Mr. Smith's office and I had talks with two or three members of the local board and informed them fully of the situation.

They expressed no animosity towards Salmon and said they wanted to make it as easy for him as they could, and that they were simply doing their duty.

About the middle of the afternoon two officers came, being police officers of the City of Denver, and Mrs. Salmon then stated her protest against his arrest and we stated the protest of the other bondsman, Mr. Smith, but the officers took him to the police headquarters, and we understand that there was then quite an extended conference between the Chief of Police, the Commissioner of Safety, and the United States District Attorney, and the Chief of Police and the Commissioner of Safety demurred a long time before finally permitting the officers to take Salmon to the local board.

Finally they did permit him to be taken before the local board and the local board at a very short and formal hearing found him guilty of wilful desertion and sent him to Fort Logan, which is our nearest camp.

The following morning we understand that he was given an opportunity to make a statement and he then dictated a statement of the entire affair from the very beginning, including the Court proceedings and everything. The statement was to be transcribed by the stenographer and given to him to sign.

That was on Tuesday, the 21st, and in that evening Mrs. Salmon received a telephone message from him stating that he had been ordered to Camp Funston and was just getting on the train to leave for Camp Funston, in charge of two guards (the newspaper said two guards, but we are not sure whether he stated that to Mrs. Salmon, or not.)

So far as we are advised, Salmon has been very quiet and self-contained at all times. He is absolutely sincere in his religious convictions against war. It is not simply a conscientious objection with him, but is a real, deep-seated religious conviction. He looks upon the commands of the Bible as absolute and that his punishment for disobedience to them would be greater than any punishment which could be inflicted upon him by human beings for disobedience to the civil or military law.

Of course we have no idea what will be done with him at Camp Funston, but we thought that it was possible that something might happen which would make action at Washington immediately imperative, and therefore we thought that a full statement of the matter ought to be in your hands.

Incidentally we would say that at one time during the proceedings above outlined, District Attorney Tedrow intimated that we were running considerable risk in advising Salmon under the circumstances. This intimation was made to Mr. Vogl, and Mr. Vogl simply informed Mr. Tedrow that Mr. Tedrow knew nothing about what we were advising Mr. Salmon, and this was the fact.

As a matter of fact, we have never advised Salmon to refuse to obey the military authorities. His stand had been fully taken before he ever came to us, and we had never met him until after he had been charged with the crime of refusal to return his Questionnaire.

He has never asked our advice as to whether to subject himself to the military authorities, but has always taken the positive stand that he would not do so.

Our advice as to his delivering himself to his bondsmen was given on behalf of the bondsmen, one of whom had gone on his bond as a personal accommodation to us as well as to Salmon, and we felt that the bondsmen should be released at all hazards, and then if the military authorities had the right to take him from the custody of the civil authorities the bondsmen could not be injured thereby because they would have done their full duty in delivering him up to the civil authorities.

Yours very truly,

WHITEHEAD & VOGL,

Per *Carl Whitehead*

P. S.--Your telegram was duly received.

There is real dependency in this case, but it cannot be taken advantage of because Salmon will not fill out and return a Questionnaire, which is necessary under the section cited by you.

C. W.