Notes and Comments

The Selective Service

I. Introduction

The Selective Service System is the only government institution outside the criminal courts with the power to condemn a man to possible death. The draft, through its unique mixture of local discretion and national advice, decides which men must spend two years of their lives in the armed forces, perhaps in armed combat, and which may live their lives uninterrupted.

A system with such telling power deserves careful scrutiny, even ignoring America’s current war effort. We have attempted a detailed study of the structure and administration of the draft, using both public information and empirical research. To learn how the draft really works, we interviewed Selective Service officials and sent a questionnaire to 300 randomly selected local draft boards. While officials were most cooperative in discussing the draft, we experienced considerable difficulty with the questionnaires. First, the Office of Public Information of the Selective Service System refused to supply a list of local board addresses, stating that “their use is confined to official administrative purposes.” A list was compiled from local telephone directories. More important, the response to the questionnaire was too spotty for statistically significant generalization. Nevertheless, the results illuminate some of the draft’s present problems.

[1.] Several important aspects of the System will not be discussed, either because they have been treated extensively elsewhere or because they are tangential to the Comment’s thesis. For example, the problems of conscientious objectors are not covered. Materials on every aspect of this problem can be obtained by sending $4.00 to the Central Committee for Conscientious Objectors, 2006 Walnut St., Philadelphia, Pa. (requesting the Kit for Lawyers and the Kit for Counselors). See also Bierstedt, Conscientious Objection to Particular Wars, Civil Liberties, April, 1966, p. 2. Similarly, the problems of aliens will not be dealt with, nor will the special provisions for drafting doctors. Other parts of selective service not covered include the provision for returning veterans to get reinstatement in their former jobs and the provision for Reserves.

[2.] The questionnaire, along with a discussion of the problems in obtaining access to reliable information about the System, is found in Appendix A.

[3.] Letter from Capt. William Pascoe, Public Information Officer, Selective Service System, May 5, 1966. It is hard to see why the Office of Public Information would not want to facilitate the obtaining of information directly from the local boards so that the actual administration of the System could be more easily understood and explained.
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The most serious flaw in the system is the principle of local discretion, which is basic to the present administrative structure. Originally designed to avert the fierce resistance to conscription stirred by the Civil War system, the local discretion model has since become obsolete. In fact, the draft now functions as a hybrid in which national policy jostles with local authority, affording neither coherent standards, responsible decision-makers, nor procedural essentials.

This Comment does not attack either the concept of conscription, or the idea of a selective rather than a universal system—i.e., a draft in which some parts of the population are freed from military service in the “national interest.” Nor does it attempt to judge which deferments are desirable. It suggests simply that once a selective system is chosen, its procedures should give those affected fair notice of when their turns may come, and of how they may present grievances. We conclude by proposing changes in the structure of Selective Service.

II. A Brief History of Selective Service

A. Early History and the Civil War Experience

Conscription has been a part of the American military structure since the beginning of colonial history; and the concept of selective conscription—allocating manpower for military needs without crippling the economy—has been present from the beginning.

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[4.] For such a discussion see, e.g., John Graham, The Universal Military Obligation (1958).
[6.] For example, whether certain types of students should be deferred is not in issue; rather the focus is on how the decision was made to defer those students, and once made, how that decision is applied as individual students go through the system.
[7.] Virginia, for example, enacted a law in 1629 ordering that:
... every commander of the several plantations appointed by commission from the governor shall have the power and authority to levy a partie of men out of the inhabitants of that place soe many as well be spared without too much weakening of the plantations and to imploy those men against the Indians ....
Hershey, Outline of Historical Background of Selective Service 1 (1952) [Hereinafter cited as Historical Outline].

Not all conscriptions have had this balancing factor:
Everyone will now be mobilized, and all boys old enough to carry a spear will be sent to Addis Ababa. Married men will take their wives to carry food and cook. Those without wives will take any woman without a husband. ... Anyone found at home after the receipt of this order will be hanged.

In Revolutionary times armies were raised and maintained through a colonial militia system which “embrac[e] one of the cardinal principles of Selective Service,” the assumption that “every male citizen owed an obligation to bear arms for the protection of his community.” Historical Outline 2.
It was the Civil War which provided the basis for the modern Selective Service philosophy. Conscription, in force both North and South, became a nightmare for the Union. Begun in 1863, the draft soon became a tool for coercing people into volunteering for service.

The Federal military controlled the system, with no local participation; delinquents and deserters were captured and punished by the military. Many local communities found themselves victims of an occupying army, impressing young men into service. Further, a draftee could hire a substitute for about $300; the war was conducted with maximum feasible participation of the poor.

Reaction to the draft was violent; anti-war and anti-draft riots broke out in many parts of the country. The worst violence was in New York City:

[T]he Federal draft went into effect in New York City on 11 July, 1863. Two days later a frenzied mob, composed chiefly of Irish laborers, sacked the draft office, looted private homes, lynched eighteen Negroes, and fought pitched battles with policemen and soldiers. Not until 16 July was order restored. Something like seventy to eighty deaths marked this greatest urban insurrection in the nation's history.

Following the Civil War, Brig. Gen. James Oakes wrote a report recommending a structural overhaul of the draft. Principally, the report urged the decentralization of conscription, with authority placed in the hands of local boards composed of "civilian neighbors." The local citizens would administer most phases of the draft, including registration. In addition, delinquents were to be prosecuted by the Justice Department, rather than the military. The hiring of substitutes would be dropped, and deferments would be made on an individual basis, for cause only.

The Report's emphasis on broad discretion vested in local civilian
neighbors remains a pillar of the present Selective Service System. The model of local discretion, advanced a century ago, is considered by Lt. Gen. Lewis Hershey, head of Selective Service, to be one of the “priceless lessons” of the early experience.

B. The Modern System Develops

The current draft pattern was in part foreshadowed by the Selective Service Act of 1917, which created local boards with responsibility for registering men for a national lottery. Anyone chosen by lot could still be deferred if he fitted into one of the categories for exemption or deferment. It was, however, the Selective Training and Service Act of 1940 which formed the beginning of “modern selective service.” The Act was administered by unpaid civilians serving on local boards, and created deferments in the national health, safety, and welfare. Since 1941 the national director of the draft has been Lt. Gen. Lewis Hershey.

The 1941 Act expired in 1947, and for about a year there was no draft. The Cold War, however, institutionalized the peace-time draft. On March 17, 1948, President Truman made a special address to Congress. In proposing the first long-range peace-time draft in the nation’s history, the President said:

Universal training is the only feasible means by which the civilian components of our armed forces can be built up to the strength required if we are to be prepared for emergencies. . . .

* * *

I recommend the temporary re-enactment of selective service legislation in order to maintain our armed forces at their authorized strength. . . . They have been unable to maintain their authorized strength through voluntary enlistments.

[16.] Ibid.
[17.] Act of May 18, 1917, 40 Stat. 76.
[18.] Historical Outline 7.
[20.] Hershey, Memorandum from General Hershey, S. Doc. No. 82, 89th Cong. 2d Sess. 4 (1966). [Hereinafter cited as Memorandum].
[21.] Shaw, supra note 10, at 52; Historical Outline 9-12.
[22.] During this time enlistments fell off greatly, and it became clear that the draft was a major if not the major stimulus for enlistments. It has been estimated that 70% or more of the enlistments in the Army come about because of the stimulus of the draft.
[23.] Although the Act of 1940 was passed in peace-time, it was enacted in the face of a growing certainty about the coming of World War II.
Congress, however, rejected Truman's call for universal service—in which everyone trains for a short time and remains in readiness to be called—and chose a selective service system, in which some men are deferred on a "national interest" criterion, and others serve for a relatively long period (at present two years). Selective Service was chosen because 1) it would conserve manpower, protecting the nation's economy and technology; 2) it would maintain maximum flexibility, by having forces already serving, thus avoiding the need for a call-up if swift military action were taken; 3) it would be more economical. All of the essential elements of the present system were provided for in the 1948 Act.

Congress appeared to reverse this decision for a selective system in 1951, when it passed the Universal Military Training & Service Act. In addition to extending the 1948 Act's selective system for four years, it provided the structure for a universal system by creating a National Security Training Corps, to train young men for an anticipated large scale manpower call-up. This Corps functioned for several years; but as more men reached draft age than were needed, and as the need for increased manpower failed to materialize, the Corps became defunct. Despite the title of the Act, the nation is still operating solely under a selective system, which comes up for extension in 1967.

III. The Philosophy of the Selective Service System

The men who ran the draft have never forgotten the "priceless lesson" of the disastrous Civil War experience: that "no system of compulsory service in this country could long endure without the support of the people." And public support requires public involvement:

The people of the country will support a compulsory system only to the extent that they have confidence in its fairness and they

[25.] See, e.g., 94 CONG. REC. 6998 (1948).
[26.] Committee on Armed Services, Selective Service Act of 1948, S. REP. No. 1258, 80th Cong., 2d Sess. 2 (1948). Because of the need for a pool of trained men to augment active forces, provision was made for a system of reserves. Id. at 8.
[30.] Written Summary of Interview with Col. Daniel Omer, Deputy Director and General Counsel of Selective Service System, April 21, 1966, on file at Yale Law Journal.
[31.] The draft is due to expire in July 1967. 77 Stat. 4 (1963), 50 U.S.C. APP. § 467(c) (1964). Discussions in Congress and the tentative conclusions of one Presidential study indicate that a draft will be needed for the foreseeable future. See Hearings before the House Committee on Armed Services, 89th Cong., 2d Sess. 9942 (1966) [Hereinafter cited as 1966 Hearings].
[32.] Memorandum 4.
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will have confidence in a system only to the extent which they themselves operate it. The Selective Service System is, therefore, founded upon the grassroots principle, in which boards made up of citizens in each community determine when registrants should be made available for military service.33

Expanding on this statement, the Deputy Director of the System explained that the draft’s central theme is flexibility. He noted that Selective Service functions very “loosely,” especially compared with other federal agencies, and thus can respond to the nation’s fast-changing defense needs. There are no rigid rules, or specific criteria, or hard and fast procedures—the classification is “administrative, not legalistic.”34 Each registrant is called or deferred in light of the current manpower needs of the army and the national interest.35

Discussing the basic policies of Selective Service, the Deputy Director stressed the importance of local board autonomy, a “team” effort on the part of the entire system, dedicated work by unpaid board members, and an informal method of operation throughout the system. This informal method, and the resulting “harmony” within the draft, was largely developed through the efforts of Gen. Hershey in getting to know almost all the members of the System, and his informal discussions of policy with them.36

The draft, then, is based on a philosophy which rejects a firm, nationally-directed system of rules and procedures, and which places great faith in local discretion and informality.

IV. How the Draft Works

A critical examination of the Selective Service System is not possible without a regretfully detailed description of the draft’s structure, to illustrate what and who the registrant faces at each step of the classification and appeal process.

[33.] Ibid.
[34.] Interview with Col. Omer, April 21, 1966.
[35.] For those who play bridge, the Deputy Director drew the following analogy to illustrate the philosophy of the System: rather than take an exact point-count of each hand and look up in a book the exact bid which the hand calls for, the hand should be considered in the whole context of the game and the point system should only be a general guide. If it is remembered why the point system is used, the hand may be bid in a flexible manner. The registrant is like the bridge hand—instead of issuing a set of exact criteria and specific procedures to follow in his classification, the system uses an overall policy to flexibly evaluate each registrant and determine what the best interests of the country and the registrant are, in light of the flexible need for raising an army. Interview with Col. Omer, April 21, 1966.
[36.] Ibid.
A. Initial Classification—The Local Board Level

At age eighteen every American male must register with his local Selective Service board. He is given a draft card which he must carry at all times. Once he registers with a local board that board retains jurisdiction over him regardless of changes of address.

After registering with the board, the registrant is given a questionnaire for the purpose of placing him into one of eighteen classifications. Classifications include deferments (which temporarily keep a person out of the service while he is in a certain category, but which extend the age until which he is liable for service), exemptions (which exempt a person from serving unless there is a declaration of war or national emergency by Congress), and various classifications indicating availability for full or limited service. By regulation, the classifications are listed in a priority order, the lowest priority being the last to be called. The registrant is placed in the lowest category for which he is qualified.

Certain of the classifications are provided for by the Act itself, including the exemptions for completing military service, ministerial exemp-

[40.] 32 C.F.R. § 1621.9 (1962).
[42.] Ibid.; 32 C.F.R. § 1622 (1962), as amended, 32 C.F.R. § 1622 (Supp. 1966). The classifications in order of priority are:

1-A: Available for military service.
1-A-O: Conscientious objector available for noncombatant military service only.
1-O: Conscientious objector available for civilian work.
1-S: High school or college student who has received notice to report for induction, who is deferred until the end of the academic year.
1-Y: Registrant available for military service, but qualified for service only in event of war or national emergency.
2-A: Registrant deferred because of civilian occupation.
2-C: Registrant deferred because of agricultural occupation.
2-S: Registrant deferred because of activity in study.
1-D: Exemption for member of reserve component or student taking military training.
3-A: Deferment for registrant with child or children or registrant deferred by reason of extreme hardship for dependants.
4-B: Officials deferred by law.
4-C: Aliens.
4-D: Exemption for minister of religion or divinity student.
4-F: Registrant not qualified for military service on physical, mental or moral grounds.
4-A: Exemption for registrant who has completed service or sole surviving son of person killed in military service.
5-A: Registrant over the age of liability for military service.
1-W: Conscientious objector performing civilian work.
1-C: Exemption for member of the armed forces of the United States, the Coast and Geodetic Survey, or the Public Health Service.

Persons deferred in the national interest in categories 2-A, 2-C, and 2-S are liable for service until age 35. Persons are otherwise liable for service only until age 26. All deferments are made on an individual basis. 50 U.S.C. App. § 456(h) (1964).
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tion, deferment for certain officials and deferment for one year for a
student who receives notice to report for induction.\textsuperscript{43} The President is
authorized to make other classifications, including the deferments in
the national health, safety and interest.\textsuperscript{44}

1. \textit{Local Board Members}. The local boards consist of at least three
unpaid civilian, male residents of the county in which the board is
located.\textsuperscript{45} There is at least one board in every county (generally one for
every 100,000 people) except for some rural areas in which one board
covers several counties.\textsuperscript{46} The members of the board are appointed
by the President on recommendation of the state Governor.\textsuperscript{47} Under
his general authority to delegate any power vested in him by the Act,\textsuperscript{48}
the President has delegated to the National Director the job of approving
the recommendations made by the governors for the local board
members.\textsuperscript{49} There are no fixed terms of service for members of the
board.\textsuperscript{50}

From the questionnaires sent to the local boards, the returns from
thirteen urban boards indicated the following occupations of the board
members:

- Small Businessman: 22
- Lawyer: 10
- Big Businessman: 9
- Professional (not lawyer): 6
- Salesman: 5
- Government Worker: 4
- Agriculture: 3
- Factory Employee: 1

The under-representation of members of the laboring and lower
classes on these thirteen boards is striking.\textsuperscript{51} In addition, there have
been complaints that many Southern boards do not include Negroes.\textsuperscript{52}

2. \textit{Local Board Clerks}. The local boards are staffed by clerks: paid

\textsuperscript{43} 50 U.S.C. App. § 456(b)-(i) (1964).
\textsuperscript{44} 50 U.S.C. App. § 456(h) (1964).
\textsuperscript{45} 50 U.S.C. App. § 460(b)(2) (1964); 32 C.F.R. § 1604.52 (1962).
\textsuperscript{46} 50 U.S.C. App. § 460(b)(3) (1964); 32 C.F.R. § 1604.51 (1962).
\textsuperscript{47} 50 U.S.C. App. § 460(b)(2) (1964); 32 C.F.R. § 1604.52 (1962).
\textsuperscript{48} 50 U.S.C. App. § 460(c) (1964).
\textsuperscript{49} Interview with Col. Omer, April 21, 1966.
\textsuperscript{50} 32 C.F.R. § 1603.5 (1962).
\textsuperscript{51} The under-representation among suburban and rural boards was as striking.
Among 21 suburban board members only 3 were in the working class, and among 20 rural
board members none was a laborer.
\textsuperscript{52} See N.Y. Times, December 13, 1965, p. 27, col. 3; N.Y. Times, Sept. 18, 1966,
p. 72, col. 1; 1966 Hearings 9919 (statement of Congressman Ryan).
employees whose salary is set by the National Director, rather than by civil service. Because of the tremendous volume of work carried on by the local board, the unpaid board members cannot possibly keep up with the daily routine. The clerks are thus the first person the registrant encounters in the system, and often the only one he ever sees in person. This puts the clerks in the position of making tentative classification and advising the registrants. A Congressman recently charged that the important draft board work is done by the clerks and that the board members merely “rubber stamp” their decisions.

3. Government Appeal Agents. Attached to every local board is a government appeal agent. He is a civilian, with legal training and experience “whenever possible,” and is not paid for his draft work. His duties are (1) to appeal from any classification of the local board brought to his attention which he feels should be reviewed; (2) to suggest to the local board that it reopen classifications if needed; (3) to attend meetings with the local board when the board so requests; and (4) to “render such assistance to the local boards as it may request by advising the members and interpreting for them laws, regulations and other directives.” The appeal agent is in a position to provide free legal advice to the registrant, and thus his role in the system is potentially a very important one. However, the questionnaires from eleven appeal agents indicated that the agents may not be playing such an important part in the system. From January to March, 1966, eleven agents helped a total of sixteen registrants—and ten of them were helped by a single agent. Only two of the agents spent more than one hour a month on draft work, and the most time spent in any month was four hours.

It should be noted that the appeal agent is in the somewhat strange position, for a lawyer, of having to be “equally diligent in protecting

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<tr>
<th>Number of Registrants helped:</th>
<th>Jan.-March 1966</th>
<th>Jan.-March 1965</th>
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<tbody>
<tr>
<td>Urban</td>
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<tr>
<td>0 (four agents)</td>
<td>0 (three agents)</td>
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<tr>
<td>10 (one agent)</td>
<td>1 (one agent)</td>
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<tr>
<td></td>
<td>3 (one agent)</td>
<td></td>
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<tr>
<td>Suburban</td>
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<tr>
<td>1 (one agent)</td>
<td>1 (one agent)</td>
<td></td>
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<tr>
<td>Rural</td>
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<tr>
<td>0 (two agents)</td>
<td>0 (two agents)</td>
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<tr>
<td>2 (one agent)</td>
<td>1 (two agents)</td>
<td></td>
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<tr>
<td>3 (two agents)</td>
<td>3 (one agent)</td>
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\[55.\] 32 C.F.R. § 1604.71(a) (1962).
\[57.\] The responses showed the following:
the interests of the Government and the rights of the registrant in all matters."58

4. Advisors to Registrants. By regulation, advisors to registrants may be appointed to the local boards by the National Director, on recommendation of the State Director, to advise and assist registrants in the preparation of questionnaires and other selective service forms and to advise registrants on other matters relating to their liabilities under the selective service law.59

If a board has advisors attached to it the names and addresses of the advisors must be conspicuously posted at the board. The advisors are also unpaid civilians. The advisors, like the appeal agents, appear to play a very limited role. The sixteen boards answering a questionnaire about the extent of the adviser’s activities reported a total of only five registrants helped between January and March of 1966—four of them by one board. Two other boards reported that they had no advisor.60

5. Local Board Procedure. There are no fixed guidelines for the procedure to be followed by the local boards. They are charged with the duty and authority to hear and determine, subject to the right of appeal to the appeal boards herein authorized, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this title. . . .61

Approximate time per month spent in connection with draft work:

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<thead>
<tr>
<th></th>
<th>None (two agents)</th>
<th>1 hour (one agent)</th>
<th>2-3 hours (one agent)</th>
<th>None (one agent)</th>
<th>None (three agents)</th>
<th>less than 1 hour (one agent)</th>
<th>3-4 hours (one agent)</th>
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<tr>
<td>Urban</td>
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<td>Suburban</td>
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<tr>
<td>Rural</td>
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</table>

[60.] The following responses were received to the question "How many registrants were helped by the advisors to registrants in the months Jan.-March, 1966?"

<table>
<thead>
<tr>
<th></th>
<th>None</th>
<th>No advisor</th>
<th>None</th>
<th>Four</th>
<th>No advisor</th>
<th>One</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban</td>
<td>9</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td></td>
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<tr>
<td>Suburban</td>
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<td></td>
</tr>
<tr>
<td>Rural</td>
<td>3</td>
<td>1</td>
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</table>

The local board classification is made solely on the basis of the selective service forms and any written evidence in the registrant's file, produced either by the registrant or by the board. The board does not consider oral information unless it is summarized in writing and placed in the registrant's file. The registrant may submit written information to the board to be used for classification at any time, and the registrant always has access to his file.

If the registrant is dissatisfied with his classification he can personally appear before the board if he gives written notice of his desire for an appearance within ten days after receiving his classification. He may present any written information to the board and put it in his file, and may be accompanied by another person or persons at the board's discretion; however, he may not be represented by counsel. After the appearance the registrant may put a written summary of the appearance in his file. The board is not required to give reasons for the classification it decides upon after the appearance.

B. Appeal—The State Level

1. State Appeal Board. If the registrant is still dissatisfied with his classification he may, within ten days, file written notice and appeal to the state appeal board for his district. In addition, the State Director, the National Director, or the government appeal agent may appeal the registrant's classification on behalf of either the registrant or the government, to the state board.

No particular form is required for a written notice of appeal; any written indication of dissatisfaction is sufficient. Each federal judicial district has a state appeal board, composed of five unpaid civilian men appointed by the President on recommendation of the Governor. By regulation, the appeal board should be a composite board, representative of the activities of its area, and as such should include one member from labor, one

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[67.] Ibid.
[68.] 32 C.F.R. § 1626.2 (1962). On appeal of a claim for conscientious objectors the registrant has a right to a hearing before the Justice Department. 32 C.F.R. § 1626.25 (1962).
[70.] 32 C.F.R. § 1626.11(a) (1962).
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member from industry, one physician, one lawyer, and, where applicable, one member from agriculture.\textsuperscript{73}

The state appeal boards make a de novo classification. The registrant has a right to enclose written material along with his file, explaining why he feels the local board was wrong, and what information he feels the local board did not consider adequately.\textsuperscript{74} The appeal board considers:

(1) information contained in the record received from the local board (the registrant's file);
(2) general information concerning economic, industrial, and social conditions.\textsuperscript{75}

“General information” includes, for example, the fact that nuclear scientists are strategic, that we are in an undeclared war in Vietnam and that the need for manpower is therefore increased.\textsuperscript{76} While the board need not give reasons for its decision, it must record the numerical vote of the members.\textsuperscript{77}

2. State Director. The President is authorized to appoint a State Director for each headquarters in each state (New York has two, one for New York City and one for the rest of the state). The State Director represents the Governor and directs the activities of the state system. He is given a salary and can be a member of the military.\textsuperscript{78}

C. Further Appeal—the National Level

1. The President's Appeal Board. A registrant who is still dissatisfied after the state appeal board acts may have a further right of appeal to the President’s Appeal Board if (1) there was a dissenting vote in the state appeal board\textsuperscript{79} or (2) the State Director or National Director takes an appeal for him.\textsuperscript{80} This appeal, as with the personal appearance or the appeal to the state appeal board, stays induction.\textsuperscript{81} The President’s Appeal Board consists of three civilian men, compensated by the hour,

\textsuperscript{73} Ibid.
\textsuperscript{74} 32 C.F.R. § 1626.12 (1962).
\textsuperscript{75} 32 C.F.R. § 1626.24(b) (1962).
\textsuperscript{76} Written Summary of Interview with Edwin J. Dentz, Executive, National Selective Service Appeal Board, April 22, 1966, Washington, D.C., on file at Yale Law Journal. In general, things which may be judicially noticed can be included as “general information.” Interview with Col. Omer, April 21, 1966.
\textsuperscript{77} 32 C.F.R. § 1626.27 (1962).
\textsuperscript{78} 50 U.S.C. App. § 460(b)(3) (1964); 32 C.F.R. § 1604.12 (1962).
\textsuperscript{79} 32 C.F.R. § 1627.3 Supp. 1966.
\textsuperscript{80} 32 C.F.R. § 1627.1(a) (1962).
\textsuperscript{81} 32 C.F.R. § 1627.8, 1626.41 (1962).
appointed by the President. The board is independent of the National Director.

There is no personal appearance before the President's Board, which makes a de novo classification based on the materials in the registrant's file. When the file comes before the board, the executive of the board, a lawyer, briefs the cases and makes tentative recommendations. After it makes a classification, the board is not required to, and does not at present, give reasons for its decisions.\textsuperscript{82} The board disclaims any role as a policy-making organ and its decisions are not intended to act as precedent.\textsuperscript{83} Nor are there specific written materials, outside the general regulations and the executive order creating the board which describe the procedures used by the board in deciding on a classification.\textsuperscript{84}

2. National Director. The Act authorizes the President to appoint a salaried National Director of Selective Service to administer the national system.\textsuperscript{85}

D. Reopening Classifications

The registrant may, on the discovery of new facts or changed circumstances, request that his classification be reopened.\textsuperscript{85} In addition, the State Director or National Director may order the local board to reopen his classification.\textsuperscript{87} There is no right of appeal from a decision not to reopen the classification. However, if the classification is reopened the registrant may make a personal appearance and appeal an unfavorable decision. Such appeals stay induction.\textsuperscript{88}

E. Judicial Review

The registrant who wants to take his case to court will find little relief from that quarter. Indeed, he will find it difficult to obtain review at all. The courts have allowed review only by habeas corpus after induction and defense to a criminal prosecution for failure to report for induction.\textsuperscript{89} Neither of these routes is attractive; habeas

\textsuperscript{82} Interview with Edwin Dentz, April 22, 1966.
\textsuperscript{83} Ibid.
\textsuperscript{84} Letter from Edwin Dentz, May 10, 1966, on file at Yale Law Journal.
\textsuperscript{86} 32 C.F.R. § 1625 (1962).
\textsuperscript{87} 32 C.F.R. § 1625.3 (1962).
\textsuperscript{88} 32 C.F.R. § 1625.13,14 (1962).
\textsuperscript{89} Witmer v. United States, 348 U.S. 375, 377 (1955); There is no direct judicial review of the actions of the [Selective Service] Appeal Boards. Questions concerning the classification of the registrant may be raised either in a petition for habeas corpus or as a defense to prosecution for failure to submit to induction into the armed forces.

Habeas corpus: \textit{e.g.}, United States ex rel. Levy v. Carn, 149 F.2d 338 (2d. 1945). Criminal defense: \textit{e.g.}, Estep v. United States, 327 U.S. 114 (1946).
The Selective Service

corpus requires rigid exhaustion of remedies,90 and the stakes in a
criminal prosecution are five years in prison.91 Even if the registrant
obtains a hearing, he has a limited chance of getting the merits of his
classification considered, since the Act declares the board’s decisions
to be “final.” The Supreme Court, however, has carved out a moderate
scope of review. In Estep v. United States92 the Court held that review
would lie where the draft board exceeded its jurisdiction by baselessly
classifying a registrant:

The provision making the decisions of the local boards “final”
means to us that Congress chose not to give administrative action
under this Act the customary scope of judicial review which ob-
tains under other statutes. It means that the courts are not to
weigh the evidence to determine whether the classification made
by the local boards was justified. The decisions of the local boards
made in conformity with the regulations are final even though
erroneous. The question of jurisdiction of the local board is
reached only if there is no base in fact for the classification which
it gave the registrant.93

Errors in procedure have been a basis for judicial reversal of board
classifications;94 the courts have been wary, however, of “weighing” the
substantive merits of classification.95

Other methods of review from draft classifications are unavailable. See, e.g., Reap v.
James, 232 F.2d 507 (4th Cir. 1956) (declaratory judgement and injunction); Buít cf.
Townsend v. Zimmerman, 237 F.2d 376 (6th Cir. 1956); United States v. Mancuso, 139
F.2d 90 (3rd Cir. 1945) (mandamus) Drumheller v. Local Board, 130 F.2d 610 (3d Cir.
1942). For general discussion of judicial review under selective service, see three articles
by Shaw in MILITARY LAW REVIEW: SELECTIVE SERVICE; A SOURCE OF MILITARY MANPOWER, 13
SELECTIVE SERVICE RAMIFICATIONS IN 1964, 29 MIL. L. REV. 123 (1965); see also, Shipley,
SELECTIVE SERVICE: FINALITY OF DRAFT BOARD DECISIONS, 41 A.B.A.J. 709 (1955), Comment, 114
U. PA. L. REV. 1016 (1966). Cases are collected in LEGAL ASPECTS OF SELECTIVE SERVICE
(1953), published by the general counsel of the System [hereinafter cited as LEGAL
ASPECTS].

90. E.g., ex parte Catanzaro, 138 F.2d 100 (3rd Cir.), cert. denied, 321 U.S. 793 (1943);
 corpus has been denied in practically every case involving the selective service law.”

91. 50 U.S.C. APP. § 462 (1964). There is a provision for parole into the armed forces
for convicted violators, but it has never been used. Interview with Col. Omer, April 21,
1966.

92. 327 U.S. 114 (1946). Congress accepted Estep’s standard for review when it passed

93. 327 U.S. 114, 122-23.

94. See e.g., Steele v. United States, 240 F.2d 142 (1st Cir. 1956) (failure to post names
and addresses of advisors coupled with failure to advise of deadline for application for
dependency deferment); United States v. Ransom, 223 F.2d 15 (7th Cir. 1955) (arbitrary
refusal to reopen classification in light of prima facie evidence of grounds for deferment);
Talcott v. Reed, 217 F.2d 360 (9th Cir. 1954) (denial of right to personal appearance);
United States v. Bender, 206 F.2d 247 (3rd Cir. 1953) (use of evidence not contained in
registrant’s file); Chih Chung Tung v. United States, 142 F.2d 910 (1st Cir. 1944) (denial
of right to appeal to State Appeal board).

95. The courts have on occasion applied the “basis in fact” test and reversed the
classification on substantive grounds. See, e.g., Riley v. United States, 223 F.2d 780 (9th
F. After Classification

1. Induction Procedures. When the registrant is classified 1-A, 1-A-O or 1-O he is called for a physical and mental examination by the Army. The Surgeon General of the Army sets the criteria for passing the examinations, which are administered by the Army. Although the local boards may place someone in the 4-F category if the person has an "obvious defect," (there is a list of such defects provided by the Army), the examination is for the most part left to the Army; local boards rarely place registrants in the 4-F class on their own initiative.

If a registrant is 1-A, 1-A-O or 1-O and he presents evidence to the board of a disqualifying defect, the board may order him to have a physical examination before his normal turn. There is no provision, however, for a person who is presently deferred to obtain a physical examination before his turn (before he loses his deferment and is classified 1-A). In recent years the System decided to process 18 year-olds for physical examination before classification in order to remove the uncertainty felt by people not yet classified.

There is, by regulation, an order of induction of those classified 1-A who have had their physical examination:

(1) delinquents;
(2) volunteers;
(3) non-volunteers between 19 and 26 who are not married, or who were married after August 26, 1965 (these men are called oldest first);

Cir. 1955), United States v. Hagaman, 213 F.2d 86 (3rd Cir. 1954). In addition, the courts have sometimes declared the basis for classification to be arbitrary; for example, the willingness of a registrant to defend himself if attacked was disallowed by several courts as a basis for denying a conscientious objector deferment. Letter from Edwin Dentz, May 10, 1966.

There are also a few cases in which the courts insisted on certain general due process rights for the registrant. See, e.g., United States v. Peebles, 220 F.2d 114 (7th Cir. 1955) (prejudiced attitude of members of local board was a denial of fair hearing), Franks v. United States, 216 F.2d 266 (9th Cir. 1954) (registrant must have a "fair chance" for proper classification in personal appearance), United States v. Cain, 149 F.2d 338 (2d Cir. 1945) (right to know and rebut evidence).

[96] A summary of relevant statistics indicating the size of the system, the distribution of registrants in the various classifications, and the volume of work handled by the different levels of the system, is presented in Appendix B.


[98] Interview with Col. Omer, April 21, 1966.


[100] This was done to help eliminate some of the uncertainty registrants encounter: "This would result in an earlier determination of those men not qualified for active duty who need rehabilitation, while those found qualified could make future plans." DIRECTOR OF SELECTIVE SERVICE, 1965 ANN. REP. 16 [Hereinafter cited as 1965 REPORT].

There is no reason why others in the system should not be allowed to eliminate the same uncertainties; those presently deferred as students, for example, should be allowed to have an examination if they so request.

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(4) non-volunteers between 19 and 26 who were married before August 26, 1965 (oldest first);\(^{102}\)
(5) non-volunteers who are over 26 (youngest first);
(6) non-volunteers who are between 18\(\frac{1}{2}\) and 19 (oldest first).

When a man reports for induction he is given a second physical examination at the induction center which is also administered by the Army.\(^{103}\) After the examination the selectee is sworn into the Army.

2. Quota Determinations. The quotas for induction and the call for a physical examination are determined by the Secretary of Defense\(^{104}\) and are based for each state on the number of available registrants, after classification, with credits given for the number of men already serving. The State Directors then use the same formula to determine quotas for the local boards.\(^{105}\)

3. Service. When the registrant is inducted he serves on active duty for two years.\(^{106}\) Usually he serves in the Army, but during the Viet Nam call-up the Navy and the Marine Corps have on occasion used the draft.\(^{107}\)

4. Delinquency. All persons are assumed to have notice of the provisions of the Act and of their duties under it.\(^{108}\) Any person who does not comply with a duty under the act is declared a delinquent.\(^{109}\)

V. The Weaknesses of the System

A. The Local Discretion Model is Impractical

As we have seen, the present draft is modeled on a philosophy of local discretion, in which the "friends and neighbors" of the registrant determine his status. The director has stated:

The Selective Service System is . . . founded upon the grassroots principle, in which boards made up of citizens in each com-

\(^{102}\) The men in group (4) are the "Kennedy married men" who, by order of the late President were to be drafted after single men. That order was superseded by President Johnson's order making men married after the date of the superseding order (August 26, 1965) eligible along with single men. 30 Fed. Reg. 11129 (1965).

\(^{103}\) Memorandum 2.

\(^{104}\) 32 C.F.R. § 1631 (1962).

\(^{105}\) Ibid.

\(^{106}\) 50 U.S.C. App. § 454(b) (1964).


\(^{109}\) 32 C.F.R. § 1642.4 (1962). The treatment and prosecution of delinquents, and the relationship of civil disobedience to delinquency, is not discussed in this Comment. For a treatment of these problems, see Comment, 144 U. Pa. L. Rev. 1014 (1966).
munity determine when registrants should be made available for military service.\(^{110}\)

The actual operation of the draft, however, bears little relation to this model; a variety of pressures on the system produce major distortions.

First, the local board members may have been "neighbors" of registrants in 1866 but they are not in 1966. In answer to a question asking "approximately what per cent of the registrants who had an appearance before the board were known (or their families were) to some extent by one or more members of the board?", the responses of the thirteen urban boards were: 0\% (three boards), 1\% (two boards), 2\%, 3\%, 5\%, 7\%, 10\%, 80\%, "about 100\%", "very few." Thus, in half the boards three percent or less of the registrants who had a personal appearance were known by their neighbors. The figures thus illustrate what common sense indicates: urban neighbors today are not familiar with each other.

Second, the board members are only part-time, unpaid administrators, who work elsewhere for their income. The sheer pressure of time guarantees that members cannot possibly research and discuss individual cases in detail.\(^{111}\) This further distorts the "neighbor" model which assumes that the local members have time to familiarize themselves with the background of the registrant.

Moreover, the special knowledge of "local conditions" which local board members are presumed to possess is substantially irrelevant. However much the local board member knows about the local textile mill, his knowledge does not make him fit to decide whether mill workers are more in the national interest than teachers. National manpower planning today requires information about the complex, integrated industrial pattern. While local boards are still capable of exercising discretion about such matters as the registrant's sincerity or his claim of special hardship, they are unable to cope with decisions of national social and economic policy. Of necessity, the boards have turned to the federal system for advice and guidance. Some measure of consistency has been achieved at the price of utter confusion about what the rules are, how they are made, and who has the power to enforce them.

\(^{110}\) Memorandum 4.

\(^{111}\) See note 54 supra. A local board in Texas in response to the questionnaire noted that it had 42 persons working as registrars to carry out the board's daily business.
B. Where Do the Rules Come From?

1. Methods of Implementing National Policy. The Selective Service system issues a stream of materials on national policy. Most of it, however, is "advisory" or informal, and offers little help to a registrant seeking to demonstrate that his board did not follow national policy. The Office of the National Director periodically issues Local Board Memoranda, outlining policy suggestions for classification and procedures. These memoranda range from discussions of approved military colleges to college student deferments. The memoranda generally embody long-term policy, and are advisory only. The National Director also issues Operations Bulletins (similar to memoranda) which are again only advisory. A list of critical industries and occupations is issued by the Secretaries of Labor and Commerce, and the national system administers the recently instituted student examination, which is available for local board use. The local board, however, may ignore the guides or use them in conflict with the national policy.

The draft also employs more informal methods of communicating national policy: letters to State Directors and local boards, and extensive travel and discussions with local boards by national personnel, especially the Director. A prime illustration of the informal policymaking is the monthly house magazine, Selective Service, in which General Hershey writes editorials expostulating national policy.

The National Director does have a tool for enforcing these "advisory" national policy guidelines: he can appeal an individual's classification to the President's Appeal Board. If the National Director consistently appeals local classifications running counter to "advisory" national policy, the local boards will eventually get the message. For example, a local board in West Virginia recently denied deferments to all graduate students. Gen. Hershey appealed, and the President's Board granted

[112.] See Local Board Memoranda Nos. 45, (November 29, 1965), and 43, (September 15, 1960).
[114.] Interview with Col. Omer, April 21, 1966.
[115.] Ibid.
[116.] Ibid. There are also local industrial advisory boards which may be used if a local board is in doubt about whether an industry is critical. Interview with Chairman, Local Board #8, New Haven, Conn., March 28, 1966.
[117.] Interview with Col. Omer, April 21, 1966.
[118.] Ibid.
[119.] In the six-month period ending December 31, 1965, the National Director took 55 such appeals. [Dec. 31, 1965] NATIONAL SELECTIVE SERVICE APPEAL BOARD, STATISTICAL REPORT.
The trouble, of course, is that national standards can be applied haphazardly. It is entirely up to the National Director in each case whether to put muscle behind national policy by appealing to the President’s Board.

Moreover, the President’s Board may frustrate national office policy simply by rejecting the appeal. While at present the Director and the board function in “harmony” with close liaison between the board’s executive and the Deputy Director of the system, disagreements may arise. For example, before 1959 some local boards drafted teachers, contrary to national policy. The National Director appealed the classifications to the President’s Board and the board did not grant the teachers deferments. The Director then resorted to his ultimate weapon: he reopened the teachers’ cases and again appealed, until the teachers got to be over the age of liability. This is at best a clumsy method of enforcing national policy.

The State Director’s office is another dark corner of the system. The director may issue advice and memoranda to local boards and may appeal classifications to the State and President’s Board, but his authority is nowhere explicitly delineated; different directors may exert different degrees of control over the local boards. Similarly, the Directors may arrive at different criteria for classification and for appealing a registrant’s case. It is hard to see what clear role the State Directors are supposed to play in the system, since they are not the local neighbors of the model nor are they national officers charged with making national policy.

2. Confusion for the Registrant. For the registrant, seeking to find where he stands with the draft, Selective Service is thus a maze of

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[120.] Interview with Col. Omer, April 21, 1966.
[121.] Ibid.
[122.] The Texas State Director, for example, last spring issued “advice” requesting local boards to review all 2-S classifications in light of the national student tests. However, the local boards were not bound to follow the advice. Texas State Director’s Advice to Local Boards No. 525, May 13, 1966.
[123.] A personal example of the disparity in State Director power concerns responses to our questionnaire. Thirty-two boards consulted the State Director of their state and then suggested to the writer that inquiries be made to the Director. To the writer’s knowledge, at least two State Directors called in the questionnaires from the local boards and at least five others advised or instructed the local boards not to answer their questionnaires. On the other hand, of the twenty boards who sent in completed questionnaires, fifteen stated that they had not consulted the State Director about filling out the questionnaire (and the five who had consulted the Director of their states obviously got approval from those Directors).
[124.] Since only one State Director responded to the questionnaire, there is insufficient data for determining whether State Directors have differing criteria. However, it is clear that the system leaves ample room for the State Directors to reach varying criteria for classification.
"advisory" federal policies, enforced, modified or ignored by his local board. Depending on his State Director, the President's Board, or the National Director, he may or may not be able to have his complaint heard. He does not know where or why the rules are made, or whether they will be considered by his local board. Under the banner of flexibility, Selective Service has produced uncertainty and confusion in the minds of great numbers of young men about how the draft is treating them, and why. Although complete certainty is not possible, one does not have to agree with Gen. Hershey that:

Uncertainty is the thing that keeps us alive and keeps us active and keeps us thinking. As soon as you get a person with complete security and complete certainty, when he has no uncertainties of any kind, you have got a fellow you might as well bury because there is nothing more in the world that he can do.2

By this standard, the draft is surely the liveliest operation in the entire federal system. For, despite the system's quasi-national character, registrants with similar backgrounds are treated wholly differently by different boards. And, because national standards lead such a shadowy existence, it is impossible to tell whether local boards are reflecting different conceptions of the national interest, or are overriding the national interest in favor of local needs. (Indeed, it is not even clear whether the boards are supposed to base classifications on local or national interests.) Thus, the disparity between boards appears to the registrant an arbitrary one. In addition, incidents such as the reclassification to 1-A of Michigan students who participated in a demonstration at a draft board raise questions about whether a draft board can consider the political belief or action of a registrant in classifying him, and whether the board can perform the functions of a court in determining whether the registrant has broken the law.126

Our examination of Selective Service provides confirmation of the widespread contradictions in classification policy. An example is deferment policy regarding airline pilots and merchant seamen. These groups pressured the national system for deferments. The Director did not want to issue formal guidelines (Operations Bulletins or Local Board Memoranda) for these occupations because he feared being swamped with requests from other groups. Instead, he sent a letter to the State Directors indicating a national policy of deferment for these groups. The State Directors, in turn, presumably relayed the informa-

[125.] 1966 Hearings 9693.
tion to the local boards who thus “got the message” about the national policy. However, of the local boards who responded to the question-naire, six said they would defer merchant seamen while eight said they would not, and seven said the would defer airline pilots while nine indicated they would not. Indications were that the same is clearly true in the areas of the 2-A (occupational) and 2-S (student) deferments. Their responses are summarized in the charts below:

### TABLE I

**Question 1:** Is it your general policy to give 2-A deferments to the following (assuming that the condition of the labor market was such that there was no surplus of people qualified for the job):

<table>
<thead>
<tr>
<th></th>
<th>Urban Boards</th>
<th>Suburban Boards</th>
<th>Rural Boards</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) college teachers</td>
<td>11 Yes, 0 No</td>
<td>5 Yes, 1 No</td>
<td>4 Yes, 0 No</td>
</tr>
<tr>
<td>b) high school vocational teachers</td>
<td>11 Yes, 1 No</td>
<td>4 Yes, 1 No</td>
<td>4 Yes, 0 No</td>
</tr>
<tr>
<td>c) high school academic teachers</td>
<td>10 Yes, 0 No</td>
<td>5 Yes, 0 No</td>
<td>4 Yes, 0 No</td>
</tr>
<tr>
<td>d) elementary school teachers</td>
<td>10 Yes, 1 No</td>
<td>4 Yes, 1 No</td>
<td>4 Yes, 0 No</td>
</tr>
<tr>
<td>e) pre-school teachers</td>
<td>5 Yes, 5 No</td>
<td>3 Yes, 1 No</td>
<td>3 Yes, 1 No</td>
</tr>
<tr>
<td>f) graduate-professional school teachers</td>
<td>10 Yes, 0 No</td>
<td>4 Yes, 1 No</td>
<td>4 Yes, 0 No</td>
</tr>
</tbody>
</table>

**Question 2:** Is it your general policy to give 2-A deferments to people working in the following programs (assuming that the condition of the labor market was such that there was no surplus of people qualified for the job):

<table>
<thead>
<tr>
<th></th>
<th>Urban Boards</th>
<th>Suburban Boards</th>
<th>Rural Boards</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) peace corps</td>
<td>11 Yes, 1 No</td>
<td>4 Yes, 1 No</td>
<td>3 Yes, 1 No</td>
</tr>
<tr>
<td>b) domestic poverty program</td>
<td>3 Yes, 5 No</td>
<td>1 Yes, 1 No</td>
<td>2 Yes, 2 No</td>
</tr>
<tr>
<td>c) welfare agencies</td>
<td>4 Yes, 5 No</td>
<td>0 Yes, 4 No</td>
<td>2 Yes, 2 No</td>
</tr>
<tr>
<td>d) judicial agencies (e.g., parole officers)</td>
<td>6 Yes, 3 No</td>
<td>0 Yes, 4 No</td>
<td>2 Yes, 2 No</td>
</tr>
<tr>
<td>e) policemen</td>
<td>5 Yes, 6 No</td>
<td>1 Yes, 3 No</td>
<td>1 Yes, 3 No</td>
</tr>
<tr>
<td>f) non-defense administrative agencies</td>
<td>1 Yes, 10 No</td>
<td>0 Yes, 4 No</td>
<td>1 Yes, 3 No</td>
</tr>
<tr>
<td>g) city or state government</td>
<td>1 Yes, 10 No</td>
<td>0 Yes, 4 No</td>
<td>3 Yes, 1 No</td>
</tr>
</tbody>
</table>

[127.] Interview with Col. Omer, April 21, 1966.
The Selective Service

Question 3: Will it be your policy to re-classify students who do not meet the criteria set forth in the national test and class-standing guidelines?

<table>
<thead>
<tr>
<th>Urban Boards</th>
<th>Suburban Boards</th>
<th>Rural Boards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Generally</td>
<td>Not Necessarily</td>
</tr>
<tr>
<td>7</td>
<td>4</td>
<td>2</td>
</tr>
</tbody>
</table>

Question 4: How many credits must be carried in order for a student to obtain a 2-S deferment?

<table>
<thead>
<tr>
<th>Urban Boards</th>
<th>Suburban Boards</th>
<th>Rural Boards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Twelve (5 boards)</td>
<td>Twelve (1 board)</td>
<td>Twelve (3 boards)</td>
</tr>
<tr>
<td>Fourteen (1 board)</td>
<td>Fifteen (2 boards)</td>
<td>“Full Time” (2 boards)</td>
</tr>
<tr>
<td>Fifteen (3 boards)</td>
<td>“Full Time” (2 boards)</td>
<td>“Full Time” (2 boards)</td>
</tr>
<tr>
<td>“Full Time” (2 boards)</td>
<td>“Full Time” (2 boards)</td>
<td>“Full Time” (2 boards)</td>
</tr>
</tbody>
</table>

Question 5: If a graduate student did not enter his present graduate school immediately after college, will you give him a deferment if he took a year (years) off for the following reasons:

<table>
<thead>
<tr>
<th>Urban Boards</th>
<th>Suburban Boards</th>
<th>Rural Boards</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) To earn money to go to school</td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>b) Because of illness or involuntary disability</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>c) To enter the Peace Corps</td>
<td>11</td>
<td>0</td>
</tr>
<tr>
<td>d) To get another graduate degree, which he completed</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>e) To get another graduate degree, which he failed to complete</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>f) To work although there was no financial need</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>g) To travel</td>
<td>0</td>
<td>12</td>
</tr>
</tbody>
</table>

3. In Summary. If the draft is to regain public approval, which it now appears to lack, the deficiencies plaguing the system must be corrected. Whatever the need for flexibility and speed in recruitment for military service, there is no reason why the draft should not be revised to preserve these qualities while providing a fairer system for the registrant. Nor is Gen. Hershey's view of fairness, offered at a congressional hearing on the draft, a persuasive argument against reform:
... I enlisted in the National Guard in Indiana when I was sixteen years old, and there were a thousand other kids that didn't, and there was nothing fair about the fact that I assumed voluntarily a responsibility they ought to share and therefore there is a limit to what you can possibly do, and I think we have gone way hogwild on the individual rights in this country, whether the group rights had to suffer because of it.\[128\]

VI. Suggested Changes in the Draft

A. Reduced Local Discretion

A primary requirement for reform is that an end be put to the haphazard mixture of national and local influence. While an attempt could be made to construct a purely local draft system, with a minimum of federal influence and intervention, such a system would be neither workable nor desirable.

First, local decision making will not work; the need for national manpower allocations, and the pressures for some national guidance, will inevitably convert a local system into a hybrid.\[129\]

Even assuming that a purely local system could be maintained, there are compelling reasons for providing national, rather than local, controls. A draft with firm national direction would greatly increase the system's efficiency; in addition to permitting introduction of cost-saving devices not now possible,\[130\] it would permit the country to structure a deferment policy that accurately reflected the national interest. Once that policy was made, it would not be imperiled by local failures to understand or implement national decisions.

Most important, a national system could provide the registrant with procedural safeguards, which are now noticeably absent throughout the draft, and which are deliberately excluded in the local discretion model. In fact, the principle of "civilian neighbors" informally applying rules and adjudicating classifications with little national control could hardly be imagined in another agency. Throughout the federal administrative system a model has evolved which shapes the general structure of agency process.\[131\]

This model finds statutory expression in the Administrative Proce-

\[128\] *1966 Hearings* 9721.
\[129\] See text accompanying notes 110-11 supra.
\[130\] See note 140 infra.
\[131\] The Selective Service System, of course, is considered by those who run it to be an administrative agency. Written summary of interview with Col. Omer, April 21, 1966. On file at Yale Law Journal.
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dure Act, which prescribes procedural requirements for most agencies (although it exempts the Selective Service System). While we do not contend that the draft should be covered by the Act, an examination of APA standards illustrates the gap between the draft and an accepted "fairness" model of agency behavior.

In general, the APA provides that an agency shall draft rules after a hearing at which interested persons, who have notice of the agency's intention, can present their views. Once made, the rules are issued along with general statements of their purpose so that those affected have notice of them and so that they may be applied uniformly. When an agency adjudicates, the APA provides that the party affected shall have notice of agency action and a right to an evidentiary hearing. The agency's decisions must be accompanied by "the reason or basis therefor" and the rule used in reaching the decision.

The safeguards suggested by this model require that the draft become

[133.] It is possible that the exemption from the APA was an unthinking one. When the APA was enacted in 1946, the Selective Service System probably was exempted from its coverage because it was one of several war agencies which were due to expire and which needed flexibility in operation during the reconversion period:

The exclusion of war functions and agencies, . . . affords all necessary freedom of action for the exercise of such functions in the period of reconversion. It has been deemed wise to exempt such functions in view of the fact that they are rarely required to be exercised upon statutory hearing, with which much of the bill is concerned, and the fact that they are rapidly liquidating.


The Selective Service Act provided for a right to a personal appearance before the local board, so the draft should not have been exempt on the first ground mentioned in the report, i.e., that there was no statutory provision for a hearing. The Selective Service was duly liquidated in July, 1947. When the draft was re-enacted in 1948, it again was excluded from the APA, and the report of the Senate Committee on Armed Services gave this cryptic explanation:

This subsection establishes exclusion from the operation of the Administrative Procedures Act. This exclusion was formerly provided with respect to the 1940 Act, by subsection 2(a) of the Administrative Procedures Act itself.

S. Rep. No. 1268, 80th Cong., 2nd Sess. 21 (1948). But, since the 1940 Act was exempted because it was a war agency due to expire, that exemption of the 1940 Act could hardly be an adequate basis for exempting the 1948 Act.

The 1965 Act providing for counsel in administrative agencies 79 Stat. 1281, 5 U.S.C. §§ 1012-14, also exempts the draft. The report of the House Judiciary Committee explains:

This is because of the large number of registrants involved, the informality of procedures, and the need for a capacity to provide large numbers of men quickly for service.


Excluding lawyers because the system's procedures are informal begs the question for our purposes, since we want to know whether having an informal system is fair, and the other two reasons, the large size and the need for speed in raising an army do not say that the draft is fair—they say that because of these needs the draft was exempted. Therefore, if a fairer system can be devised which retains the speed in raising an army, that system should be adopted.

a national, rather than local, system. Whatever modifications of the APA are required for the draft, it is anomalous to excuse it from the Act's broad policies of fair notice, uniform standards, and reasoned decisions. Yet local discretion presently permits boards to adopt whatever "informal" procedures appeal to them, with no real check. And even if an acceptable procedure could be grafted onto a local discretion system, the registrant would have no way of influencing the adoption of substantive standards. Of course, national standards for "fair" rule making—as in the APA—could be imposed on local boards, but this would undercut the whole premise of local discretion: that each case should be judged on its merits, without "stifling" rules. In addition, the rule-making process is far more efficient when performed on the national level. Not only is it wasteful for thousands of boards to go through the process from hearing to rule making, but there is no way of insuring that local rules reflect national manpower needs.

B. Formulation of Rules in the National System

Under the Selective Service System the categories of those deferred or exempted from military service in the national interest are rules. Even in the few instances when national policy behind these rules is clear, there is no coherent process for its formulation. Student tests, for example, were begun after consultation with the Secretaries of Labor and Education, the National Education Association, and various teachers' groups.\(^7\) No student organizations were consulted or advised; and as a matter of statute or regulation, there was no requirement for any consultation with anyone before the tests were instituted.

A rational and fair system of designating categories for deferments would include a hearing at which the effect of the choice on the national interest would be thoroughly examined, and at which those affected could present their views to the rule makers. Further, once these categories are drawn, the standards adopted should be applied throughout the draft, except in those rare instances in which the national interest really depends upon local conditions.

For example, in permitting occupational deferments, the Selective Service should use a board composed of members with experience in national planning and resource allocation. This board, working with the Secretaries of Labor and Commerce, would draft a list of critical occupations and industries, which then would be binding on the local

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[137] Interview with Col. Omer, April 21, 1966.

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C. Adjudication in the National System

In addition to establishing firm national rules, the structure of the draft and the treatment accorded the registrant must be made fairer and less chaotic.

1. Local Board—Composition and Functions. The local boards would retain responsibility for the initial registration and classification of registrants, but their function would be largely fact finding, placing the man into one of the categories established by the national system. Discretionary judgment would still be involved in borderline cases, in areas not covered by national rules, and in such equity situations as hardship deferments and the sincerity of conscientious objectors.

The present part-time boards might be retained in the new system, since knowledge of local conditions could be helpful in performing the “jury” functions of judging need and sincerity. However, given the demands on the boards imposed by the procedural reforms suggested below, the draft may find it necessary to make the local boards full-time.

Members of a full-time board would be compensated, either through civil service or through an equivalent structure. Salaries would be high enough to attract men capable of interpreting and applying the national rules, and implementing national procedures.

Such boards could handle far more registrants than at present, thus permitting reduction in the number of local boards. Further, each
case would be given far closer attention. A corollary advantage would be the equalization of the boards' responsibilities. At present, boards vary greatly in the number of registrants assigned. For example, those answering our questionnaire had the following ranges:

<table>
<thead>
<tr>
<th>Type</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban</td>
<td>8,000-23,000</td>
</tr>
<tr>
<td>Suburban</td>
<td>10,000-46,000</td>
</tr>
<tr>
<td>Rural</td>
<td>3,000-12,000</td>
</tr>
</tbody>
</table>

2. **Appeal Agents.** At present the appeal agent appears to have little importance in most draft boards, evidently because 1) there is confusion about his function, since he is supposed to be "equally diligent" in protecting the interests of the individual and the system; 2) few registrants know of the agent's existence; and 3) the agent is not compensated.

To make the agent an effective part of the system, each registrant should be advised of his right to consult the appeal agent at the time he registers. The agent would be compensated in accordance with his work load, and would be available to represent the registrant within the system, and on appeal to the courts. The ambiguous role of the agent should be changed; he should represent the registrant and not the board.

3. **Advisors.** Each board would have advisors, available to aid the registrant in filling out forms, and to give information about kinds of military service, the status of conscientious objectors, and the myriad of confusing facts about selective service. They would help in lightening the appeal agent's work by taking routine, non-legal matters. This function could probably be handled by part-time, unpaid men, and several could share the work in a community.

4. **Personal Appearance and Right to Counsel.** In addition to a right

the pervasive unfairness and confusion which has weakened support for and confidence in the draft. Improving the operation of this important agency surely justifies the cost increase such improvement would cause.

[141.] The speed of processing registrants should be equalized among the various boards. The reason for this is that the quotas for the boards are determined on the basis of the number of registrants in the 1-A category who have been found available for service (in pre-induction physical), plus a balancing factor of credits for men already serving. Thus, if a board is fast in processing men, it may have a higher quota than a board with the same number of registrants actually available but with a slower processing rate so that fewer were officially listed as available. The higher quota may result in a more "restrictive" granting of deferments.

[142.] See note 57 supra.

[143.] The local board would be "represented" on appeal by the material in the registrant's file and the written decision it made on the registrant's classification (see text accompanying note 149 infra). For court appearances, the present system of representation by the United States Attorneys, aided by the office of the General Counsel of the System, would suffice.
of personal appearance before the local board, the registrant should be permitted representation by counsel. In view of the prime importance accorded this right throughout the criminal and administrative process, the failure of the draft to permit representation is anomalous, and reflects the invalid notion that the draft is so different from other agencies that it need not accord fundamental fairness to those affected.

The changes we have recommended, moreover, greatly weaken present arguments against right to counsel. Selective Service now contends that the informality of the system precludes lawyers, who would argue "legalistically." If the draft reflected a more "formal" structure, the boards' vast discretion would be considerably lessened. More formal arguments would be both necessary and proper. The presence of the government appeals agent in no way weakens the argument for a right to counsel; in fact, under our proposed change, it strengthens it. If the agent were available to represent the registrant at appearances, there would be no reason for denying him the right to bring his own lawyer.

Opponents of the right to counsel argue that the boards could not cope with the attorney's skills, and would in any event be overwhelmed by the increased number of personal appearances and the lengthened time of the hearings.

The first objection might have some validity in a system run by part-time, unpaid individuals. If the local board members were full-time, and adequately compensated, however, they would presumably be competent enough to reject spurious or incorrect arguments. They might also hire counsel to aid them in their duties. Nor does the argument from inconvenience appear strong. The boards answering our questionnaire indicated the following number of personal appearances between January and March, 1966:

Urban (11 boards): Range 3-12; Average 7.5 (2.5 per month).
Suburban (4 boards): Range 4-50; Average 16.5 (5.5 per month).
Rural (4 boards): Range 0-15; Average 4 (1.3 per month).

These figures indicate that personal appearances would not burden local boards, especially if the boards were full-time and thus able to

[144.] Interview with Col. Omer, April 21, 1966.
[145.] Ibid.
[146.] Even if the number of appearances averaged five per board per month (higher than the average of the nineteen boards responding to the question) the total would come to 240,000 for the whole system, or only 60 per board for the year. The National Labor Relations Board in 1965 handled 15,800 charges of unfair labor practices and conducted 7,824 elections, procedures involving considerably more time than a personal appearance would. N.Y. Times, May 23, 1966, p. 5, col. 1. The Veterans Administration and Social Security Administration handle some 50,000 contested claims cases per year. GELLHORN & BYSE, ADMINISTRATIVE LAW 1023 (4th ed. 1960).
hear more personal appeals. The right to counsel, moreover, would be granted in the context of binding national rules; the uniform nature of national policies might even make for a smaller number of appearances, since registrants would be aware of the limited local board power. At present, registrants may seek personal appearances out of ignorance of what the policies are, or in an effort to persuade local boards to ignore national "guidance."

The local board, it should be noted, would not become a totally formal tribunal. Informal hearings, to resolve misunderstandings, would still be possible. But where the registrant and the board disagreed, for example, on the interpretation of a rule, the registrant should be entitled to have counsel with him when he confronts the board.

5. The Basis for Classification. One of the most unfair features of the present system is that the local board need not give any reason for classifying a registrant; thus, he cannot present an adequate appeal, since he does not know what rules have been applied or will be applied on appeal.

The board should supply written reasons for its classification, at least where it decides against the registrant's claim. By requiring boards to supply findings of fact and a brief statement of the reason for decision, the aggrieved registrant would be able to make an attempt at formulating an appeal.

The burden of requiring written decisions would not unduly tax the local boards. Of the responding boards, the one with the highest number of appearances over the three month period had 50; an unusually high figure, which still amounts to only 200 a year. Reasons would have to be given only in cases where the registrant's claim was denied.\[147\] (Even if a part-time board could not bear the load, a full-time, five-member board surely could.) No reasons would have to be given for initial classifications, the overwhelming number of which are not appealed. In order to give the registrant an opportunity to know what kind of evidence to present, informal conferences could be held with him before a formal personal appearance.\[148\] This practice is in widespread use in administrative agencies, and would further reduce instances where the registrant does not know what information is relevant to the board's determination.

\[147\] In new and unusual cases the board might want to record its reasons regardless of which way it decided.

\[148\] In addition, if during the appearance the registrant needed to bring in some additional proof the appearance could be adjourned to give him time to do so.
6. The State Appeal Board. The confusion of Selective Service is heightened by the power now held by state boards to issue de novo classifications; the registrant may thus face a board applying entirely different standards from his local board. To correct this, the state boards should have review functions comparable to other agencies. If the local board failed to apply binding national policies, the state board could reclassify the registrant on its own. If improper procedures were followed, the state board could remand the case for further proceedings.

Here, too, a decision on the record would be required. The state board need not have personal appearances, since both the local board and the registrant would have written records; however, if the state board felt a personal appearance was necessary, the right to representation by either an attorney or the local appeals agent would be guaranteed.

No substantial delay would result from such a practice, since the only major change is the requirement of written decisions. The state appeal system processed 9,741 appeals in fiscal 1965, or about 100 per board.\[149\]

Considering that these part-time boards handled more than 50,000 cases in 1952,\[150\] it is most unlikely that the procedural change would upset the functioning of state boards. If the number of appeals did rise unexpectedly, the boards could become full-time, or else use an examiner system or other screening devices common in administrative procedure.

7. President's Appeal Board. At present the President's Board disdains a policy-making function, holding that its decisions have no precedential value. In fact, the board, which once gave opinions, now refuses to do so. This refusal was based not on work load pressure, but on rather unusual strategic considerations, as revealed by the executive of the board:

It is true that this Board did at one time return appeals with written decisions, primarily in cases which could be subject to litigation. This was done, as you state, because a Circuit Court Judge might well have upheld a conviction had this Board furnished a "basis in fact." The policy of writing decisions was not discontinued because of a fear that such opinions might be used in favor of the defendant but more accurately because judicial decisions coming at a rather rapid rate rendered some of our findings obsolete. For example, several landmark cases held that a willingness to fight in self-defense or in defense of family and brethren was no bar to a claim of conscientious objection. This forced a

\[149\] 1965 Report 66.
\[150\] Id. at 21.
decision by the Board to abandon its previously held position that true pacifism was a prerequisite to classification in Class 1-O. Court decisions with regard to the practices of unorthodox religions also affected the Board’s thinking with regard to ministerial classifications. Opinions were, therefore, discontinued in order to retain flexibility.\footnote{151}

This statement apparently means that the board stopped writing decisions for fear that the courts would reverse if invalid reasons were used to classify a registrant. The board evidently preferred to submit only the registrant’s file to the court, letting it try to discover a valid “basis in fact” to uphold the board. This practice ought not to continue; the President’s Board should supply the registrant with reasons and take its chances in court.

The present method of gaining review if a dissenting vote was cast on the state board should be maintained. In keeping with its new function as a policy-making body, the President’s Board should, in addition, have the discretionary power to grant a review, when as the Supreme Court does on \textit{certiorari}, an important interpretation of a rule is at stake.

D. \textit{Judicial Review in the National System}

With a draft system of set rules and required procedures, the courts would find it far easier to perform a reviewing function than under the present regime of “looseness.” A court could readily determine, for example, whether a board placed a registrant in the wrong category, or violated a nationally-required classification. Similarly, a court could order a board to hold a new classification hearing if a procedural right of the registrant, clearly set out by Congress, had been violated. Finally, a court would not have to guess the reasons for a board’s decisions, since at all levels written opinions by the boards would be required.

It has been suggested elsewhere\footnote{152} that the narrow scope of review afforded the registrant—the \textit{Estep} “basis in fact” test—is in reality no different from the “substantial evidence” test applied to most other agencies. In any event, it seems unwarranted to retain the narrow scope ordained by the “finality” provisions of the APA. If the Selective Service system is to be reshaped to conform more with accepted controls on agencies, Congress ought to enable courts to reverse the boards where

\footnote{151.}{Letter from Edwin Dentz, May 10, 1966.}
\footnote{152.}{Comment, 114 \textit{U. Pa. L. Rev.} 1014 (1966).}
there was no substantial evidence leading to the classification given the registrant.

There is, however, a clear danger that broader review could mean a rush to the federal courts, if for no other reason than to litigate until the registrant reached the promised land of age 26 or fatherhood. To prevent this, the expanded scope of review could be balanced by providing only two limited routes to the courts: appeal either by habeas corpus after induction, or by defending a criminal prosecution for failure to be inducted. However, since the dangers of low-visibility decisions will remain when there are no national rules, Congress could permit pre-induction appeals where the classification was made in an area where local board discretion still prevailed. An expedited judicial hearing would determine whether such an appeal had merit, or was merely frivolous.

Appendix A

The need for detailed information on the actual administration of the Selective Service System on which to base an article such as this is obvious. Equally obvious is the need of an individual registrant, or his lawyer, to obtain such information in order to fully present his case. Unfortunately, there are not many sources of such information. The Act\(^1\) and regulations\(^2\) are available of course, but they give only the broad outline of the system, allowing a great deal of discretion to the different levels to formulate their own criteria and procedures for administering the system. There is a "house magazine," Selective Service, which is put out monthly and is available at libraries. This organ contains many inter-system news items, but also includes an editorial by General Hershey in every issue. These are read by the boards and may often serve as the foundation for policy in an area.\(^3\) A recent example is General Hershey's editorial on the status of student sit-in participants, in the January 1966 issue.

Selective Service set up an Office of Public Information for the first time in its history last year. This office would seem to have its limitations, however, as illustrated by its refusal to give the writer the addresses of the local boards so that questionnaires could be sent.

A questionnaire was sent to a random sample of 300 local boards, including some in every state. Questionnaires were also sent to the

State Directors, State appeal boards, and government appeal agents. The purpose of the questionnaire was to determine the actual criteria used for certain specific classifications by the different levels of the system, and by the different groups at each level, and to determine what specific procedures are used by the different parts of the system in processing a registrant's classification. This would make it possible to learn if the different local boards do use different procedures and criteria for the same classification. It would also be possible to learn what the justifications are for the different procedures and criteria. Responses to the local board questionnaire were as follows:

- Completed questionnaire from local boards: 22
- Completed questionnaire from appeal agents: 12
- Completed questionnaire from State Director: 1
- Completed questionnaire from appeal board: 1
- Letter from local boards stating that they did not have time to return questionnaire: 22
- Letters from local boards stating that they chose not to return the questionnaire: 5
- Letters from the local boards stating that they referred the questionnaire to the State Director: 32
- Letters from State Directors explaining why they chose not to fill out the questionnaires: 16

In addition, one local board sent the writer the form sent to delinquents to be filled out to avoid prosecution.

The questionnaires sent to the local boards and appeal agents were as follows:

I. Local Board Questionnaire

It is understood that in questions about the Board's general policy in giving certain classifications or in conducting specific procedures, the answer reflects only a general policy; each specific case is decided on its particular facts. If for any reason you cannot answer a question, please indicate why.

1. In what state are you located?
2. Is the area encompassed by your Board predominantly
   - Urban (over 500,000 in city)
   - Urban (under 500,000 in city)
   - Suburban (over 500,000 in central city)
   - Suburban (under 500,000 in central city)
   - Rural (small town; agricultural)
3. How many men are on the Board?
4. What are the occupations of members of the Board?
5. Are there any minority groups in your area (racial, national origin) comprising over 10% of the population? If so, are any members of the Board members of such a minority group?
6. How many registrants are registered with the Board?
7. What was the average quota for the Board for the Months Jan.-March 1966? For the months Jan.-March 1965?
The Selective Service

8. What is the average age of the men inducted in the last monthly call? The monthly call a year ago?

9. In the priorities of men to be inducted who are in the 1-A category (as set forth by Presidential order in the Regulations—section 1631.7) which group of men were you down to in the last monthly call?

10. Approximately when would you expect to have to call men who are over twenty-six if the present level of calls is maintained?

11. Is it your general policy to follow the national guidelines (as set forth in Operations Bulletins, Local Board Memoranda, Letters from the National Director, etc.) in classifying registrants?
   (a) In what specific areas have you departed from those guidelines in that past year?

12. Will it be your general policy to re-classify students who do not meet the criteria set forth in the national test and class-standing guidelines?
   (a) If not, what other criteria will you use in deciding which students will be deferred?
   (b) How many credits must be carried in order for a student to obtain a 2-S deferment?
   (c) If a graduate student did not enter his present graduate school immediately after college, will you give him a deferment if he took a year (years) off for the following reasons:
      (1) To earn money to go to school.
      (2) Because of illness or other involuntary disability.
      (3) To enter the Peace Corps.
      (4) To get another graduate degree, which he completed.
      (5) To get another graduate degree, which he failed to complete.
      (6) To work although there was no financial need.
      (7) To travel.
   (d) In part (c), would it make any difference what the person was studying? If so, roughly what priorities would you give for the various fields of graduate and professional study?
   (e) Would you remove a student in good academic standing (i.e., one who meets the national guidelines recently promulgated) from a 2-S deferment because:
      (1) He participated in a sit-in at a local board, and was convicted of trespass (but not of violating the Selective Service Law)?
      (2) He participated in a demonstration at a local board?
      (3) He was convicted of a crime unrelated to the Selective Service Law?
   (f) If you were faced with a choice of drafting married men or re-classifying some students in good academic standing to 1-A, how in general would you choose?
      (1) If you chose to re-classify some students, what priorities would you give to the various fields of study?
      (2) Would you choose graduate students or college students first (or would you not differentiate)?

13. Is it your general policy to give 2-A deferments to the following
(assuming that the condition of the labor market was such that there was no surplus of people qualified for the job):

1. college teachers
2. high school vocational teachers
3. high school academic teachers
4. elementary school teachers
5. pre-school teachers
6. graduate school, and professional school teachers

14. Is it your general policy to give a 2-A deferment to people working in the following programs (assuming that the condition of the labor market was such that there was no surplus of people qualified for the job):

1. Peace Corps
2. Domestic Poverty Program
3. Welfare agencies
4. Judicial agencies (e.g., parole officers)
5. Policemen
6. Non-defense administrative agencies (people who are working in some executive capacity)
7. City or State government (people with some executive capacity).

15. Is it your general policy to give 2-A deferments to a law school graduate who is clerking for a judge?

16. Is it your general policy to give a 2-A deferment to a person who is not in an industry on the Secretary of Labor's list but which "indirectly" contributes to the defense effort?
   (a) Would it make any difference if the person was a college graduate?

17. Is it your general policy to give 2-A deferments to
   (a) airline pilots
   (b) merchant seamen

18. What specific criteria do you use to determine if a Jehovah's Witness is eligible for a ministerial deferment?

19. Is it your general policy to give a deferment for conscientious objection to a person who is a pacifist in all respects except that
   (a) he would use force in self-defense
   (b) he would use force in defense of family
   (c) he believes in Armageddon
   (d) he would use force but will not use it in subservience to a political entity
   (e) he would work for the government as a policeman.

20. What specific criteria do you use to determine if a person is a conscientious objector (other than those listed in 19)?

21. If a person requests a physical examination before he would normally be called to take the examination, will you grant such a request?

22. Have you classified anyone within the last year 4-F on moral grounds? If so, what were the grounds?
The Selective Service

23. Approximately how many classifications do you make per month?
   (a) How often does the Board meet?
   (b) How many men have had personal appearances before the Board in the three months Jan.-March 1966?
24. Do you give reasons for giving a classification after a personal appearance? If not, why not?
25. Do you allow lawyers to accompany a registrant in an advisory capacity when the registrant appears before the Board?
26. In your experience with the personal appearances of registrants, do you feel that having a lawyer represent the registrant would be helpful or harmful? Please explain.
27. How many classifications given by you in the three months Jan.-March 1966 were appealed?
28. Approximately what per cent of the registrants who had an appearance before the Board were known to some extent (or their families were) by one or more members of the Board (this of course does not refer to the close association which would cause disqualification)?
29. Does the Government Appeals Agent attend meetings
   (a) always
   (b) frequently
   (c) infrequently
   (d) has not attended any in the past year
   Approximately how many times within the past year has the Board consulted the Government Appeals Agent?
30. How many registrants were helped by the Advisors to Registrants in the months Jan.-March 1966?
31. On how many cases in the months Jan.-March 1966 did the Board consult with the State Director before determining a classification? What kinds of classifications were involved?
32. Is it your general policy to follow the guidelines for classification given by the State Director? In what areas have you departed from those guidelines in the past year?
33. Would you show the following information to a registrant?
   (1) Operations Bulletins from the National Director, if the registrant felt they were relevant to his classification.
   (2) Local Board Memoranda.
   (3) Letters and informal communications from the National and State Directors if they were relevant to the type of classification sought by the registrant.
   (a) Would you show the above information (assuming time permitted) to a person writing an article on the draft?
34. Did you consult with the State Director on the advisability of filling out this questionnaire?

II. Government Appeals Agent Questionnaire

Even if you have not been involved in much activity as an appeals agent, it will still be appreciated if you would fill this out.
1. What is your occupation?
2. Is the board you serve located in an area which is predominantly
   (a) Urban (over 500,000 in city)
   (b) Urban (under 500,000 in city)
   (c) Suburban (over 500,000 in central city)
   (d) Suburban (under 500,000 in central city)
   (e) Rural (small town; agricultural)
3. How long have you been an Appeals Agent?
4. On how many occasions have you sat with the local Board over the past year?
5. On approximately how many occasions have you been consulted by the Board over the past year?
6. To how many registrants have you given advice in the three months Jan.-March 1966? Jan.-March 1965?
   (a) What kind of cases have these been?
   (b) How did the registrants know to come to you?
7. How do cases which you appeal come to your attention initially?
8. What “interests” of the Government do you “protect”?
9. How many classifications have you appealed during the three months Jan.-March 1966? Jan.-March 1965?
   (a) What kinds of classifications have these involved?
10. In how many cases have you suggested to the local Board that they reopen the case over the months Jan.-March 1966? Jan.-March 1965?
   (a) What kinds of cases have these been?
11. How do you arrive at the specific criteria you use for determining when student deferments, occupational deferments, hardship deferments, conscientious objector deferments, and others, should be given? (Do you, for example, use the same criteria that the local Board uses; do you, for example, rely on communications from the State and National Directors as to what is the National interest? Please explain in some detail.)
12. I would appreciate any comments you might have on what you believe the role of the Appeals Agents is intended to be, and to what extent having Appeals Agents has benefited registrants. Any additional comments or suggestions would be welcome.
13. Approximately how much time per month do you spend in connection with your work as an Appeals Agent?

Appendix B

The following statistics illustrate the size of the system and the variety of its functions. They also point out some of the problems it faces.

In fiscal 1965, 1,940,911 new registrants were added to the system.\[1\]
This number, reflecting the increase in the birth rate which followed World War II, will probably increase to over two million new registrants per year by the late 1960's.

As of July 1, 1966, the number of men in the various classifications was:

<table>
<thead>
<tr>
<th>Classification</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>32,638,304</td>
</tr>
<tr>
<td>Class Number</td>
<td>1,112,013</td>
</tr>
<tr>
<td>1-A and 1-A-O</td>
<td></td>
</tr>
<tr>
<td>Single or married after Aug. 23, 1965:</td>
<td></td>
</tr>
<tr>
<td>Examined and qualified</td>
<td>69,768</td>
</tr>
<tr>
<td>Not examined</td>
<td>70,509</td>
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<td>Induction or examination postponed</td>
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<tr>
<td>Ordered for induction or examination</td>
<td>178,429</td>
</tr>
<tr>
<td>Pending reclassification</td>
<td>95,734</td>
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<tr>
<td>Personal appearance and appeals in process</td>
<td>14,463</td>
</tr>
<tr>
<td>Delinquents</td>
<td>12,651</td>
</tr>
<tr>
<td>Married on or before Aug. 25, 1965:</td>
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</tr>
<tr>
<td>Examined and qualified</td>
<td>101,152</td>
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<tr>
<td>Not examined</td>
<td>16,850</td>
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<tr>
<td>Induction or examination postponed</td>
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<tr>
<td>Ordered for induction or examination</td>
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<td>13,713</td>
</tr>
<tr>
<td>Appearance and appeals in process</td>
<td>2,198</td>
</tr>
<tr>
<td>Delinquents</td>
<td>970</td>
</tr>
<tr>
<td>25 years and older with liability extended</td>
<td>63,569</td>
</tr>
<tr>
<td>Under 19</td>
<td>445,512</td>
</tr>
<tr>
<td>1-Y (Available for national emergency)</td>
<td>2,553,770</td>
</tr>
<tr>
<td>1-C (Inducted)</td>
<td>421,634</td>
</tr>
<tr>
<td>1-C (Enlisted or commissioned)</td>
<td>1,880,054</td>
</tr>
<tr>
<td>1-O (Not examined)</td>
<td>4,178</td>
</tr>
<tr>
<td>1-O (Examined and qualified)</td>
<td>3,133</td>
</tr>
<tr>
<td>1-O (Married, between 19 and 26)</td>
<td>1,720</td>
</tr>
<tr>
<td>1-W (At work)</td>
<td>4,578</td>
</tr>
<tr>
<td>1-W (Released)</td>
<td>5,995</td>
</tr>
<tr>
<td>1-D (Reserve)</td>
<td>1,207,247</td>
</tr>
<tr>
<td>1-S (College)</td>
<td>19,947</td>
</tr>
<tr>
<td>1-S (High school)</td>
<td>492,594</td>
</tr>
<tr>
<td>2-A (Occupation)</td>
<td>205,112</td>
</tr>
<tr>
<td>2-A (Apprentice)</td>
<td>28,114</td>
</tr>
<tr>
<td>2-C (Agricultural occupation)</td>
<td>21,947</td>
</tr>
<tr>
<td>2-S (Student)</td>
<td>1,782,416</td>
</tr>
<tr>
<td>3-A (With dependents in addition to wife)</td>
<td>3,580,555</td>
</tr>
<tr>
<td>4-A (Completed service)</td>
<td>2,427,476</td>
</tr>
<tr>
<td>4-B (Officials deferred by law)</td>
<td>58</td>
</tr>
<tr>
<td>4-C (Aliens)</td>
<td>12,337</td>
</tr>
<tr>
<td>4-D (Religious officials)</td>
<td>95,911</td>
</tr>
<tr>
<td>4-F (Physical, mental, moral disqualification)</td>
<td>2,560,363</td>
</tr>
<tr>
<td>5-A (Over age of liability)</td>
<td>14,197,300</td>
</tr>
</tbody>
</table>

In fiscal 1965, 50.5% of the men over 19 who took the pre-induction physical and mental examination were found not qualified. In the

[2.] Ibid.
same year 24.9% of the men over 19 who were delivered to the induction station failed the induction physical. Thus, a total of 55% of the 581,716 registrants over 19 who were examined in fiscal 1965 were found not qualified (this includes men classified 1-Y as well as 4-F).

Approximately the same results were found when the 18 year olds were examined.

In June, 1962, it was estimated that by the time an age group gets to be 26, about 42% have not served in the Armed Forces. Judging from the figures of the pre-induction and induction examinations in fiscal 1965, that figure is now substantially higher. This is probably due to the fact that the category 1-Y was just instituted in the past two years.

However, even with these high rejection rates, the system will be faced with many more men than it can use. Thus, categories of deferments must be maintained, and changed as the need arises.

In 1963 Congress estimated that there would be a need for drafting 90,000 men per year (7,500 per month) over the four years 1963-1967. However, in fiscal 1964 150,808 men (12,500 per month) were inducted. In that year there were 319,001 enlistments. In fiscal 1965 the number of men inducted dropped to 103,328 (8,600 per month). In the face of the Vietnam escalation, the figure is rising rapidly. In a special Memorandum to Congress on March 2, 1966, General Hershey noted that:

During the current buildup of the Armed Forces, the demands for manpower by the Armed Forces have increased severalfold over a year ago. Monthly draft calls have been in the 30,000 to 40,000 range. These increased demands on the Nation's manpower resources do not permit the continued liberal deferments of a year ago.

General Hershey stated that in the five month period from October 1965 to February 1966, 170,000 men were inducted (34,000 per month).

In the face of the increased buildup some deferments were dropped or altered—most notably the institution of national tests for students.

As the buildup increases, pressure is put on the system at every level. The number of appeals to the 95 State appeal boards was 9,374 in fiscal

[6.] Id. at 23.
[7.] Id. at 24.
[10.] Recent attempts to include some formerly disqualified registrants have been undertaken by the Army. N.Y. Times, October 5, 1966, p. 20, col. 1.
[13.] Id. at 20.
[15.] Memorandum 1.
[16.] Ibid.
1964 and 9,741 in fiscal 1965. That figure may approach the 51,000 appeals handled in one year during the Korean war.

The number of appeals to the President's appeal board has risen dramatically. In fiscal 1965 there were 163 appeals to the board. In the six month period June 1965 to December 1965 the board took action on 322 appeals. In a letter dated May 10, 1966, the executive of the board stated that the case-load had increased tenfold over the past year.

The system has 4,061 local boards. It employs 48,300 people, over 85% of whom are uncompensated. The system's expenditures in fiscal 1965 totaled $43,887,395.24

[23.] Id. at 6.
[24.] Id. at 82.