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Review

Selective Service Law Reporter. *Michael E. Tigar*, Ed. Public Law Education Institute, 1968. \$42.00/year. Library Ed. \$36.00/year. Student Ed. (and Legal Services programs) \$18.00/year.

J. Skelly Wright†

Alice had already heard the Queen sentence three of the players to be executed for having missed their turns, and she did not like the look of things at all, as the game was in such confusion that she never knew whether it was her turn or not.

As the only United States institution outside the courts with the power to tell a man, in effect, "off with your head," the Selective Service System¹ seems to some to act with the capriciousness of the Queen. According to one recent critic,

The Military Selective Service Act of 1967 is one of those rare statutes which is so utterly rotten at its core and in every branch, root and leaf, that the only appropriate remedy is clean extirpation from the law of the land.²

Whether one agrees with this view or not, two things are clear. First, since the Vietnam buildup and the Army's reliance on the draft to provide the needed manpower,³ the legal profession has become con-

† Judge, United States Court of Appeals for the District of Columbia Circuit.

1. See 50 U.S.C. APP. §§ 451 *et seq.* (1967).

2. Griffiths, *Book Review: The New Draft Law, A Manual for Lawyers and Counselors*, 77 YALE L.J. 827 (1968).

3. The annual inductions since 1960 have been:

Year	Number
1960	90,549
1961	61,070
1962	157,465
1963	71,744
1964	150,808
1965	103,328
1966	343,481
1967	298,559
1968 (first half)	135,198

DIRECTOR OF SELECTIVE SERVICE, 1968 SEMI-ANNUAL REPORT 13 [hereinafter cited as 1968 REP.].

cerned about the draft;⁴ the increasing number of draft delinquency investigations⁵ and law suits concerned with violations of the draft law⁶ have forced more and more lawyers to familiarize themselves with the operation of the draft system. Second, the Military Selective Service Act, and the accompanying regulations⁷ and semi-official policy statements⁸ by which the Act is enforced, are so complicated that a registrant and his lawyer entering this area for the first time might well feel a little like Alice watching the Queen's game of croquet.⁹ Since the vast majority of registrants can solve their problems without resort to court action, the lawyer must know the various draft administrative procedures sufficiently well to be able to tell a registrant what options are available to him at different points in time. Moreover, unless the

4. In the 15-year period (encompassing the Korean War) from August 1949 to August 1964, the *Index to Legal Periodicals* listed a total of 51 articles on the various aspects of selective service. In the four-year period since, roughly coinciding with the heavy United States commitment in Vietnam, there have been at least 38 articles.

5. FBI Director J. Edgar Hoover testified during appropriations hearings for fiscal 1969: There continued to be an increase in the volume of Selective Service Act violations referred to us during the fiscal year 1967, a total of 29,228 violations being received. This represented an average influx of more than 2,400 a month as contrasted to approximately 1,775 a month in 1965.

1 SELECTIVE SERVICE LAW REPORTER 26 (1968) [hereinafter cited as SSLR].

Further, there has been an "increase in illegal activities which had been taking place at local boards, induction centers, and college campuses . . ." 1968 REP. 21.

6. The number of federal criminal cases per fiscal year commenced under the Selective Service law in recent years have been:

Year	Number
1964	287
1965	380
1966	663
1967	1,335
1968	1,826

DIRECTOR, ADMINISTRATION OFFICE OF UNITED STATES COURTS, 1968 ANNUAL REPORT II-33. The Increase in 1968 over 1967 was thus 36.8%. *Id.* Selective Service cases in fiscal 1968 represented a remarkable 5.9% of all criminal cases brought in federal courts. *Id.* II-32.

7. 32 C.F.R. §§ 1600 *et seq.* (1968).

8. *E.g.*, local board memoranda and operations bulletins.

9. It has been charged that by running the System with "flexibility" as a primary goal, a great deal of confusion and uncertainty has been created:

. . . 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.

By this standard, the draft is surely the liveliest operation in the entire federal system.

Comment, 76 YALE L.J. 160, 179 (1966).

registrant correctly follows the required procedures, his legal case may be prejudiced for failure to exhaust his administrative remedies.¹⁰

The *Selective Service Law Reporter* (SSLR) was published to provide lawyers with detailed information about draft law and procedures.¹¹ It is a loose-leaf service, augmented monthly, which brings together several types of useful material and presents it in four main sections: (1) Statutes and Regulatory Material; (2) Recent Decisions; (3) Articles and Comments; and (4) Practice Manual. The first section mentioned contains the Act, the regulations, and a host of policy statements, such as all the local board memoranda, current operations bulletins, and some Defense Department directives. Much of this material is not widely known, and some of it has only recently been made publicly available.¹² Collecting all the official material on the draft law in one place should save lawyers a significant amount of research time and prevent them from overlooking relevant material.

The next section, Recent Decisions, contains current court decisions. The opinions are sometimes printed in full, sometimes abridged with a summary by the editors. What happened in a recent case before the United States Court of Appeals for the District of Columbia Circuit illustrates the value of this section (especially if, as the editors hope, readers send in unreported decisions). On brief neither side mentioned a case, very much in point, which was discovered by my law clerk in looking through SSLR.

The editors intend the Articles and Comments section not only to disseminate general draft law information and legal theories, but also, by offering a forum for student-written articles, to stimulate law schools to establish seminars on draft law problems, as Yale, Harvard, and the University of Southern California have already done. Furthermore, SSLR hopes to sponsor and provide editorial direction for several studies of draft law problems; there is a particular need at this time for in-depth analyses and empirical examinations of the draft system.¹³

10. *But see* *Lockhart v. United States*, 37 U.S.L.W. 2269 (9th Cir. Oct. 23, 1968).

11. In some specialized areas, such as conscientious objection, registrants and lawyers do have helpful material available. CENTRAL COMMITTEE FOR CONSCIENTIOUS OBJECTORS, HANDBOOK FOR CONSCIENTIOUS OBJECTORS (9th ed. 1967).

12. The Selective Service System, in its monthly newsletter *Selective Service*, announced recently a public information policy "to make information available to the public, unless the disclosure of such facts would constitute a clearly unwarranted invasion of personal privacy or is prohibited under law or Executive Order." 19 SELECTIVE SERVICE, No. 7, at 4 (July 1968). Inquiries should be addressed to the Office of Public Information, National Headquarters, Selective Service System, 1724 F Street, N.W., Washington, D.C.

13. For example, in 1966 attention was called to the fact that the System's local boards were virtually all white. *See* Comment, 76 YALE L.J. 160, 167 (1966). The Marshall Commission similarly pointed out the underrepresentation of blacks on draft boards. THE

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The last section mentioned above, and the first in the SSLR, is potentially the most important. Entitled "Practice Manual," it is intended to be just that—a manual for lawyers whose clients are confronting the draft system. The Manual is divided into five parts. Part I is an overall introduction to the Selective Service System and the Act. Part II takes the lawyer through the System's procedures from registration to induction. Part III will discuss criminal litigation, Part IV civil litigation, and Part V will treat selected problems in detail. These last three parts have not yet been published, though Part III is soon to be released.¹⁴ Although the advice offered in these parts is sometimes obvious ("First, of course, the lawyer's job is to know his client."¹⁵) and sometimes too argumentative in tone ("In sum, the System adamantly insists upon the use of informal procedures even in cases in which they are manifestly inappropriate"¹⁶), the Manual will benefit a lawyer in at least two ways. First, for each classification the Manual points out relevant regulatory policy (such as the one-year limitation on the II-S student deferment for master's degree students after October 1967). Second, in discussing the Act and the regulations, the Manual points out important ambiguous phrases (for example, in Section 4(a) of the 1967 Act, the phrase "refused to report for induction") which a lawyer untrained in the area might not notice.

Finally, the SSLR has an index, a bibliography (including the legislative history of every draft act), and a list of organizations concerned with selective service problems. As the SSLR grows in size, its indexing system will grow in importance. It might be useful if, in addition to the overall index, the editors compiled a more detailed index for each type of material, especially for the section which contains the statutes, regulations, and policy statements. Furthermore, a separate index for the current cases should be created, which should be related

REPORT OF THE NATIONAL ADVISORY COMMISSION ON SELECTIVE SERVICE 9 (1967). No doubt as a result of these empirical studies, the System took corrective steps. The August 1963 issue of *Selective Service* reported: "The number of Negroes serving as members of local boards climbed to 788 in July. At the beginning of 1967, there were only 278." 18 SELECTIVE SERVICE, No. 8, at 1 (Aug. 1968). Considering that as of June 30, 1967, there was a total of 17,062 local board members, the underrepresentation has still not been eliminated. DIRECTOR, SELECTIVE SERVICE SYSTEM, 1967 ANNUAL REPORT 58.

A claim that systematic exclusion of blacks from local boards is a ground for refusing induction was advanced, and rejected, in *Clay v. United States*, No. 24,991 (5th Cir., May 6, 1968), reported at 1 SSLR 3088.

14. These latter parts of the Manual would be most useful if the editors, in discussing problems, not only pointed out possible legal theories for solving them but also provided a sober evaluation of their chances of being successfully received by the courts.

15. SSLR Practice Manual ¶ 1006, at 1031 (1968).

16. *Id.* ¶ 1003, at 1029.

to the one used by the Selective Service System itself,¹⁷ one which closely parallels West's.

Each month the SSLR is updated with material. A covering newsletter is sent which summarizes the major recent developments—key cases, new regulations, new groups formed to assist registrants, etc. The newsletter, like *Law Week's Summary and Analysis*, is valuable in spotting current issues in this expanding area of the law.¹⁸

When a nation exercises one of its gravest powers over an individual, it is imperative that the procedural rules and substantive criteria which govern be clear, fair, and just. It is the lawyer's task to insure that the registrant is fairly treated by the Selective Service System. Although the System deliberately limits the lawyer's ability to render such aid by prohibiting representation by counsel before the local board,¹⁹ the lawyer can still be of substantial help to registrants by advising them of alternative choices available within the System and assisting them in protecting their rights. The *Selective Service Law Reporter* should materially aid him in doing this job.

17. See LEGAL ASPECTS OF SELECTIVE SERVICE (1963), published by the office of the General Counsel of the Selective Service System.

18. For example, lawyers could have kept up with the progress of the major draft case decided by the Supreme Court this year, *Oestereich v. Selective Service System, Local Board No. 11*, 37 U.S.L.W. 4053 (No. 46, decided Dec. 16, 1968). The SSLR newsletter kept note of the filing of briefs in that case, offering facsimiles for sale.

19. 32 C.F.R. § 1624.1(b) (1968).