DRAFT COUNSELOR'S WORKSHOP—(NOTE CHANGE)

The Draft Counselors' Workshop will take up the problems of community draft counseling centers. Participants will include representatives from a number of centers in Northern California. We hope that this will be an opportunity to discuss the problems of organizing and operating counseling centers, maintaining confidentiality, individual v.s. group counseling sessions, screening and making referrals, and keeping counseling up to date. CCCO wants to cooperate with West Coast counseling centers to facilitate exchange of ideas and information. We hope that this workshop will be a beginning in this direction. The session will run from 10 to 4 on Saturday, May 3rd at CCCO, 437 Market Street, San Francisco.

I-S(C) FOR GRADUATE STUDENTS: THE COURTS DIFFER

In the February issue of this newsletter, we noted the decision of Judge Roberts in Austin Texas in the case of Armendariz v. Hershey, which held that an individual who has been deferred in Class II-S since June 30, 1967 only for graduate studies is entitled to deferment in Class I-S(C) if he is issued an induction order while enrolled full-time in graduate school.

The February issue of the Selective Service Law Reporter reports four new decisions on this same matter. Carey v. Local Board No. 2, decided in the district of Connecticut, follows the finding of Armendariz. Dickens v. United States (S.D Iowa, Feb 1-, 1969) denied I-S(C) to a graduate student, but does not necessarily contradict Armendariz, because Dickens had been granted undergraduate II-S's since June of 1967.

Two cases directly contradict the finding of Armendariz. Rosenfeld v. Local Board No. 19, (W.D. Pa. Feb. 13, 1969), and Kaplish v. Hershey (N.D. Ohio Feb. 7, 1969) found that graduate students who have been deferred only as graduate students under the Military Selective Service Act of 1967 are not entitled to the I-S(C) classification. The reasoning of these last two decisions is at least arguably incorrect.

Counselors who are concerned with this problem will find reference to Selective Service Law Reporter, "Articles and Comment", 1SSLR-4041, helpful.

RECLASSIFICATION OF INTERNS

Some counselors may have noticed by now the results of Operations Bulletin 318, issued January 8, 1969, Subject: Reclassification and Special Report of Doctors of Medicine.

The text of the Operations Bulletin reads as follows:

"1. Information received from the Department of Defense indicates that the Selective Service System will receive a special call for Doctors of Medicine to be delivered during the summer of 1969.

"2. In preparation for this special call, local boards are requested to immediately reopen and consider anew the classifications of physician interns who are in Class II-A and whose internships will terminate during 1969. Physician interns who have been appointed in the Public Health Service CORD Program may be retained in Class III-A without reopening their classifications."
The Selective Service Law Reporter notes that "there is a question whether a board may permissibly rely upon an "internal directive", such as an Operations Bulletin, as authority for a reclassification decision."

APPEALS AND AGE

On November 27, 1968, General Hershey issued State Director Advice No. 764: "Acting under Section 10(c) of the Military Selective Service Act of 1967, as implemented by Section 1604.1(g) of Selective Service Regulations, I hereby delegate to each State Director of Selective Service the authority which was vested in me by Section 1626.24(a) of Selective Service Regulations to prescribe the order in which appeals are to be considered by appeal boards in his state, when it is determined that appeals should not be considered in the order in which they are received."

Section 1626.24 of the Regulations, referred to above, reads: "(a) The appeal board shall consider appeals in the order in which they are received unless otherwise directed by the Director of Selective Service; in which event, they shall be considered in such order as the Director of Selective Service shall prescribe."

While there are several criteria which might be used to alter the order in which appeals are heard, it would seem most likely that this authority will be used, if at all, to speed up the appeals of registrants nearing the age of 26.

This makes it more difficult for an individual to avoid issuance of induction orders until he is beyond draft liable age.

ENLISTMENT AFTER ISSUANCE OF INDUCTION ORDERS

Operations Bulletin No. 287, amended on January 31, 1969, and titled SUBJECT: ENLISTMENT OF REGISTRANTS WHO HAVE BEEN ORDERED FOR INDUCTION, reads in part:

"Each registrant who inquires regarding enlistment, after an order to report for induction has been issued to him, will be informed that, supported by convincing evidence that a representative of any of the Regular armed forces is prepared to enlist him on or before the date set for his induction, he may request the State Director of Selective Service to cancel his order and if the State Director does not approve his request, he may appeal to the Director of Selective Service, who normally will cancel that order and permit him to enlist."

CO PROVISION HELD UNCONSTITUTIONAL

Most counselors will be aware that Judge Charles Wyman, a Federal District Judge in Boston, declared Section 6(j) of the Military Selective Service Act unconstitutional. That section requires "religious training and belief" as the basis for claims of conscientious objection. In deciding US v. Sisson, Judge Wyman stated that, "In the draft act, Congress unconstitutionally discriminated against atheists, agnostics and men who are motivated by profound moral beliefs which constitute the central convictions of their beings."

The decision has been appealed by the government directly to the US Supreme Court.

ACTIVITY IN THE WEST COAST COURTS

Reports in recent months have indicated a growing concern on the part of Federal Judges and United States Attorneys about the rising number of draft violators in the Federal Courts. At the same time, it is becoming clearer that those Federal officials are not insensitive to the legal and moral dilemmas posed by the government's attempts to conscript manpower for the controversial war in Vietnam.
Seattle

On January 25, Judge William Beeks of Seattle gave three years probation to Curtis Chapel, Jr., who had been convicted by a jury of refusal of induction as a noncooperator. Judge Beeks is known for his severe sentencing in Selective Service cases, and often has ordered five-year prison sentences. Judge Beeks was a prosecutor at the Nuremberg trials, and allowed testimony by Chapel regarding the Nuremberg principles despite objections from the United States Attorney, Robert Mussehl.

According to the Seattle Post Intelligencer, Beeks told the courtroom that "Chapel's case had caused him considerable mental anguish".

The United States Attorney also admitted to some mixed feelings about the case. On the one hand "Mussehl said he'd been convinced of Chapel's sincerity since their first meeting." At the same time he felt that "Leniency in the San Francisco federal courts had caused a near mass movement in draft resistance... By being tough, a judge may feel he's fulfilling his responsibility as a deterrent."

San Francisco

Observers in the San Francisco Federal Courts have noted similar discomfort expressed by Federal officials. The number of Selective Service cases has risen to such heights in the Bay Area that special procedures are being established in the courts to expedite pre-trial arraignments, pleas and hearings, and at least two federal judges from other districts have been called in to conduct trials. In a recent case involving Roderick Rose, a draft resister from Detroit, Judge William Sweigert meted out a sentence of two years in prison, despite a plea from Rose's attorney that he be granted probation. United States Attorney Michael Metzger commented that "This is the type of case that is causing this district problems. They flout the Selective Service System, then transfer their case here on the brink of induction, hoping to receive a light sentence or probation. Substantial sentences such as this may have the salutary effect of diminishing the desirability of this district as a place to be sentenced for violating the draft law."

And yet, on April 2, Judge Sweigert, in sentencing a middle-aged man for tax fraud, stated: "No Judge of this court can, in good conscience, perform the distasteful and sometimes heart-rending duty of committing young idealists to jail for refusal to perform duties under the controversial Selective Service Act and at the same time, extend the lenient and sometimes meaningless imposition of a fine for this kind of crime to mature-- and materialistic rather than idealistic-- men of comparative wealth who, by concealment, refuse to meet their obligation for paying the taxes which are necessary, unfortunately, to sustain the young men who are performing their military duties in the service of their country-- sometimes at the risk of their lives."

Kangas

The moral dilemma of balancing "deterrent" law enforcement and justice in individual cases by the Federal Courts may be further illuminated by the sentence given Emil Kangas in San Francisco. Kangas tore up his draft card on November 15, and threw the pieces at the United States Attorney, after Kangas' brother John was sentenced to two years' imprisonment.

On March 11, Emil Kangas was sentenced to three years in prison. Judge Lloyd Burke, however, offered Kangas a novel alternative to the prison time: if he were willing to accept certain terms, he could choose to spend only four months in prison and the remaining 32 months on probation. The conditions of the probation would be that Kangas live alone unless the probation office agreed that his living companions were acceptable; that he not participate in any demonstrations or activities reflecting his personal philosophy regarding military service or any draft counseling or anti-draft activities, directly or indirectly.
Judge Burke said, "It could be urged that such conditions might be regarded, under the circumstances, as an infringement of First Amendment rights. But the restrictions are no greater than those conditions that necessarily follow actual confinement. I can't halt your personal views, but I can restrict the exposure of your views to the public." The judge indicated that this formula would be his sentencing philosophy in future similar cases where probation was deemed advisable.

Wentworth

On April 9, Assistant US Attorney Metzger refused to prosecute Walworth Wentworth, a Hayward, California conscientious objector, who had been indicted by the Federal Grand Jury for refusal to submit to induction. Metzger stated his opinion that the local board acted improperly in denying Wentworth CO status.

Metzger went on to say that, "If the board maintains its position and insists he be inducted, I could not, in good conscience, advocate his conviction... In this case, if there had to be a criminal prosecution ultimately, I would have either to urge an acquittal or disqualify myself as a prosecutor."

On April 11, Metzger was curtly overruled by Cecil Poole, U.S. Attorney for Northern California. Poole removed Metzger from the case, noting that "a decision of this sort...is mine, not his. Metzger did not consult with me before taking his action."

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GUIDE TO THE DRAFT by Arlo Tatum and Joseph Tuchinsky is now available at a discount for $1.20 per copy for 10 or more. Regular price per single copy is $1.95. These costs do not include postage.