MEMORANDUM ON FAILURE TO CONDUCT CONSCIENTIOUS OBJECTOR HEARING BY THE DEPARTMENT OF JUSTICE

Beginning in the latter part of 1951 and the first part of 1952 lawyers in the Department of Justice have argued that one classed as a conscientious objector *by his local board* may be denied that classification by the appeal board without an investigation and hearing in the Department of Justice, which are required by statute.

It is my opinion that the statute commands the investigation and hearing. The policy of the department and the regulation making it the usual procedure are invalid because they are against the statute. Where the statutory investigation and hearing are not given upon an appeal taken by a registrant who has made the conscientious objector claim, the law is violated. It should be asserted that there has been in such case an improper denial of a full and fair hearing of the conscientious objector claim commanded by the statute and also that the regulation to the contrary is invalid.

Section 6 (j) of the Universal Military Training and Service Act reads:

"Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the president, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall be deferred. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board."

Section 1622.14 of the Selective Service Regulations (32 C.F.R. § 1622.14) provides:

"Class I-O: Conscientious Objector Available for Civilian Work Contributing to the Maintenance of the National Health, Safety, or Interest.—(a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to both combatant and noncombatant training and service in the armed forces.

"(b) Section 6 (j) of title I of the Universal Military Training and Service Act, as amended, provides in part as follows:

"'Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.'"

Section 1623.2 of the regulations (32 C.F.R. § 1623.2) provides:

"Consideration of Classes.—Every registrant shall be placed in Class I-A under the provisions of Section 1622.10 of this chapter except that when grounds are established to place a registrant in one or more of the classes listed in the following table, the registrant shall be classified in the lowest class for which he is determined to be eligible, with Class I-A-O considered the hightest class and Class I-C considered the lowest class, according to the following table:

Class:		Class:	
	I-A-O		IV-A
	I-O		IV-B
	I-S		IV-C
	II-A		IV-D
	II-C		IV-F
	II-S		V-A
	I-D		I-W
	III-A		I-C"

In all cases where there has been a denial of the conscientious objector status by the appeal board *before June 17, 1952*, without referring the case to the Department of Justice for investigation and hearing, there is a conflict with the express provisions of the Selective Service Regulations then in existence. These regulations (before June 17, 1952) made it mandatory that the appeal involving conscientious objection be referred to the Department of Justice for inquiry and hearing, regardless of whether the local board had classified the registrant in Class I-O. The regulations were amended on June 17, 1952, whereby this requirement was deleted. It is my opinion that the new regulations are inconsistent with the provisions of the act above quoted, as will be discussed later.

Herein discussed are rights of a registrant: (1) to a hearing under the regulations before June 17, 1952, (2) to an investigation and hearing in the Department of Justice after June 17, 1952, and (3) to a hearing even when the appeal board grants the I-O classification.

I.

Sections 1626.25 and 1626.26 of the regulations (32 C.F.R. §§ 1626.25 and 1626.26) before June 17, 1952, provided:

"1626.25. Special Provisions When Appeal Involves Claim That Registrant Is a Conscientious Objector.—(a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:

"(1) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to combatant training and service in the armed forces, but not conscientiously opposed to noncombatant training and service in the armed forces, the appeal board shall first determine whether or not such registrant is eligible for classification in a class lower than Class I-A-O. If the appeal board determines that such registrant is eligible for classification in a class lower than I-A-O, it shall classify the registrant in that class. If the appeal board determines that such registrant is not eligible for classification in a class lower than Class I-A-O, but is eligible for classification in Class I-A-O, it shall classify the registrant in that class.

"(2) *If the appeal board determines that such registrant is not eligible for classification in either a class lower than Class I-A-O or in Class I-A-O, the appeal board shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.*—[Emphasis added.]

"(3) If the registrant claims that he is, by reason of religious training and belief, conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces, the appeal board shall first determine whether or not the registrant is eligible for classification in a class lower than Class I-O. If the appeal board finds that the registrant is not eligible for classification in a class lower than Class I-O, but does find that the registrant is eligible for classification in Class I-O, it shall place him in that class.

"(4) If the appeal board determines that such registrant is not entitled to classification in either a class lower than Class I-O or in Class I-O, it shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

"(b) No registrant's file shall be forwarded to the United States Attorney by any appeal board and *any file so forwarded shall be returned, unless in the 'Minutes of Action by Local Board and Appeal Board' on the Classification Questionnaire (SSS Form No. 100) the record shows and the letter of transmittal states that the appeal board reviewed the file and determined that the registrant should not be classified in either Class I-A-O or Class I-O under the circumstances set forth in subparagraphs (2) or (4) of paragraph (a)* of this section.—[Emphasis added.]

"(c) The Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

"(d) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice and the report of the hearing officer of the Department of Justice.

"1626.26. Decision of Appeal Board.—(a) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant, except that an appeal board may not place a registrant in Class IV-F because of physical or mental disability unless the registrant has been found by the local board or the armed forces to be disqualified for any military service because of physical or mental disability.

"(b) Such classification of the registrant shall be final, except where an appeal to the president is taken; provided, that this shall not be construed as prohibiting a local board from changing the classification of a registrant in a proper case under the provisions of part 1625 of this chapter."

The denial of a hearing provided for by the regulations before draft boards is a denial of due process.—*United States* v. *Peterson*, 53 F. Supp. 760 (N.D. Calif. S.D.); *United States* v. *Laier*, 52 F. Supp. 392 (N.D. Calif. S.D.); *United States* v. *Fry*, 203 F. 2d 638

(2nd Cir.); *Davis* v. *United States*, 199 F. 2d 689 (6th Cir.); compare *Knox* v. *United States*, 200 F. 2d 398 (9th Cir.).

Refusal of the conscientious objector status to a registrant solely because he appeals on the ground that he is a minister is a plain violation of the regulations and flouts the requirements of procedural due process.—*Cox* v. *Wedemeyer*, 192 F. 2d 920 (9th Cir.).

The interpretation placed upon the act by the United States attorneys when they returned the files to the boards before June 17, 1952, because they held that an inquiry and hearing was not necessary flies in the teeth of Section 6 (j) of the act and Section 1626.25 of the regulations. They denied the registrants a full and fair hearing before the appeal board.

II.

The denial of an investigation and hearing in the Department of Justice after June 17, 1952, pursuant to amended Regulation 1626.25 (executive order of the president 10,363, Volume 17, Federal Register No. 119, Wednesday, June 18, 1952, pages 5,449 to 5,452) is a denial of a full and fair hearing. The amended regulation and the executive order of the president conflict directly with Section 6 (j) of the act. The new regulation as amended reads as follows:

"§ 1626.25. *Special provisions when appeal involves claim that registrant is a conscientious objector.* (a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:

"(1) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to participation in combatant training and service in the armed forces, but not conscientiously opposed to participation in noncombatant training and service in the armed forces, and the local board has classified the registrant in Class I-A-O, the appeal board shall proceed with the classification of the registrant. If, in such a case, the local board has classified the registrant in any class other than Class I-A-O, the appeal board shall transmit the entire file to the United States Attorney for the federal judicial district in which the appeal board has jurisdiction for the purpose of securing an advisory recommendation from the Department of Justice.

"(2) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces, and the local board has classified the registrant in Class I-O, the appeal board shall proceed with the classification of the registrant. If, in such a case, the local board has classified the registrant in any class other than Class I-O, the appeal board shall transmit the entire file to the United States Attorney for the federal judicial district in which the appeal board has jurisdiction for the purpose of securing an advisory recommendation from the Department of Justice.

"(b) Whenever a registrant's file is forwarded to the United States Attorney in accordance with paragraph (a) of this section, the Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

"(c) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant the letter containing the recommendation of the Department of Justice.

"5. (a) Subparagraph (1) of paragraph (b) of § 1628.4 of Part 1628, *Physical Examination*, is amended to read as follows:

"(1) Prepare an original and three copies of the Record of Induction (DD Form No. 47), by completing all of Section I except item 2, and item 18 of Section II thereof, and send the original to the medical advisor to the local board for completion of item 19 of Section II after the medical interview.

"(b) Paragraph (b) of § 1628.5 of Part 1628 is amended to read as follows:

"(b) Upon receiving such request for transfer for medical interview the registrant's own local board shall forward the original and three copies of the Record of Induction (DD Form No. 47), after completing all of Section I except item 2, and item 18 of Section II thereof, to the local board of transfer and shall enter under "Minutes of Actions by Local Board and Appeal Board" on the Classification Questionnaire (SSS Form No. 100) the date such forms were forwarded and the designation of the local board of transfer.

"(c) Subparagraph (2) of paragraph (a) of § 1628.13 of Part 1628 is amended to read as follows:

"(2) Prepare an original and three copies of the Record of Induction (DD Form No. 47), by completing all of Section I except item 2, and item 18 of Section II thereof, for each such registrant for whom such form has not previously been completed.

"6. Section 1630.4 of Part 1630, *Volunteers*, is amended to read as follows:

"§ 1630.4 *Classification of volunteers.* When a man files an Application for Voluntary Induction (SSS Form No. 254) under the provisions of § 1630.1, he shall be classified as soon as possible and placed in a class available for military service unless:

"(a) Disregarding all other grounds for deferment, he would be classified in Class II-A, Class II-C, or Class III-A;

"(b) He is the Vice President of the United States, a Governor of a State, any State official chosen by the voters of the entire State, a member of the Congress of the United States, a member of a State legislative body, or a judge of a court of record of the United States or of a State, required to be deferred by law;

"(c) He is the sole surviving son of a family of which one or more sons or daughters were killed in action or died in line of duty while serving in the Armed Forces of the United States, or subsequently died as a result of injuries received or disease incurred during such service, whose induction is prohibited by law; or

"(d) Under the provisions of § 1622.44 of this chapter he is found to be physically, mentally, or morally unfit."

HARRY S. TRUMAN

THE WHITE HOUSE,

June 17, 1952.

[F. R. Doc. 52-6748; Filed, June 17, 1952; 11:48 a. m.]

To understand the conscientious objector provisions of the 1948 act the background of the 1940 act must be considered. The 1948 act being identical to the 1940 act in most respects, it is necessary to consider the history of the 1940 act along with the history of the 1948 act. Senate Report No. 1268, 80th Congress, Second Session, dated May 12, 1948, accompanying Senate Bill 2655, indeed, under Section VI, discussing Section 6 (j) of the act, said concerning conscientious objection: "This section re-enacts substantially the same provisions as were found in subsection 5 (g) of the 1940 act."

It will be noticed that the report on the 1948 act says that it is exactly like the 1940 act. This means that the same statutory construction that prevailed under the 1940 act should be followed for the 1948 act.

The "Statement of the managers on the part of the House" in making their conference report on September 12, 1940, shows there was an original plan to refer the conscientious objector cases by the local board to the Department of Justice. The House amendment was accepted by the joint conference and an agreement reached that the conscientious objector classification would be first determined by the local board with the right of appeal. Among other things, the conference report reads:

" . . . Upon the filing of such appeal, the appeal board is directed forthwith to refer the matter to the Department of Justice for an inquiry and hearing. After appropriate inquiry by the proper agency of the Department of Justice, a hearing is to be held by the department with respect to the character and good faith of the objections."—86 Cong. Rec. 12038, 76th Congress, Third Session.

The same conference report made to the House was also made to the Senate on the next day.—See Hearings on Senate Bill 4164, 86 Cong. Rec. 12082, 76th Congress, Third Session.

House Report No. 2947 to accompany Senate Bill 4164 dated September 14, 1940, states under "Conscientious Objectors": "After appropriate inquiry by the appropriate agency of the Department of Justice, a hearing was held by the Department of Justice in the case of each such person with respect to the character and good faith of his objections."—See pages 17-18, House Report No. 2947, 76th Congress, Third Session, September 14, 1940.

Senate Report No. 2002, on Senate Bill 4164, dated August 5, 1940, provided as follows: "The measure is *fair* both to a person holding conscientious scruples against war and to the Nation of which he is a part. It provides for inquiry and hearing by the Department of Justice to make recommendations as to whether a person claiming deferment because of conscientious objection to war is or is not a bona fide conscientious objector. . . . The rights of a conscientious objector and of the government are fully protected against possible local prejudice, influence, or passion, by provision for appeal to a board of appeal."—See Senate Report No. 2002, 76th Congress, Third Session, p. 9 (Emphasis added).

It was always the view of the Department of Justice and the Selective Service System that the Selective Training and Service Act of 1940 required a reference to the Department of Justice for investigation and hearing in every case where the appeal board did not sustain the conscientious objector classification.

General Lewis B. Hershey, in the publication entitled "Conscientious Objection" said:

"The Department of Justice and Selective Service took the position that each time the case of a registrant who claimed to be a conscientious objector came before a board of appeal, the case

must be referred to the Department of Justice for its recommendation. *This was* felt to be the direct application of the law. In addition such reference was necessary because *new factors* in the case might be brought to light by the Department's investigation and hearing. . . . " (Emphasis added.)—See Selective Service System, *Conscientious Objection*, Special Monograph No. 11, Vol. I, pp. 147, 150, 155, Washington, Government Printing Office, 1950.

It is my opinion that the Department of Justice has changed its construction of the statute and sought the amendment to the regulations, dispensing with the reference to the Department of Justice where the local board gives the I-O classification, solely for the purpose of lightening the burden of the Department of Justice. The department wants to get out of investigating as many of these cases as possible. It thought it saw a loophole by reading into the statute something that was not there.

The government ought to produce something from Congress authorizing this change. The Department of Justice cannot do so. Its failure proves that it is trying to amend the statute and make it different from what Congress intended. The fact that the executive order incorporated the departmental interpretation of the act into the regulations does not make it valid. This regulation by executive order flies into the teeth of the act of Congress.

The position taken by the Department of Justice is unreasonable. The regulation resulting from the executive order of the president is not reasonable either. The over-all purpose of Congress in dealing with the conscientious objectors must be considered.

Congress intended to exempt all conscientious objectors found by final determination to be such. The congressional report on the 1940 act shows an intent to have the Department of Justice investigate every case where there is any question about the conscientious objector status. The intent to have the investigation is not hinged on the type of an appeal that was taken. Congress knew that when an appeal was taken there would be a completely *de novo* consideration of the conscientious objector problem.

Congress knew that the local boards would not have the final say in all cases. It knew that appeals would be taken. In fact the act provides for appeals generally.

Section 10 (b) of the act provides for the boards. Section 10 (b) (3) in particular mentions the local boards and appeal boards. Section 6 (j) deals specifically with conscientious objectors, including procedure on appeal. The sentence in that section of the act, reading "Any person claiming exemption from combatant training and service because of such conscientious objections shall if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board" is mere surplusage. The registrant would have the right to take an appeal in any event under the act. It merely recognizes that he has the right to take an appeal like all other registrants. The conscientious objector is not limited in taking an appeal claiming other grounds. This provision of the act was merely to ensure that the conscientious objector had the right to appeal from the denial of the claim.

The controlling sentence is the one following the one above quoted, namely, "Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing." The words "such appeal" cannot be reasonably interpreted to mean 'only in event he appeals from a denial of the conscientious objector claim.' The sentence says that upon the filing of the appeal the appeal board shall refer any such claim to the Department of Justice. If Congress intended to limit "such claim" it would have said so. The proper interpretation of this sentence is that whenever any appeal taken to the appeal board involves the conscientious objector claim, "such claim" must be referred to the Department of Justice for inquiry and hearing unless the appeal board grants the complete conscientious objector classification immediately upon taking the appeal.

Congress also knew that there would be a *de novo* consideration of the case by the appeal board. Especially is this true of the Congress that passed the 1948 act since the regulations provide for the *de novo* consideration of the case upon appeal by the appeal board. An appeal board therefore performs the same function as the local board. It is required to consider the case as though the registrant had theretofore never been classified. Section 1626.26 provides that "The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant."

Since Congress knew that the conscientious objector status should be considered *de novo* by the appeal board, this would mean that the conscientious objector I-O classification would no longer be in effect. It certainly would not be a binding judgment like a judgment of a court of law. The taking of the appeal from any local board classification for all practical purposes constituted an obliteration of that classification regardless of what the classification may have been. This would put the registrant in the same position before the appeal board as before the local board before any classification. Now with the registrant standing in this unclothed position before the appeal board and with the appeal board having doubt or intending to deny the conscientious objector classification, it would be plain that Congress intended that there would be an investigation and hearing in the Department of Justice.

The only way that this conclusion can be escaped is to have something specific in the act which would command that there be no investigation in such circumstance.

It is necessary to consider the reasonableness of this interpretation and the unreasonableness of the construction placed upon the act by the government. It would put Congress in an incongruous position. It would mean that the appeal board would have greater authority than the local board, thus making the law inconsistent. The appeal board has no greater authority than the local board so far as classification is concerned. Congress was after the facts on claims involving conscientious objectors. The only way the facts could be obtained was to refer the matter to the Department of Justice. The very purpose of the Department of Justice investigation was solely to protect the government against malingerers and to ensure the bona fide conscientious objector against arbitrary and capricious denials. If the local boards were not permitted by Congress to exercise arbitrary and capricious power, then certainly the boards of appeal were not intended by Congress to have such power. If the denial of the conscientious objector claim by the local board demanded a Department of Justice inquiry and hearing, then certainly the same denial by the appeal board commanded a similar inquiry and hearing.

It should be remembered that the investigation and hearing in the Department of Justice is not only for the benefit of the government. It also is for the benefit of the registrant. The appeal board is entitled to know all the facts about "any such claim." A registrant is entitled to have the claim developed in the Department of Justice if it is not to be granted by the draft boards—either local or appeal.

It is unreasonable to say that Congress intended to make the safety and welfare of the conscientious objector before the appeal board dependent on whether the claim was granted. The registrant would be much better off if the local board denied the claim in each case. Then this would mean that he was assured of an investigation. Since the appeal board has no greater authority than the local board, the logical consequence is that the hearing in the Department of Justice must be had.

This seems to be the only reasonable interpretation that can be placed on the act. The act must be interpreted in a fair and just way. Congress intended that there should be a fair and just selection of registrants. It would not be fair and just to give a man denied the conscientious objector classification by the local board greater rights than one given the conscientious objector status by the local board. Congress did not intend to discriminate between two classes of registrants when they appear before the appeal board. Congress certainly intended to give the conscientious objector found by the local board to be entitled to the classification at least the same rights before the appeal board as the one denied such status by the local board.

III.

It seems that the act requires an investigation even when the appeal board gives the I-O classification itself. The giving of the I-O classification by the appeal board makes it harmless error if the conscientious objector status is not taken away. But where the conscientious objector claim is later denied by the National Selective Service Appeal Board, the registrant can be said to be harmed. The National Selective Service Appeal Board may have denied the claim because of lack of corroborating evidence. In any event the denial of the claim by the National Selective Service Appeal Board after the appeal board has failed to refer the case to the Department of Justice is a denial of procedural due process.

The word "shall" is used in the sentence of the act commanding the inquiry and hearing. This is followed by the word "refer." Following the word "refer" are the words "any such claim." "Any such claim" means any conscientious objector claim. This would mean that if an appeal had any conscientious objector claim in it, it would be the duty of the appeal board to refer it to the Department of Justice.

It is necessary to look further into the history of the various bills that were proposed to Congress. The original (1940) Burke-Wadsworth Bill had in mind that every conscientious objector claim be investigated by the Department of Justice as soon as the claim was made to the local board. That procedure, if made the law, would have required every claim filed with the local board to be investigated by the F.B.I. This 1940 bill was objected to in Congress and finally a compromise was reached whereby the reference to the Department of Justice was provided for when the conscientious objector claim reached the appeal board. If Congress intended that originally all such claims be investigated by the Department of Justice before the local board then the change of the original bill to require the appropriate inquiry and hearing in the Department of Justice after an appeal to the appeal board would indicate that Congress had in mind the same type of investigation being made in every case after the claims reached the appeal board.

In any event Congress intended in the original bill that every conscientious objector claim that was questioned by the local board should be investigated by the Department of Justice. If this was the intention of Congress then when this investigation was transferred from the local board to the appeal board in the final conference report of the two joint committees of Congress in 1940, it would also indicate that Congress intended that there should be an investigation where the appeal board questioned the claim. In other words, if Congress intended an investigation if the local board denied the claim, by force of the same reason the subsequent bill transferring the investigation to the appeal board would

mean that the appeal board denial would require the investigation too.

The sentence of the act immediately preceding the sentence providing for the inquiry and hearing is merely declaratory of the rights of the registrant to an appeal. It merely iterates for the conscientious objector the right of appeal that is granted all registrants under the act. If the sentence is interpreted in this way, the sentence that follows about inquiry and hearing means that there should be an investigation and hearing following the filing of such appeal. "Such appeal" means an appeal by a conscientious objector or by a person having "such claim" as a conscientious objector. The word "appeal" used in the sentence is not in any way qualified by reference to the type of classification that was made by the local board. Since the right to the investigation flows from the taking of the appeal, rather than the type of classification made by the local board, it is absolutely mandatory that the inquiry and hearing be conducted by the Department of Justice in every case where there is an appeal to the appeal board and where a claim for classification as a conscientious objector is involved in such appeal, regardless of the appeal board classification.

CONCLUSION

Wherefore, it is submitted that a proper interpretation of the act makes invalid any departmental interpretation or president's order which conflicts with it. The executive cannot add to or take from the intent of Congress. This is expressly true where the administrative interpretation upon the act requires a just investigation and final report by the Department of Justice on the conscientious objector claim, regardless of the classification by the local board.

This interpretation of the law has been the interpretation of the Department of Justice and the Selective Service System for a long time under the act. This administrative interpretation should be given great weight by the courts. The sudden change in interpretation expressed in the new regulation, promulgated on June 17, 1952, must find some justification in a change in the law. It cannot be justified merely by a change of opinion by lawyers for the Department of Justice who for the first time dreamed up this new idea for the purpose of saving the Department a great deal of work. Congress is the one that must lighten the burden of the Department of Justice. It cannot lighten its own burden by new theories that attempt to stretch the law out of its proper shape.

Cox v. *Wedemeyer*, 192 F. 2d 972 (9th Cir.), is in point and supports our position here. In the *Cox* case, the registrant was classified in I-A-O. The local board found him to be a conscientious objector willing to do noncombatant service. He appealed. The appeal board did not refer the case to the Department of Justice because he was seeking a ministerial exemption on appeal and not the conscientious objector status. The Court of Appeals found that the failure to consider the conscientious objector claim on appeal was a violation of the regulation.

While this case is not directly in point, it seems that the spirit of the decision calls for a conclusion that the appropriate inquiry and investigation should be held where a registrant appeals from a I-O (full conscientious objector classification) as well as when he appeals from a I-A (full military service classification) and from a I-A-O (partial conscientious objector classification).

Respectfully submitted,

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