

This provision was intended to prevent cases similar to Wolff against Selective Service Local Board 16. In that case, the U.S. Court of Appeals for the Second Circuit held that by reclassifying participants in a demonstration against the Vietnam war as "delinquents" and subjecting them to immediate induction, the local board had both exceeded its jurisdiction and had caused an immediate and irreparable injury to the participants' constitutional rights. Consequently, the suit was sent back for further hearing by the district court.

In its opinion, the second circuit noted that:

"Normally it is desirable not only that the administration (of the draft law) function with a minimum of judicial interference but also that, when the administration does err, it be free to work out its own problems. But, as noted above, there are competing policies and when as here a serious threat to the exercise of First Amendment rights exists, the policy favoring the preservation of these rights must prevail."

The court pointed out that the National Appeal Board had concluded unanimously that the reclassifications were valid, and that General Hersey had stated repeatedly that the reclassifications were proper. Thus, it would have been a futile recourse to pursue the normal appeal procedure, and the Federal court thus accepted jurisdiction.

Now, that is all changed. If the same demonstrators were today reclassified, they could seek judicial review only when they had been through the entire appeals process, and only after they had been inducted—when the reclassification would be moot; or had refused induction—when they would be charged with a criminal violation of the law. Further, the courts would be virtually prohibited from considering the question of the local board's exceeding its jurisdiction in the reclassification proceeding.

I think this is an unprecedented attempt to work mischief with constitutional rights, and that it should be stricken from the law. Accordingly, my bill would strike it.

PROSECUTOR'S DISCRETION

The 1967 amendments require the Attorney General of the United States, on the request of the Director of Selective Service, to prosecute a given selective service case or to advise the Congress, in writing, of the reasons for his failure to do so. This is a virtually unprecedented provision, and goes against the grain of our long established legal protection. Only experienced prosecutors have sufficient judgment to determine whether a given case merits the expenditure of public funds, or whether a case would not merit such an expenditure.

My bill restores the provision of the old law, giving prosecutorial discretion back to the prosecutors.

LOCAL BOARD DISCRIMINATION

The present draft law prohibits discrimination in determining the composition of local boards—but only discrimination on account of sex. Despite the fact that the racial discrimination issue has already been raised in court cases, the law nowhere prohibits discrimination on account of race, religion, or creed. Should we interpret the explicit mention of discrimination by sex to mean an implicit acceptance of discrimination on other grounds? I, for one, would hope not.

But to be sure, my bill would explicitly prohibit discrimination by race, color, creed, or sex in determining the composition of local boards.

My bill makes another change in the law governing the composition of local boards: it requires the membership of a local board to represent all elements of the public it serves, insofar as practicable. The Marshall Commission developed statistics which clearly reveal how unrepresentative local boards are in many instances. At the time the Commission report was issued a year ago, Alabama had no nonwhite local board members, yet more than 30 percent of the State's population was Negro. In New York City, 4.6 percent of the local board members were nonwhite yet 14.7 percent of the city were nonwhite. In the District of Columbia, 36.2 percent of the board members were nonwhite, while 54.8 percent of the District were nonwhite. And in Massachusetts, six-tenths of 1 percent of board members were nonwhite, while 2.4 of the State were nonwhite.

The statistics are a cause of great concern, and the President has requested General Hershey and the State Governors to bring local boards more in line with the population they represent. My bill would require that the boards be so constituted, and not leave it to the discretion of the Director of the Selective Service and the State Governors.