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## Military Law - Pre-Induction Review - Section 10(b)(3) of the Military Selective Service Act of 1967

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MILITARY LAW—PRE-INDUCTION REVIEW—SECTION  
10(b)(3) OF THE MILITARY SELECTIVE  
SERVICE ACT OF 1967

On September 12, 1967, Fein, an intern at Cleveland Metropolitan General Hospital, wrote his local board "to declare [himself] a conscientious objector to war and the institution which propagates war, the military."<sup>1</sup> He requested Selective Service System form number 150, so that he could explain the basis for his conscientious objection. Upon receipt of this form, he filled it out and returned it to his local draft board. After Fein was classified as a conscientious objector by his local selective service board, the State Director requested an appeal.<sup>2</sup> Dr. Fein was notified of this, but was not furnished with the basis for the appeal or given an opportunity to reply. The appeal board classified him I-A by a unanimous vote rejecting his conscientious objector claim. Again Dr. Fein was not given any reason for the ruling. Fein brought a pre-induction suit challenging, on due process grounds, the constitutionality of his selective service appeal procedures. The district court dismissed the complaint, finding the suit barred by section 10(b)(3) of the Military Selective Service Act of 1967,<sup>3</sup> and the court of appeals affirmed. The United States Supreme Court affirmed the judgment of the court of appeals, apparently feeling that pre-induction review is available only where a registrant's "claimed status is . . . factually conceded and thus [is] assured by the statute upon objective criteria." *Fein v. Selective Service System*, 405 U.S. 365, 388 (1972).

*Fein v. Selective Service System* and other cases dealing with section 10(b)(3) of the Military Selective Service Act of 1967 are very relevant to a registrant's right to pre-induction review of his classification. Congress' enactment of section 10(b)(3) has made pre-induction review of a registrant's classification very difficult. Section 10(b)(3) provides that:

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1. Appendix filed with the Supreme Court at 33a, *Fein v. Selective Service System*, 405 U.S. 365 (1972).

2. 32 C.F.R. § 1626.1 (Supp. 1970). Either the Director of Selective Service or the State Director of Selective Service as to local boards in his state may appeal from any determination of a local board at any time.

3. 50 U.S.C. App. §§ 451-67 (Supp. IV, 1968).

No judicial review shall be made of the classification or processing of any registrant . . . except as a defense to a criminal prosecution . . . after the registrant has responded either affirmatively or negatively to an order to report for induction. . . . *Provided*, That such review shall go to the question of the jurisdiction . . . only when there is no basis in fact for the classification. . . .<sup>4</sup>

The Supreme Court however, has not read section 10(b)(3) literally, as the Court has increased the availability of pre-induction judicial review in *Gutknecht v. United States*,<sup>5</sup> *Breen v. Selective Service Board No. 16*<sup>6</sup> and *Oestereich v. Selective Service Board*.<sup>7</sup> Why did Congress enact section 10(b)(3) of the Selective Service Act of 1967? How does section 10(b)(3) effect a registrant's right to pre-induction review? These questions along with the effect of the Court's decision in *Fein* are what this case note will explain.

In order to understand why Congress enacted section 10(b)(3), we must return to the year 1944, when the principle of restricting pre-induction judicial review originated. The Supreme Court in *Falbo v. United States*<sup>8</sup> dealt with the problem of a Jehovah's Witness' refusal to report for a work assignment. Falbo sought judicial review of his I-O classification, based on the belief that he was entitled to a IV-D classification as a minister. Falbo did not exhaust his administrative remedies as provided for in the Selective Service Act of 1940,<sup>9</sup> and he refused to report to his work assignment, which was assignable under a I-O classification.<sup>10</sup> The Supreme Court held that judicial review of a classification is not available until a registrant has exhausted his administrative remedies, including reporting for a work assignment or induction. This holding indicates the Court's desire to see that the Selective Service System not be delayed in the pre-induction process by judicial review.

In *Estep v. United States*,<sup>11</sup> another case came before the Supreme Court dealing with a Jehovah's Witness claiming a IV-D classification. However, in this case, *Estep had* exhausted all his administrative remedies and *had* reported for induction. The Court in this instance held that even though the Selective Service Act of 1940 said that the decisions of the draft board are final, "the silence of Congress as to judicial review

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4. 50 U.S.C. App. § 460(b)(3) (Supp. IV, 1968).

5. 396 U.S. 295 (1970).

6. 396 U.S. 460 (1970).

7. 393 U.S. 233 (1968).

8. 320 U.S. 549 (1944).

9. Act of Sept. 16, 1940, ch. 720, §§ 5(g), 10(a)(2), 54 Stat. 885, 889, 893.

10. 32 C.F.R. § 1622.14 (Supp. 1970) provides for civilian work assignments as an alternative to military service for those classified I-O.

11. 327 U.S. 114 (1946).

is not necessarily to be construed as a denial of the power of the federal courts to grant relief in the exercise of the general jurisdiction which Congress has conferred upon them . . . [for the enforcement of the Act]."<sup>12</sup>

The federal courts have followed the principle set by these two cases by limiting judicial review to criminal prosecutions following a refusal to submit to induction and habeas corpus proceedings. However, there have been a few exceptions to the rule, as in *Townsend v. Zimmerman*,<sup>13</sup> where the court allowed the registrant's induction to be enjoined because he was not given the opportunity to exercise his administrative remedies.

The principle of allowing judicial review only in a criminal prosecution following a refusal to submit to induction or in a habeas corpus proceeding suffered a tremendous setback in the case of *Wolff v. Selective Service Local Board*.<sup>14</sup> The Second Circuit in this case gave a registrant the right of pre-induction judicial review of his classification, even though he had not exhausted his administrative remedies and had not been tried in a criminal prosecution. The court said that when the registrant was reclassified from II-S (student deferment) to I-A (registrant available for military service) because of his participation in an anti-war protest, he was deprived of his first amendment rights. Therefore judicial review of a classification is available whenever a draft board flagrantly oversteps its jurisdiction by performing such an illegal act.

Congress reacted to the decision of the court in *Wolff* by amending section 10(b)(3) of the Selective Service Act of 1948,<sup>15</sup> enacting the Military Selective Service Act of 1967.<sup>16</sup> The House Armed Services Committee, with the encouragement of the Director of the Selective Service System,<sup>17</sup> felt it necessary to rewrite the provision in order to more clearly enunciate the principle of judicial review. The amendment provides:

No judicial review shall be made of the classification or processing of any registrant by local boards, appeal boards, or the President, except as a defense to a criminal prosecution instituted under section 12 of this title, after the registrant has responded either affirmatively or negatively to an order to report for induction, or for civilian work in the case of a registrant determined to be opposed to participation

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12. *Id.* at 120.

13. 237 F.2d 376 (6th Cir. 1956).

14. 372 F.2d 817 (2d Cir. 1967).

15. Ch. 625, § 10(b)(3), 62 Stat. 608, 619 (1948), *as amended*, 50 U.S.C. App. § 460(b)(3) (1964).

16. 50 U.S.C. App. §§ 451-67 (Supp. IV, 1968), *amending* 50 U.S.C. App. §§ 451-73 (1964).

17. *See Hearings Before the House Comm. on Armed Services*, 90th Cong., 1st Sess. 2636-38 (1967).

in war in any form: *Provided*, That such review shall go to the question of the jurisdiction herein reserved to local boards, appeal boards, and the President only where there is no basis in fact for the classification assigned to such registrant.<sup>18</sup>

This provision was adopted by the House and accepted by the Senate in conference.<sup>19</sup> Congress' reason for the adoption of the new provision, as summed up by Senator Russell, speaking as the Chairman of the Senate Armed Services Committee, is "to prevent litigious interruptions of procedures to provide necessary military manpower."<sup>20</sup>

Since Congress enacted section 10(b)(3) of the Military Selective Service Act of 1967, the courts have interpreted a registrant's right to pre-induction review. The first major case testing the enactment of section 10(b)(3) in the Supreme Court was *Clark v. Gabriel*.<sup>21</sup> In *Gabriel*, the registrant filed for a I-O classification. He filled out form 150, expressing his conscientious convictions.<sup>22</sup> Gabriel was given an opportunity to personally appear, and afterwards he filed a summary of the hearing, as provided by Selective Service regulations. He then appealed after he was denied his I-O (conscientious objector) classification. When a registrant appeals in such a case, the Justice Department conducts an investigation to determine the sincerity of the registrant's beliefs. The Justice Department in Gabriel's case filed a recommendation with the local board suggesting that Gabriel be denied I-O classification. After he was ordered to report for induction he brought an action in the United States District Court for the Northern District of California, seeking to have his induction enjoined and to have the rejection of his claim declared improper on grounds that it had no basis in fact, that the Board had misapplied the statutory definition of conscientious objector, and that the members of the Board were improperly motivated by hostility and bias against those who claim to be conscientious objectors.<sup>23</sup> The district court entered a preliminary injunction, delaying Gabriel's induction until his claim was determined on the merits.

The Supreme Court in holding section 10(b)(3) constitutional said: To allow pre-induction judicial review of such determinations would be to permit precisely the kind of 'litigious interruptions of procedures to provide necessary military manpower' . . . which Congress sought to prevent when it enacted §10(b)(3). We find no constitutional objection to Congress' thus requiring that assertion of a

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18. Military Selective Service Act of 1967 § 1(8)(c), 81 Stat. 100, 104, 50 U.S.C. App. § 460(b)(3) (Supp. IV, 1968).

19. H.R. REP. No. 346, 90th Cong., 1st Sess. 16 (1967).

20. 113 CONG. REC. 15,426 (1967).

21. 393 U.S. 256 (1968).

22. *Id.* at 261.

23. *Id.* at 256-57.

conscientious objector's claims such as those advanced by appellee be deferred until after induction . . . or until defense of the criminal prosecution. . . .<sup>24</sup>

The Court here seems to be going back to the old principle of pre-induction judicial review which was established prior to the *Wolff* decision.

In *Oestereich v. Selective Service Board*,<sup>25</sup> the Supreme Court ruled an exception existed to section 10(b)(3)'s denial of jurisdiction prior to induction. Oestereich was a student preparing for the ministry with a IV-D classification, which under the Selective Service Act gave him an exemption from training and service in the armed forces.<sup>26</sup> He returned his registration certificate "for the sole purpose of expressing dissent from the participation by the United States in the war in Vietnam."<sup>27</sup> Oestereich was declared delinquent (1) for failure to have the registration certificate in his possession,<sup>28</sup> and (2) for failure to provide the Board with notice of his local status. He lost his administrative appeal and was ordered to report for induction. The district court dismissed his suit to restrain his induction and the Supreme Court granted his writ of certiorari.

Justice Douglas, in delivering the majority opinion of the Court, said that there was no congressional authorization for the use of delinquency regulations to deprive the registrant of his statutory exemption. According to Justice Douglas such activity on the part of the draft boards would make them

. . . free wheeling agencies meting out their brand of justice in a vindictive manner . . . . To hold that a person deprived of his statutory exemption in such a blatantly lawless manner must either be inducted and raise his protest through habeas corpus or defy induction and defend his refusal in a criminal prosecution is to construe the Act with unnecessary harshness. . . . No one, we believe, suggests that §10(b)(3) can sustain a literal reading.<sup>29</sup>

This case illustrates that there are exceptions to the principle of no pre-induction judicial review.

Justice Harlan in a concurring opinion explained the rationale for both *Gabriel* and *Oestereich* by stating that the language in section 10(b)(3) refers to

24. *Id.* at 258-59.

25. 393 U.S. 233 (1968).

26. 50 U.S.C. App. § 456(g) (1964).

27. 393 U.S. at 234.

28. 32 C.F.R. § 1617.1 (Supp. 1970) of the Selective Service System Regulations requires a registrant to have the certificate in his personal possession at all times, and 32 C.F.R. § 1642.4(a) (Supp. 1970) provides that whenever a registrant fails to perform "any duty" required of him (apart from the duty to obey an order to report for induction) the Board may declare him to be "a delinquent."

29. 393 U.S. at 237-38.

. . . the 'classification or processing' of any registrant . . . encompass[ed] the numerous discretionary, factual, and mixed law-fact determinations which a Selective Service Board must make prior to issuing an order to report for induction. I do not understand that phrase to prohibit review of a claim, such as that made here by petitioner, that the very statutes or regulations which the Board administers are facially invalid.<sup>30</sup>

Thus a registrant claiming the deprivation of an exemption specifically provided for by statute is entitled to pre-induction judicial review under *Oestereich*, while a registrant claiming a deferment as a conscientious objector, because such deferment is a question of fact for the local draft board, is not entitled to pre-induction judicial review under *Gabriel*.

Out of the Court's decision in *Oestereich*, the question arose whether the reclassification of a student is an illegal act so as to entitle him to pre-induction judicial review. The issue was decided in *Breen v. Selective Service Local Board No. 16*.<sup>31</sup> Breen was a student with a II-S deferment who, in protest of the Vietnam war, turned in his draft card. His local board then reclassified him I-A, declaring him a delinquent. Breen then received an order to report for induction. He sought an injunction against his induction and a review of his classification. The District Court of Connecticut dismissed his appeal,<sup>32</sup> the Second Circuit affirmed the dismissal, and the Supreme Court granted certiorari. The Court in this case concluded that there were no "practical or legal differences between exemptions and deferments."<sup>33</sup> In holding *Breen* within the *Oestereich* decision, Justice Black said:

When Congress thus acted to replace discretionary standards with explicit requirements for student deferments . . . [in the Selective Service Act of 1967] . . . it did not specifically provide or in anyway indicate that such deferred status could be denied because the registrant failed to possess his registration certificate.<sup>34</sup>

Justice Black also held that the language in the Selective Service Act, referring to rules and regulations, did not apply to the discretionary granting of student deferments.

Justice Harlan, in his concurring opinion, considered the issue to be a legal one, and not a factual issue to be left to the Selective Service System. Therefore, the Court in *Breen* expanded the availability of pre-induction judicial review from the registrant who claimed a statutory exemption as in *Oestereich*, to the registrant who claimed a statutory student deferment.

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30. *Id.* at 240.

31. 396 U.S. 460 (1970).

32. 284 F. Supp. 749 (D. Conn. 1968).

33. 396 U.S. at 466.

34. *Id.* at 465.

A registrant's right to pre-induction judicial review was expanded further in *Gutknecht v. United States*,<sup>35</sup> where the Supreme Court declared the Selective Service System delinquency regulations invalid. Thus a registrant is entitled to pre-induction judicial review whenever unauthorized delinquency regulations have been used to reclassify him.

The decisions in *Gabriel*, *Oestereich*, *Breen* and *Gutknecht* illustrate the Court's interpretation of section 10(b)(3) of the Military Selective Service Act of 1967 as leading into the decision of the *Fein* case. *Fein* alleged in his complaint that the statute and regulations governing his classification and appeal violated the due process clause of the fifth amendment in that they did not provide him with a statement of reasons for the State Director's decision denying his I-O classification. *Fein* also alleged that the defendants acted unconstitutionally by failing to provide him with statements of reasons, by failing to permit him to submit additional material for consideration by the appeal boards, and by refusing him an opportunity to rebut the State Director's decision to appeal.<sup>36</sup>

*Fein's* case does not fall in line with the Court's decisions in *Oestereich* or *Breen* in that he does not claim a statutory exemption or a statutory deferment on the basis of objectively established and conceded status.<sup>37</sup> *Fein* in this action challenges the constitutionality of the administrative procedures which adversely affected his claim for I-O classification.<sup>38</sup>

The Court here felt that *Fein's* case was in the same category as *Gabriel*, and if they allowed pre-induction review it would promote the "litigious interruption of procedures to provide necessary military manpower" that Congress intended to prevent.<sup>39</sup> The Court is saying here that since "objective certainty of status is lacking," *Fein* is not entitled to pre-induction judicial review.

Why should section 10(b)(3) be read "with unnecessary harshness" in this instance and not in *Oestereich* and *Breen*? In this case *Fein* is compelled to relinquish his religious convictions by submitting to military authority or risk his liberty in a criminal prosecution in order to obtain judicial redress for deprivations of constitutionally and statutorily guaranteed rights. If section 10(b)(3) is read literally, it conflicts directly with 50 U.S.C. App. § 456(j) in which Congress declared that "nothing" in the Act "shall be construed to require a person to be subject to combatant

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35. 396 U.S. 295 (1970).

36. 405 U.S. at 371.

37. *Id.* at 375.

38. *Id.*

39. *Id.* at 376.

training and service . . . who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."<sup>40</sup> As counsel for the petitioner points out, the Court in *Oestereich* and *Breen* held: [W]here the validity of an induction order is challenged on the grounds that the Board has exceeded its constitutional or statutory authority and . . . has engaged in 'blatantly lawless' conduct, pre-induction review is not precluded.<sup>41</sup>

Therefore, why should the petitioner in this case be denied pre-induction judicial review when he raises precisely the same claims with respect to the summary revocation of his conscientious objector status? Although the majority of the Court was not persuaded by the arguments the petitioner raised in his brief, three of the seven justices deciding the issue were.<sup>42</sup> This means that even though pre-induction review was not allowed in this instance, it might be when a vacancy on the bench is created.

Justice Douglas, in his dissenting opinion, pointed out that section 10(b) (3) raises serious questions of procedural due process. He refers to *Morgan v. United States*,<sup>43</sup> where the Court held:

The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one. Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command.<sup>44</sup>

Justice Douglas points out that although *Morgan* dealt with property rights, we should at least have the same rights when our "liberty" is at stake. Douglas stresses the point that Fein's claim, unlike Gabriel's was "sustained by the local board." By statute, "classification as a conscientious objector is expressly conditioned on the registrant's claim being 'sustained by the local board.'"<sup>45</sup> According to Douglas, Fein has thus demonstrated his statutory fitness for a given exemption.

By taking away Fein's I-O classification the Selective Service violated a section of the Act,<sup>46</sup> which calls for a "fair and just" administration of

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40. Brief for Petitioner at 26, *Fein v. Selective Service System*, 405 U.S. 365 (1972).

41. *Id.* at 27.

42. Justices Powell and Rehnquist took no part in the decision.

43. 304 U.S. 1 (1938).

44. *Id.* at 18-19.

45. 405 U.S. at 385 (Marshall, J., dissenting); 50 U.S.C. App. § 456(j) (Supp. III, 1964).

46. 50 U.S.C. App. § 451(c) (Supp. IV, 1969).

the Act. "Fair and just", according to Justice Douglas, means being apprised of the adverse information contained in his file, and a chance to reply and be heard by the agency in the system which deprived him of his "liberty." Justice Douglas therefore concludes that Fein should be entitled to pre-induction judicial review, because the Selective Service System in this case is "basically lawless."

Justice Marshall in his dissenting opinion states:

I can think of no reasons for an approach which ignores the actual pre-induction claim, and that permits pre-induction review only where 'objective certainty of [the registrant's] status' exists.<sup>47</sup>

Marshall believes, therefore, that the Court's decision in *Oestereich* and *Breen* should be extended to cases dealing with the issue presented by *Fein*. Justice Marshall stresses that in *Fein*, Selective Service appeal procedures are said to be invalid under the Constitution. *Fein* in Marshall's opinion is similar to *Oestereich* in that both cases challenge as illegal the general application of purportedly valid rules. Where a registrant's challenge to the underlying procedures of the classification system or where Congress' presumption of procedural regularity is questioned, pre-induction review should be permitted according to Justice Marshall.<sup>48</sup>

Even though the Supreme Court ruled four to three against *Fein*, it did not assure his induction into the Armed Forces. Events since the inception and trial of this case indicate otherwise. In 1971, a statute was passed<sup>49</sup> which approved a new section to the Military Selective Service Act,<sup>50</sup> whereby a registrant is now entitled to a personal appearance before a local or appeal board and, on request, to a statement of reasons for any decision of the board adverse to his interest.<sup>51</sup>

After the approval of this section, amendments were enacted which changed some of the administrative regulations.<sup>52</sup> These amendments have affected administratively nearly all the procedural challenges presented in *Fein's* complaint.<sup>53</sup> Today, a registrant may appear before

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47. 405 U.S. at 388.

48. *Id.* at 392-93.

49. Pub. L. No. 92-129, § 101(a)(36), 85 Stat. 348, 353 (1971).

50. 50 U.S.C.A. App. § 471(a) (Supp., 1972).

51. 405 U.S. at 378.

52. 36 Fed. Reg. 23374 (1971); 37 Fed. Reg. 5120 (1972).

53. 405 U.S. at 378-79. Specifically: (1) When an appeal is taken by the State Director "he shall place in the registrant's file a written statement of his reasons for taking such appeal." The local board shall notify the registrant in writing of the action and the reasons therefor, and advise him that the registrant may request a personal appearance before the appeal board. Section 1626.3(a) and (b), 37

appeal boards, he must be given reasons for his adverse classification and granted the opportunity to present additional material at the appellate stages. This addition to the statute does not purport to be retroactive; thus the decision of the court of appeals was valid and should be affirmed.

The majority opinion refers to *United States v. Haughton*,<sup>54</sup> which was decided prior to the adoption of the new section and amendments. The court in this case held that the failure of a local board to articulate in writing the reason for its denial of a conscientious objector classification is a fatal procedural flaw when the registrant has made a prima facie case for such status.<sup>55</sup> The Government, since the enactment of the new section, has also recognized the requirement of an administrative statement of reasons for the denial of a conscientious objector classification.<sup>56</sup> *Haughton* and *Fein* are similar in that neither registrant was examined

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Fed. Reg. 5123 (1972). (2) At such a personal appearance the registrant may present evidence, discuss his classification, point out the class or classes in which he thinks he should have been placed and may direct attention to any information in his file which he believes the local board has overlooked or to which it has given insufficient weight. He may present such further information as he believes will assist the board. The registrant, however, may not be represented before an appeal board by anyone acting as attorney and he shall not be entitled to present witnesses. Section 1626.4(e) and (d), 37 Fed. Reg. 5124 (1972). (3) If the appeal board classifies the registrant in a class other than the one he requested, it shall record its reasons therefor in his file. The local board shall inform the registrant of such reasons in writing at the time it mails his notice of classification. Section 1626.4(i), 37 Fed. Reg. 5124 (1972). (4) On the director's appeal to the national board the registrant may request an appearance. Section 1627.3(d), 37 Fed. Reg. 5124 (1972). At that appearance the registrant may present evidence, other than witnesses, bearing on his classification. There, too, he may discuss his classification, point out the class or classes in which he thinks he should have been placed, and direct attention to any information in his file which he believes the local board overlooked or to which it has given insufficient weight. He may also present such further information as he believes will assist the national board in determining his proper classification. Section 1627.4(c) and (e), 36 Fed. Reg. 23379-80 (1971). (5) If the national board classifies the registrant in a class other than the one he requested it shall record its reasons therefor in his file and on request by the registrant it shall furnish him a brief statement of the reasons for its decision. Section 1627.4(h), 36 Fed. Reg. 23380 (1971).

54. 413 F.2d 736 (9th Cir. 1969).

55. 405 U.S. at 380. See also *United States v. Edwards*, 450 F.2d 49 (1st Cir. 1971); *United States v. Stetter*, 445 F.2d 472 (5th Cir. 1971); *United States v. Lenhard*, 437 F.2d 936 (2d Cir. 1970); *Scott v. Commanding Officer*, 431 F.2d 1132 (3d Cir. 1970); *United States v. Broyles*, 423 F.2d 1299 (4th Cir. 1970); *United States v. Lemmens*, 430 F.2d 619 (7th Cir. 1970); *United States v. Cummins*, 425 F.2d 646 (8th Cir. 1970); *United States v. Pacheco*, 433 F.2d 914 (10th Cir. 1970); *United States v. Washington*, 392 F.2d 37 (6th Cir. 1968).

56. 405 U.S. at 381.

personally by the Appeal Board.<sup>57</sup> However, *Haughton* is a post-induction case while *Fein* is a pre-induction case.

The Court's ruling in *Fein* at first glance does not seem to extend pre-induction review as *Oestereich*, *Breen* and *Gutknecht* did earlier. The registrant in this case was denied his claim. However, as the Court points out in the majority opinion, if Dr. Fein is ever again called for induction, he can use the *Haughton* ruling for his defense until the new statute and regulations are fulfilled. The Court by using this language has in a sense affirmed the ruling in *Haughton* and has provided Fein and registrants like him a "fair and just" administration of the Act. The decision of this case does not extend pre-induction review in the case of a conscientious objector but, through the language contained in the majority opinion and the lower court's decision in *Haughton*, a registrant is entitled to the new administrative remedies before he can be inducted. The Supreme Court, therefore, left the decision of completely reprocessing Fein's case to the administrative authorities.

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57. 50 U.S.C. App. § 456(j) (Supp. III, 1964).