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Book Reviews

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BOOK REVIEWS

LITTLE GROUPS OF NEIGHBORS: THE SELECTIVE SERVICE SYSTEM. By James W. Davis, Jr. and Kenneth M. Dolbeare. Markham Publishing Co., Chicago, 1968. Pp. 268.

The derisive title, "Little Groups of Neighbors," was apparently chosen as a basis of ridicule of the Selective Service System in the matter of the local boards, numbering approximately 4,000 throughout the United States. The descriptive term, "Little Groups," which is obscure in meaning and random in origin, seems hardly suitable as a title for a work which purports to be an analysis of the operation of the Selective Service System.

Throughout the publication the term "conscription" is used extensively, yet nowhere is the expression defined by the authors. This is a definite omission, as the word lends itself to various meanings and interpretations. Apparently the authors were unaware that in American military history, the term "draft" is used to signify the enforcement by the government, either federal or state, of a constitutional right in the government to require all citizens and resident aliens of requisite age and capability to enter the military service if called.[1] One who is summoned to military service is usually termed a draftee or selectee. A "conscript," on the other hand, is one taken by lot from a conscription list and compelled to serve as a soldier or sailor.[2] In the European military conscriptive systems, conscription is usually administered by the military authorities. However, in the United States, in the systems of 1917 and 1940 and from 1948 through the present time, Selective Service is the *civilian* mode of registering, classifying, and forwarding for induction the selectees. The system is administered by local boards composed generally of citizens dwelling in the county where the registrant claims residence. The reiteration of the term "conscription" throughout the volume seems to be an effort to create an impression of duress or coercion in the minds of readers toward the workings of the Selective Service System.

Nearly hidden in the book is a statement which perhaps best explains the purpose of the work and may indicate the motives of the authors (pp. 217-18).

> These seem to us reasons for considering the integration of Selective Service with manpower and employment activities of the Department of Labor . . . . Further, we see no reason for the continued emphasis on employment of

1. Lanahan v. Birge, 30 Conn. 438, 443 (1862).
2. Kneedler v. Lane, 45 Pa. 238, 267 (1863).

> National Guard and Reserve officers in the National and regional (state) headquarters of the System. The skills requisite to manpower management are as likely to be developed in the civilian sector in today's world . . . . We do not mean to nominate the Department of Labor particularly for a potentially onerous and perhaps unpopular task; we suggest that any civilian agency with data processing and analysis experience . . . would be appropriate—the Veteran's Administration might be an equally practical choice.

In other words, transfer the Selective Service functions anywhere away from the System, just so there results a change from the present method. This is a difficult theme to justify; namely, uproot selective service despite almost 30 years of satisfactory experience and thereafter select any other federal agency to handle the project. This notion by the authors is whimisical and unrealistic; furthermore, it disregards the fact that we are now engaged in a period of active hostilities which may continue indefinitely and the Selective Service System as now constituted is producing the men needed by the Department of Defense.

The book in a very brief discussion attempts to outline the development of the Selective Service System in the United States. The result is a superficial treatment of the evolution of the Selective Service System. The authors state that "[c]onscripts were sought under the provisions of the Federal Enrollment Act of 1863 during the Civil War, with results which are celebrated under the title of the New York Draft Riots" (pp. 19-20). There is no mention of the Confederate Conscription and Exemption Acts of April, 1862, which authorized the Confederate Bureau to pass on the military liabilities of about 360,000 men within the Confederate States.[3] The authors also overlooked the Monroe Plan of 1814, wherein a proposal for a federal "draught" of men was tabled in the United States Senate of December 28, 1814, by a 14-13 vote because the two Houses could not agree upon the term of service to be performed by drafted men.[4]

The authors are unduly critical of local board members who are characterized as a local "elite" in their communities (although the term "elite" has not been defined by the authors). This labelling avoids an objective review of the local boards and substitutes a subtle form of name-calling for actual appraisal and discussion.

Although the authors intended the book to be a "systematic examination of the structure, personnel, and operations of the

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3. *See* Shaw, *The Confederate Conscription and Exemption Acts*, 6 AM. JOUR. L. HIST. 368-405 (1962).

4. 1 American State Papers, Military Affairs 514 (1832). *See also* J. F. LEACH, CONSCRIPTION IN THE UNITED STATES: HISTORICAL BACKGROUND 116-117 (1952).

Selective Service System," several important areas were not discussed. In purporting to analyze the Selective Service System and present day problems, the authors have either overlooked or ignored the controversial subject of "ministers of religion," a statutory exemption which has led to extensive litigation since 1940.[5] Another area of omission is the matter of divinity students. This type of registrant is preparing for the ministry, priesthood or rabbinate and is placed in Class IV-D rather than Class II where the majority of students fall.[6]

The authors have also disregarded that vital phase of Selective Service operations involving the Active and the Standby Reserves.[7] Entirely apart from the forwarding of registrants for induction into the military, the Selective Service System records the transfer into the Standby Reserve of ready reservists whose status has altered and who are comparatively inactive. This is not a minimal task nationwide, as there were 513,964 standby reservists at the end of December, 1967, reduced from a peak of 1,655,172 in September, 1959.[8] Standby reservists, those who have completed military training and are permitted to return to civilian pursuits, are classified by the local boards into four catagories. The Selective Service has the task of keeping track of these reservists, of inventorying their skills, and of reviewing their status annually. Thus, the local board records save what would amount to many weeks of time in the event of a general mobilization.

Finally, the book contains no discussion of special calls from local boards for the induction of professional medical, dental and veterinary personnel. At the end of December, 1967, there were 193,319 physicians, dentists, osteopaths and veterinarians who were registered with Selective Service. In February, 1967, the Department of Defense requested and obtained from the Selective Service System 2,200 physicians delivered from July to September, 1967.[9]

Continually repeated throughout the book is the contention that selective service has imposed an undue burden upon the lower income brackets and the relatively uneducated. This conclusion by the authors is debatable and has been challenged by other authorities.[10]

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5. 50 U.S.C. App. § 456(g) (1964).

6. "One claiming exemption under the Act as a student preparing for the ministry must be 'satisfactorily pursuing' a 'full time' course of instruction in a recognized theological or divinity school." U.S. v. Bartelt, 200 F.2d 385, 388 (1952).

7. SEL. SERV. REG. § 1690, 32 C.F.R. § 1690-1690.23 (1968).

8. DIRECTOR OF SEL. SERV. SEMI-ANN. REP. 15-17 (July-Dec. 1967).

9. *Id.* at 14-15.

10. *See, e.g., The Draft System: Are Reforms Needed?*, Newsweek Feature Service E-3 (December 22, 1968), which concluded that "The truth seems to be that the present draft laws

Another shortcoming of the book is that it devotes less than two pages to the Department of Defense Report of 1966,[11] which in fact confirmed "the essentiality of the draft, both to supply the residual number of men needed to man our forces, and to encourage a larger number of volunteers."[12] The report offers proof that without the draft, the armed services and their reserve components would be seriously handicapped in obtaining men. With regard to the 11.3 million men received into the armed forces between September, 1950 and June, 1966, the Defense Report concludes: "Only 29% would have volunteered in absence of the draft."[13]

The conclusion of this critic is that the book reads like a first draft which should be rewritten in the interest of simplicity of expression, avoidance of wishful thinking (such as the misuse of the term "conscription"), the inclusion of such topics as the reserves, and a closer attention to the operations of the Selective Service System, free from the biased analysis of the authors.

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are loaded much more in favor of the desperately poor than the ridiculously rich. The surest way to avoid the Army is to get born into a ghetto family and attend ghetto schools as delinquently as possible until the age of 16. Then, when the induction call comes, you won't even be able to read the questions on the mental exam. And that is what has happened. The poorer one's education, the less likely one is to have to go into the armed services."

11. On April 18, 1964, President Johnson, at a specially called press conference, ordered a general study of military manpower policies in order to determine whether by the 1970s, Selective Service inductions might be eliminated. Special consideration was to be given by the Secretary of Defense to alternatives to the draft and the possibility of relying upon volunteers in lieu of selectees. New York Times, April 19, 1964, at 1: *Hearings Before the House Armed Services Committee*, 89th Cong., 2d Sess. (1966).

12. *Hearings Before the House Armed Services Committee*, 89th Cong., 2d Sess. 2 (1966). The following percentages represent those who would not have volunteered without the draft (Defense Dept. Report at 13):

Group Queried	*All Services*	*Army*	*Navy*	*Air Force*	*Marine Corps*
Regular Enlistees	38%	43%	33%	43%	30%
Officers	41	48	40	39	27
Reserve Enlistees (Including National Guard)	71	72	75	80	50

13. *Id.* at 14.

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THE SUPREME COURT AND THE NEWS MEDIA. By David L. Grey, Evansville: Northwestern University Press. 1968. Pp. 194. $5.95.

Mr. Grey says of his thesis: "This book . . . attempts to analyze one difficult situation of interaction between government and press" the problem of reporting not only the facts but also the significance of United States Supreme Court opinions in the mass media.

Mr. Justice Stone, after he had been on the Court for five years, wrote John Bassett More: "I often wonder whether people at large will ever grasp what is going on in the work of our Court." Mr. Justice Rutledge in 1946, in the case of *Pennekamp v. Florida*[1] wrote: "There is perhaps no area of news more inaccurately reported factually, on the whole, though with some notable exceptions, than legal news." Justice Rutledge felt that part of this factual inaccuracy could be attributed to carelessness brought about by the haste in which the news is published; a smaller portion could be laid to bias. But to Justice Rutledge, the most significant factor was attributable to ignorance, "which frequently is not all blameworthy," for "newspapers are conducted by men who are laymen to the law."

It is the opinion of this reviewer that the author has met and thoroughly analyzed the challenge of his proposed study. His cogent comments on the cases and situations are clear and thought-provoking.

In the chapter dealing with the Court as a communicator, the author notes several of the factors which make effective communication to the public difficult. These include: the vague phraseology of the Constitution; the isolation of the Court and Justices from the public; the general custom that Justices do not expand upon or explain publicly their decisions; the Justices' presupposition that legal opinions are seldom read by laymen and thus need not be written for the lay reader; the practice of keeping decisions secret and of withholding the full text of opinions until announced in the courtroom; and the practice of handing down numerous decisions in one day. The abolition of the "Monday-only" tradition for announcing decisions has helped this latter problem, but the author points out that the Court floods the news media with numerous decisions on other days.

Professor Grey, in his examination and evaluation of the press in its coverage of the news of the Court, is of the opinion that, "[t]he

1. 328 U.S. 331, 371 (1946) (concurring opinion).

Court job [of the newsman] in many ways is like no other in Washington. The Court is the only part of the federal government where the newsman is left totally on his own." For example, press conferences or briefings do not exist.

One of the most significant reasons for the poor coverage of the Court is that the overwhelming majority of the newsmen are not trained in the law. Justice Douglas, in speaking of the decisions of the Supreme Court, has observed that the decisions "require at times the economist's understanding, the poet's insight, the executive's experience, the political scientist's understanding, the historian's perspective." And, one might add, a knowledge of the law. This demands more than can be expected of the newsman on general assignment to the Court.

The author points to the *New York Times* as an example of a newspaper that has a highly commendable record for its reporting of the opinions of the Court. No doubt one of the major reasons for this excellent record can be attributed to the fact that the *Times* pioneered in the policy of using Court newsmen trained in the law. Among other newspapers which are noted for their comprehensive coverage of the Court are the *Washington Post* and the *Washington Evening Star.*

Of special interest is the author's examination in specific detail of the news coverage in a selected number of cases. He contrasts the 1962 New York Regents prayer case of *Engel v. Vitale,*[2] which caused a public "furor," with the 1963 Bible reading and Lord's Prayer decision, *School District of Abington Township v. Schempp,*[3] which was accepted with "calm." Although the *Engel* decision could have been predicted by observers of the Court, the shock was traumatic for the public, which was left generally unaware of the issues. Better news coverage preceding *Schempp* resulted in more people being "ready" for that decision.

In another instance, the news media confused the public by publicizing a remark of Mr. Justice Douglas, made in connection with another case. Referring to *Everson v. Board of Education,*[4] a case involving public support for transporting parochial school pupils to their schools, Justice Douglas digressed in his concurring opinion in the *Engel* case to say, "The *Everson* case seems in retrospect to be out of line with the First Amendment."[5] The

2. 370 U.S. 421 (1962).
3. 374 U.S. 203 (1963).
4. 330 U.S. 1 (1946).
5. 370 U.S. at 443.

resulting publicity given the remark raised serious questions in the mind of the public concerning a policy previously held by the Court to be constitutional.

Further, the author finds the news coverage of the 1963 reapportionment case, *Baker v. Carr*,[6] to be "prize-winning effort," but characterizes the coverage of *Miranda v. Arizona*,[7] which restricted police powers in interrogation of suspects, as an effort that "fell short." The author notes that Anthony Lewis of the *New York Times* was awarded a Pulitzer Prize for his distinguished reporting of the Court's proceedings during 1962, with special reference to his coverage of *Baker v. Carr*. The author cites the summary analysis of that decision which was published by the *Times* and suggests that the analysis "does point out what the press can do when full manpower and other resources are put to work." On the other hand, the author feels "that parts of the *why* were missing in the *Time's Miranda* coverage – as they were in the New York Regents prayer case coverage in 1962."

Drawing from his study a number of suggestions for the improvement of news coverage of the Court decisions, Mr. Grey advocates that Court newsmen be law-trained, but warns that such reporters should not fall into the habit of "writing too much for lawyers." The author recommends that the Court release to newsmen a case decision headnote when the decision is announced and consider spreading out decision days. In this connection the author feels it is ironic that the effort of the Association of American Law Schools to prepare on-the-scene interpretations of the Court decisions in the press room was abandoned. The author emphasizes that ". . . the Court should not only show more empathy with the real problems of the press and public understanding but also should consider even more seriously the full ranges of real, possible, positive steps that could be taken." Likewise, "[t]he Court should be candid in outlining exactly what it has and has not decided. It should be careful to distinguish between what is law and what is *obiter dicta*—incidental remarks that sometimes confuse what the Court said."

Other recommendations include the adoption by the Court of a policy of distributing copies of its opinions to "interested segments of society" and the utilization of a press representative, not the traditional type of news reporter but "someone who could help

6. 369 U.S. 186 (1962).
7. 384 U.S. 436 (1966).

newsmen and lay publics by providing objective and nonpromotional information about the legal issues."

Perhaps the book's merit may best be seen in the author's competence in utilizing the case method of analysis. This reviewer expressly recommends this book to the attention of newspaper publishers, editors, and court reporters, who should find it valuable self-instruction in the sorely-needed improvement of legal news coverage. Those who teach courses in constitutional law and in public opinion should find the book useful as a reference work; it is a welcome addition to the literature of those fields.

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