

The original documents are located in Box 2, folder “Amnesty - President Nixon's Statements” of the John Marsh Files at the Gerald R. Ford Presidential Library.

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OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

5 March 1974

MEMORANDUM FOR Commander Howard Kerr
Naval Aide to the Vice President
The White House

SUBJECT: Amnesty

In response to your request for DoD statements on amnesty, I have included the following information which may be of assistance to you. You will note that some of the material relates to Presidential statements on amnesty; however, I have included these because they might not be known to you.

Tab A - Extract of "Conversation with the President", 2 January 1972.

Tab B - Radio address by the President, 29 October 1972.

Tab C - President's news conference, 31 January 1973.

Tab D - A very poor copy of the President's letter to the Commander, Veterans of Foreign Wars, 23 January 1974.

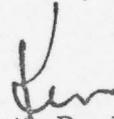
Tab E - Statement by Secretary of Defense Laird, 3 February 1972.

Tab F - Statement by Major General Benade before the 92nd Congress, 2nd Session.

The statements by OSD officials (Tabs E & F) are the only public "positions" that I am aware of. For your information, General Benade is scheduled to testify for the DoD on 11 March 1974 before the



Subcommittee on Courts, Civil Liberties and the Administration of Justice (Chairman, Kastenmeier), House Judiciary Committee on the subject of amnesty. You might be interested in getting a copy of his testimony before the committee. If you need any assistance along these lines, just let me know.



Kenneth F. Bailey
LTC, USA
Military Assistant

Attachments



DISCUSSION SHEET

CBS Television Program "Conversation with The President, " January 2, 1972

The following is an excerpt from the January 2, 1972, CBS television interview between Mr. Don Rather and President Nixon regarding the possibility of granting amnesty to individuals who have deserted their country:

"MR. RATHER: Mr. President, recently you were asked a question about amnesty. You were asked if you foresaw any possibility of granting amnesty to those young people who have fled the country to avoid the draft, and you had a one word answer, which was 'No.'"

Since then some Congressmen, among others, have proposed allowing those young men who want to come back and are willing to do it to come back without punishment, if they will take alternative service of two years or four years. Is there no amount of alternative service under which you could foresee granting amnesty?

THE PRESIDENT: No. The question that I was answering in that conference that you referred to, as you will recall, followed one where I had talked about the withdrawal of our forces, and the question was prefaced with that, as I recall.

MR. RATHER: It was.

THE PRESIDENT: In view of the withdrawal, how about amnesty? And I said, 'No.' The answer is at this time 'No.' As long as there are Americans who chose to serve their country rather than desert their country, and it is a hard choice, and they are there in Vietnam, there will be no amnesty for those who deserted their country. As long as there are any POW's held by the North Vietnamese, there will be no amnesty for those who deserted their country.

Just let me say, Mr. Rather, on that score, I don't say this because I am hardhearted. I say it because it is the only right thing to do. Two and a half million young Americans had to make the choice when they went to serve in Vietnam. Most of them, I am sure, did not want to go. It is not a very pleasant place. I have been there a number of times. They are nice people, but it is not a pleasant place for an American to serve, and particularly in uniform.

I imagine most of those young Americans when they went out there did so with some reluctance, but they chose to serve. Of those that chose to serve, thousands of them died for their choice, and until this war is over, and until we get the POW's back, those who chose to desert their country, a few hundred, they can live with their choice. That is my attitude.

OASD(M&RA) (MPP)
17 January 1972



MR. RATHER: At some future time, the door might be opened?

THE PRESIDENT: We always, Mr. Rather, under our system provide amnesty. You remember Abraham Lincoln in the last days of the Civil War, as a matter of fact just before his death, decided to give amnesty to anyone who had deserted if he would come back and rejoin his unit and serve out his period of time. Amnesty, of course, is always the prerogative of the Chief Executive. I, for one, would be very liberal with regard to amnesty, but not while there are Americans in Vietnam fighting to serve their country and defend their country, and not when POW's are held by North Vietnam. After that we will consider it, but it would have to be on the basis of their paying the price, of course, that anyone should pay for violating the law."

(MIA
issue)

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DISCUSSION SHEET

Radio Address by President Nixon on Defense Policy
October 29, 1972

The following is an excerpt from the October 29, 1972, radio address by President Nixon from the Lincoln Library, Washington, D. C., regarding the question of amnesty for draft evaders and military deserters:

"The men and women who have fought in these wars deserve the highest respect this Nation can pay them, as do those who serve in our peace forces today, and those who will serve in years to come as we end the draft next summer and move to a volunteer armed force. They are the real heroes of our time.

"Rather than talking about amnesty for a few hundred who chose to desert America, let us honor the millions who chose to serve America in Vietnam. As this long and difficult war draws to an end, it is time to draw the line on this issue once and for all. There will be no amnesty for draft dodgers and deserters after the war.

"Millions of Americans chose to serve their country in Vietnam. Many gave their lives for their choice. The few hundred who refused to serve, or who deserted their country, must pay a penalty for their choice."



OASD(M&RA)(MFP)
6 November 1972

DISCUSSION SHEET

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OASD(M&RA)(MPP)
6 November 1972

Transcript of the President's News Conference on Foreign and Domestic Matters

WASHINGTON, Jan. 31—Following is the White House transcript of President Nixon's news conference at the White House today:

1113

3. Amnesty for Draft Evasion

Q. Mr. President, do you have anything specifically in mind to help heal the wounds in this country, the divisions over the war, and specifically, anything down the road much farther in terms of amnesty?

A. Well, it takes two to heal wounds, and I must say, when I see that the most vigorous criticism or, shall we say, the least pleasure out of the peace agreement comes from those who were the most outspoken advocates of peace at any price, it makes one realize whether some want the wounds healed. We do.

We think we have taken a big step toward ending a long and difficult war which was not begun while we were here, and I am not casting any aspersions on those Presidents who were in office who can no longer be here to speak for themselves, for the causes of the war. I am simply saying this: That as far as this Administration is concerned, we have done the very best that we can against very great obstacles, and we finally have achieved a peace with honor.

I know it gags some of you to write that phrase, but it is true, and most Americans realize it is true, because it would be peace with dishonor had we—what some have used, the vernacular—"bugged out" and allowed what the North Vietnamese wanted: The imposition of a Communist government or a coalition Communist government in South Vietnam. That goal they have failed to achieve. Consequently, we can speak of peace with honor and with some pride that it has been achieved.

All Pay for Mistakes

Now, I suppose, Mr. Sheldon, that your question with regard to amnesty may deal with the problems of healing the wounds. Certainly I have sympathy for any individual who has made a mistake. We have all made mistakes. But also, it is a rule of life, we all have to pay for our mistakes.

One of the most moving wires I received, of the many thousands that have come into the White House since the peace announcement, was from a man who was in prison in Michigan, I believe it is, and he spoke about a group

of his fellow inmates. They are in a work camp, so I suppose they are being rehabilitated to come out.

He wrote very emotionally about what we had done, and he felt it was an achievement they were very proud of. I feel sorry for that man; on the other hand, it is not my right, and I should not exercise such a right, because he so wrote to me, to say, "Now you are forgiven for what you did."

Now, as far as amnesty is concerned, I have stated my views, and those views remain exactly the same. The war is over. Many Americans paid a very high price to serve their country, some with their lives, some as prisoners of war for as long as six to seven years, and, of course, 2½ million, 2 to 3 years out of their lives, serving in a country far away in a war that they realize had very little support among the so-called better people, in the media and the intellectual circles, and the rest, which had very little support, certainly, among some elements of the Congress, particularly the United States Senate, but which fortunately did have support among a majority of the American people, who some way, despite the fact that they were hammered night after night, and day after day, with the fact that this was an immoral war, that America should not be there, that they should not serve their country, that morally what they should do was desert their country.

Certainly as we look at all of that, there might be a tendency to say now, to those few hundreds who went to Canada or Sweden or someplace else, and chose to desert their country because they had a higher morality, we should now give them amnesty.

Now, amnesty means forgiveness. We cannot provide forgiveness for them. Those who served paid their price. Those who deserted must pay their price, and the price is not a junket in the Peace Corps, or something like that, as some have suggested. The price is a criminal penalty for disobeying the laws of the United States. If they want to return to the United States, they must pay the penalty. If they don't want to return, they are certainly welcome to stay in any country that welcomes them. Mr. Theis.



January 23, 1974

Dear Commander Soden:

I have received your letter of January 7 expressing the Veterans of Foreign Wars' stand against the granting of amnesty to offenders of the Vietnam era.

As you know, I have previously stated my views on this matter, and I would like to take this opportunity to reaffirm my position. In the course of a White House press conference in early 1973, I said that millions of Americans chose to serve their country in Vietnam and that many gave their lives for their choice. The few who refused to serve, or deserted their country, must pay a penalty for their choice... We cannot provide forgiveness for them. Those who served paid their price. Those who deserted must pay their price. And the price is a criminal penalty for disobeying the laws of the United States. That still reflects my views on the subject, and you may be assured that there is no reason to experience now a sense of betrayal as a result of recent reports in the press which have been attributed to others.

Further, I concur with your position that the cases of all Vietnam era offenders should be disposed of in accordance with due process of law and it is my hope that this procedure will be followed by all concerned.



On a completely different subject, I wanted to take this opportunity to thank you for your birthday greetings. Your thoughtfulness helped to make the occasion an especially enjoyable day.

With my best wishes,

Sincerely,

As you know, I have been a member of the organization since 1954. I would like to see that the organization is able to continue to serve the needs of our veterans. I am sure that you will do everything in your power to see that this organization continues to be a source of help and support for our veterans. I am sure that you will do everything in your power to see that this organization continues to be a source of help and support for our veterans.

Mr. Ray R. Soden
Commander-in-Chief
Veterans of Foreign Wars
of the United States
200 Maryland Avenue, N. E.
Washington, D. C. 20002

Further, I cannot wish that the interests of all Veterans and officers should be disregarded in accordance with the process of law and it is my hope that this procedure will be followed by all concerned.



Remarks by
Secretary of Defense Melvin R. Laird Re Amnesty for Draft Evaders
Before United States Senate Youth Group
February 3, 1972, 9:15 a.m.

Q: In reference to the draft evaders now living in Canada, do you feel that we should let them back into the United States with an "all is forgiven" policy?

A. Of course, as far as our country is concerned, throughout the entire history of our country, we have always considered violations of the law and tried to temper justice with mercy. That's been the whole history; every President has had to face up to those tough difficult decisions. In the administration of justice in the United States, we've always administered justice with a degree of mercy which is important.

On your question, I do not believe now is the time to consider that question of amnesty. That question should not be considered until every young American has been returned from the prisoner-of-war camps or we have a complete accounting for every man missing in action in accordance with the Geneva Conventions, and even the enemy has signed those Conventions and refuses to abide by them. While there's a single American involved in combat operations and being drafted into our service and going to serve his country in accordance with the laws of this nation, this is not the time for us to consider that question. That question will be considered at its proper time, but it certainly should not be considered at this time when Americans who are abiding by the law and who are giving service to their country, who are captured and living in jails and prisons, these young Americans who are willing to serve their country. Until those questions have been answered, I would not be for addressing that question of amnesty for those who have violated the law.

Q: Is this the President's stand also?

A: I think the President has indicated a stand along that line, that this is not the time for consideration of that question at this particular juncture in our history.



OASD (M&RA)
11 February 1972

SELECTIVE SERVICE AND AMNESTY

HEARING
BEFORE THE
SUBCOMMITTEE ON
ADMINISTRATIVE PRACTICE AND PROCEDURE
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-SECOND CONGRESS
SECOND SESSION
ON
SELECTIVE SERVICE SYSTEM PROCEDURES AND
ADMINISTRATIVE POSSIBILITIES FOR AMNESTY

FEBRUARY 28, 29, MARCH 1, 1972

Printed for the use of the Committee on the Judiciary



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WASHINGTON : 1972

80-20



Mr. O'NEIL. I welcome the opportunity to be of such service as I can.

Senator KENNEDY. General Benade.

General Benade is the Deputy Assistant Secretary of Defense, and we appreciate very much your being here.

STATEMENT OF MAJOR GENERAL LEO BENADE, DEFENSE
DEPARTMENT ASSISTANT SECRETARY

General BENADE. Thank you, Mr. Chairman, and members of the committee. I appreciate the opportunity to appear before you as a representative of the Department of Defense, to address the subject of amnesty.

Chairman Kennedy's letter of February 7, 1972, requested us to focus on four aspects of this subject: one, the impact of amnesty on the Armed Forces; two, whether deserters should be treated differently from draft evaders; three, the impact on military justice of granting conditional or unconditional amnesty; and four, the timing of any amnesty.

My remarks concern the question of amnesty for deserters from the Armed Forces. The issue of draft evaders lies principally within the purviews of the Department of Justice and the Selective Service System and we defer to those agencies in that regard.

It might be helpful to begin by defining amnesty and briefly reviewing the application of amnesty to military deserters throughout our history.

Amnesty implies a sovereign act of forgiveness for past misconduct, granted by a government to all or to certain persons, and often conditioned upon the performance of a certain act or certain acts within a prescribed time.

The concepts of pardon and amnesty are often interchanged. Pardon releases a person, not from guilt but from the penalty imposed for a legal transgression. Amnesty usually releases a group of persons from certain penalties.

Pardon may be granted to any kind of offender and is usually given after punishment for the crime has begun. Amnesty is usually granted to political offenders, often before a trial or punishment has begun.

Amnesty may be general or particular, that is, it may cover all classes of offenders or be limited to certain groups. It may be conditional or unconditional.

Recognizing that the power to grant amnesty rests with both the legislative and executive branches of our Government, all amnesties in our history have in practice been proclaimed by the President. His power is derived from the constitutional provision that "The President * * * shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment." This authority was used for the first time with regard to deserters in 1807 when President Thomas Jefferson granted full pardons to individuals who had deserted from the Army during the 1795 Whiskey Rebellion if they surrendered themselves within a period of 4 months.



Through the years there have been other Presidential proclamations issued, generally after a war, which granted pardons to deserters. However, certain stipulations or conditions were prescribed, such as (1) deserters in confinement were to be released and returned to duty, (2) deserters-at-large, and under sentence of death, were to be discharged and never again enlisted in the service of the country, (3) deserters who returned were to forfeit all pay and allowances during their time of absence, (4) deserters who returned were to make up time lost by their absence and complete their terms of military obligation, and (5) deserters had to surrender themselves within a specified time after the proclamation.

The last amnesty for military deserters was granted in 1924 by President Calvin Coolidge. This Proclamation was prompted as a result of a law enacted by Congress in 1912 which provided that deserters from the Armed Forces would forfeit their citizenship. Although the 1924 proclamation is often believed to be a general amnesty granted to deserters, it only applied to those individuals who had deserted after the Armistice of World War I, and only restored their right to citizenship which had been forfeited upon their conviction. Approximately 100 men were affected by the proclamation.

There has been no general amnesty granted to individuals who deserted during World War II, the Korean conflict or the Vietnam conflict.

More recently, on January 2, 1972, President Nixon expressed his views on this subject. Essentially, the President stated that he would be very liberal with regard to amnesty, but not while American servicemen were fighting in Vietnam, nor while prisoners of war were being held by North Vietnam. After these circumstances were met, he would consider amnesty, but on the basis that these persons would pay the price that anyone should pay for violating the law.

On February 3, 1972, Secretary Laird substantially repeated the President's views.

Within these historical and current policy considerations, I shall now try to answer your four questions.

It is the position of the Department of Defense that the granting of any amnesty to deserters at this time, whether general or particular, or whether conditional or unconditional, would have a serious, detrimental impact on our Armed Forces.

Currently, there are about 30,000 deserters from the military services. Included among these 30,000 deserters are 2,323 men who have deserted to foreign countries. Undoubtedly, there are several thousands of men who are draft evaders. In addition, many men have been prosecuted within the past several years for desertion or draft evasion. Some have completed their sentences or been otherwise released. Others are still imprisoned or under court jurisdiction. Despite the many individual lives these substantial figures represent, there have also been millions of young men and women who have served in the Armed Forces in recent years, many of whom have served in Vietnam. Many Vietnam veterans are still serving in our Armed Forces. Some servicemen, no doubt, served reluctantly, but the vast majority of servicemen and women—over 95 percent—

served honorably. We must also recognize those who are being held and their friends. A great many of these millions of people are directly by our effort.

Senator KENNEDY: You heard, earlier, General Benaud's ransoms on this question would be to

General BENAUD: money. I appreciate an individual, Mr. the great problem subject.

I am sure that if before the commitment combat, and who expressed by Mr. an

Sitting in the audience was how terribly possible to make a side of the issue.

Senator KENNEDY: here.

But I'm interested in this area.

General BENAUD: that I believe with problem should be that extent, I would their testimony to be

The Department interest to encourage especially those in substantial number to surrender them actions.

Extending amnesty some of these men a delicate tool which be certain that it vital to an effective

Senator KENNEDY: young person who has

General BENAUD: and each case is handled

Senator KENNEDY: coming back as to whether

General BENAUD: However, we believe

of the military courts



residential proclaimed pardons to deserters were prescribed, released and returned. In the event of death, were to service of the country, pay and allowances who returned were to their terms of military surrender themselves

was granted in 1924 by which was prompted as a which provided that they forfeit their citizenship. It is believed to be a general amnesty to those individuals who served in World War I, and only those who had been forfeited upon their return were affected by the pro-

posed to individuals who were involved in the Vietnam

President Nixon expressed his opinion that he would not pardon while American military prisoners of war were held in these circumstances were the basis that these persons were violating the law. He substantially repeated the

considerations, I shall

oppose the granting of either general or particular amnesty would have a serious,

impact from the military service. There are 2,323 men who have returned. There are several thousand men who have returned for desertion or draft evasion or been otherwise under court jurisdiction. Statistical figures represent that, and women who have returned, many of whom have not yet returned are still serving in our military. They served reluctantly, but over 95 percent—

served honorably and were discharged under honorable conditions. We must also recognize the thousands of men who died in Vietnam, those who are being held captive or are missing, and their families and friends. A grant of amnesty would be unfair and inequitable to these millions of Americans who have been and are affected most directly by our efforts in Vietnam.

Senator KENNEDY. Could I ask you, General: I don't know whether you heard, earlier, a very splendid and moving testimony of the Ransoms on this very point; I would be interested in what your reaction would be to that.

General BENADE. I was very touched and moved by their testimony. I appreciate the point that they made, and speaking to you as an individual, Mr. Chairman, and not in an official capacity, to me the great problem has been the difficulty of generalizing about this subject.

I am sure that if you have not already had, you perhaps will have before the committee, parents of other young men who have died in combat, and who would express a view directly opposite of that expressed by Mr. and Mrs. Ransom.

Sitting in the audience, Mr. Chairman, the impression I derived was how terribly complex this problem is, and the fact that it is possible to make a very persuasive and moving argument on either side of the issue.

Senator KENNEDY. That's a little comment we had written down here.

But I'm interested in your comment, because you have the responsibility in this area. And I welcome this.

General BENADE. I do want to make clear, though, Mr. Chairman, that I believe without any reservation in that consideration of this problem should be deferred until after conclusion of the war. To that extent, I would agree with Mr. and Mrs. Ransom. I understood their testimony to be to that effect.

The Department of Defense considers it to be in the national interest to encourage the return of all deserters to military control, especially those in foreign countries. Experience indicates that a substantial number of deserters have chosen, on their own initiative, to surrender themselves and face the full implications of their actions.

Extending amnesty to military deserters would probably influence some of these men to return to military control. However, amnesty is a delicate tool which must be used with great care and discretion to be certain that it does not adversely affect discipline which is so vital to an effective military force.

Senator KENNEDY. Let me ask you, what do you do now, for a young person who has deserted and wants to come back?

General BENADE. We encourage their return to military service, and each case is handled on an individual basis.

Senator KENNEDY. But they don't have really any idea before coming back as to what's going to happen to them, would they?

General BENADE. No, sir; they would not.

However, we believe they should have confidence in the integrity of the military court-martial system, as well as our administrative



system. Of those who have returned, some were handled by courts-martial and others were handled by administrative discharges. Still others were returned to duty, because the circumstances can vary so greatly.

To take just a moment, Mr. Chairman, I think it is important to place military deserters in proper perspective. They can and do run the whole gamut. There seems to be a connotation that a deserter in the military service is one who is seeking to avoid service in Vietnam. That of course is not necessarily true.

There are cases of men who are presently deserters, who served, and served very well in Vietnam. Their desertion thereafter is for reasons entirely unrelated to the problems of Vietnam. So, there shouldn't be an automatic construction upon this, that all of these men are seeking to avoid hazardous duty in Vietnam.

Senator KENNEDY. That's a very useful point.

General BENADE. Now, to elaborate, when a man comes back into military control, the commander is charged with examining and considering the whole background of the man's service, up to that point. If the man, for example, has rendered honorable service prior to that time, and has had no prior infractions of any kind and has served in Vietnam, and served honorably, and it turns out upon investigation that the reason for his desertion was a personal, family affair, or a girl friend, or financial difficulty or whatever, there is no reason to throw the book at him, so to speak, under those circumstances. Many of the commanders will not.

And then there are other cases where it is an aggravated culmination of a long series of offenses. So there is a whole range in there as to why these men desert.

And it's very difficult, Mr. Chairman, to generalize about it.

Senator KENNEDY. Have you tried to put these in categories, so that we know how many of the 30,000 are because of the war, or other kinds of offenses?

General BENADE. We have some limited data, Mr. Chairman. I wish we could be more helpful in that regard.

I do have some figures which we will give you which will be of help to the committee, an analysis of the profile of the men who desert.

There is a great similarity in the patterns in many of the cases. One thing that might be useful, Mr. Chairman, is to realize that of those who have deserted to other countries, the 2,000 some odd that I have mentioned, I am recalling some 600 cases. To the extent that we have been able to determine by individual research, it indicates that less than 4.1 percent were motivated by anti-Vietnam or political protest, and this percentage has varied only a few tenths of a percent over the last 4 years.

In other words, in the great majority of the cases, the reasons for the desertion were other than Vietnam protest.

Senator KENNEDY. Could I get that again? Approximately 4 percent of those who desert, desert because of—

General BENADE. An analysis of the data maintained on deserters who have gone or have attempted to go to foreign countries indicates that less than 4.1 percent were motivated by anti-Vietnam or

political protest: an of a percent within t

Senator KENNEDY is a relatively small of their sincere belie

General BENADE. Mr. Chairman.

May I take just absence are in mos financial problems, and lack of respect that as a lack of se ment; romantic enta

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Another reason, t ses. Other reasons: officers and noncon This is through the

In the case of al family ties; and the

Senator KENNED information as poss

General BENADE. your permission we and we would be g this subject.

(See app. 2 below General BENADE.

a brief part of my s

With amnesty at ended to desert of al continued military unpredictability th ardize our national

Senator KENNE suggest about the r

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And the suggest there would be wh take that as a rou about morale in the

General BENADE clarify this slightl Forces consists of



political protest: and this percentage has varied only a few tenths of a percent within the last 4 years.

Senator KENNEDY. That statistic would suggest that really there is a relatively small percent of deserters that have done so because of their sincere belief about the morality of the war in Vietnam.

General BENADE. That is based on the best evidence that we have, Mr. Chairman.

May I take just a moment to show you what the reasons for absence are in most of the cases? Personal and family problems, financial problems, inability to adjust to the military environment, and lack of respect for authority; irresponsibility, and we define that as a lack of self-discipline and self-confidence, and poor judgment; romantic entanglement, and antimilitary protest.

Now this, I should explain, Mr. Chairman, is a little bit different. The antimilitary protest here involves the individual who indicates that he hasn't any specific goals in civilian life. He entered the military to see if service life was what he thought it was, and later decided it wasn't.

Another reason, attempt to escape punishment for previous offenses. Other reasons: supervisor indifference and lack of sensitivity by officers and noncommissioned officers to the individual's problems. This is through the eyes of the man.

In the case of aliens, return to their country of origin, home and family ties; and the last reason, anti-Vietnam or political protest.

Senator KENNEDY. To the extent that you can give us as much information as possible in those areas, it would be very useful to us.

General BENADE. We would be glad to, Mr. Chairman, and with your permission we can work with the committee's staff and counsel, and we would be glad to furnish any and all data that we have on this subject.

(See app. 2 below.)

General BENADE. If I might conclude, Mr. Chairman, I have just a brief part of my statement remaining.

With amnesty at this time, some military members might be influenced to desert the service, safe in the knowledge that punishment or continued military service would be avoided. The unreliability and unpredictability that such a situation presents could seriously jeopardize our national interests and our national security.

Senator KENNEDY. Just on this point, General, what does this suggest about the reality of the Army at the present time?

I don't think there's a young person in the country who would want to be known as a deserter, even if given the possibility of amnesty. I don't think there are many of those. I think that's an extraordinary burden to carry, to be a deserter, even though you'd be granted amnesty.

And the suggestion that if you granted it at the present time, that there would be wholesale numbers of people who would be willing to take that as a route out and branded as a deserter, says a good deal about morale in the Army.

General BENADE. I agree, Mr. Chairman. I would like to perhaps clarify this slightly. I think we must keep in mind that the Armed Forces consists of almost 21½ million men and women, many of



whom entered the service as a result of draft pressures, or were draft motivated, even in their enlistment.

I think we would have to agree that large numbers of them would rather be someplace else. Our principal concern, and it is not something we can quantify, Mr. Chairman, it is a value judgment—but, if amnesty were to be granted while the war is still going on, I think it is only natural that many young men who enter the service under duress, if you will, of the Selective Service, would see that amnesty were granted for those who desert and it would be human and understandable that they would feel, well, there is no penalty attached, then the stigma can't be so bad.

I would like to think that they would still be a relatively small part of our force, but it could still be significant to us.

Senator KENNEDY. Let me ask this, General.

Since you're moving toward the volunteer army, let's take the next point of departure which would be considering amnesty at the time that they draft the last American.

Doesn't your argument fail a bit then? I agree with you about the draft motivation, but once you eliminate that and move to a volunteer army, which is the objective of the administration—

General BENADE. I think the problem would be diminished with an all volunteer army, but I think the principal factor that would make this problem diminish would be the cessation of hostilities in Vietnam, more than the all volunteer aspect.

Your second question asks whether deserters should be considered differently from draft evaders. If amnesty is to be extended to any individuals, we believe a distinction should be made between draft evaders and deserters.

The draft evader's absence has an indirect impact on the Armed Forces. His absence requires that his military obligations be borne by another citizen. The deserter's absence has a direct impact on the Armed Forces, and under certain circumstances such as combat, perhaps a critical impact.

While the draft evader's absence involves an avoidance of his civic responsibilities and a violation of the law, the deserter by his absence not only avoids his military obligations, he also violates the oath he took upon entry into military service, and he violates military law. If military obligations, oaths and laws, are to have any continued meaning and effect, they must not be rendered inoperative by any untimely extension of amnesty.

You also ask for the impact on military justice of any conditional or unconditional amnesty. If any amnesty were granted, the number of desertion cases presently in our military justice system undoubtedly would be reduced. However, I can say with assurance that our justice system has been, and will continue to be, able to process all deserter cases in a fair and expeditious manner.

Finally, you ask about the timing of any amnesty. As I have stated earlier, any grant of amnesty at this time would have a most serious adverse impact on our Armed Forces. We think it is wise that consideration of any amnesty for deserters be deferred until some future time when the requirements of Vietnam have passed.

Gentlemen, that concludes my statement. I will be glad to try to answer any questions you may have.

Senator KENNEDY. wrong in considering General BENADE. N tee's exploring this looked at in advance.

Senator KENNEDY. just had one area I w Senator HART. I ju The profile that yo percent of the deser what percentage of t seas?

General BENADE. I Hart, that that num countries. These are Canada, Mexico.

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Senator KENNEDY. another in 45 minutes (Whereupon, at 1 2:30 p.m. the same da

Senator KENNEDY. General, you used because of Vietnam, unbelievably low.

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General BENADE. Y I would like to mak another country—an through 1 January 1 viduals. Now, of th control; 17 have been a foreign country.

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Senator KENNEDY. making the generali actually deserted bec that those who deser last to come back, I returning would be there would be a mu for them to come ba out of the motor pool

General BENADE. I verifying that.



Senator KENNEDY. Just in that last paragraph—is there anything wrong in considering now a later grant of amnesty?

General BENADE. No, sir; I'm heartily in favor of this subcommittee's exploring this complex problem, and I agree it should be looked at in advance.

Senator KENNEDY. General, can you come back this afternoon? I just had one area I wanted to explore.

Senator HART. I just have one question.

The profile that you gave us shows that between 4 percent and 5 percent of the deserters overseas as being politically motivated—what percentage of the total deserters are reflected by the men overseas?

General BENADE. First I would like to clarify, if I may, Senator Hart, that that number indicates those who have deserted to other countries. These are the 2,000 plus, who have gone to Sweden, Canada, Mexico.

Now, the total at-large figure, sir, is 29,892, and that includes the figures I have just given you.

These are men who have been absent for varying periods of time.

Senator HART. Maybe we'll have to ask you to come back.

Senator KENNEDY. We have a vote now, and we're going to have another in 45 minutes, so can we do it at 2:30?

(Whereupon, at 1 p.m., the subcommittee recessed, to reconvene at 2:30 p.m. the same day.)

AFTERNOON SESSION

Senator KENNEDY. The subcommittee will come to order.

General, you used the figure of 4 percent for men who deserted because of Vietnam, and as I indicated this morning, that sounds unbelievably low.

Isn't that figure really on the basis of some six or so hundred of those who actually returned?

General BENADE. Yes, Mr. Chairman, I would like to clarify that. I would like to make it clear that of those who have deserted to another country—and I'm referring to the period of 1 July 1966 through 1 January 1972—there were a total of 3,293 of those individuals. Now, of those individuals, 944 have returned to military control; 17 have been discharged in absentia, and nine have died in a foreign country.

Now, of those who returned to military control, an analysis was made of 640 of them. Of the 640, only 4.1 percent gave as their reason for deserting an anti-Vietnam war belief.

Senator KENNEDY. Because that is quite a bit different than making the generalization in terms of the number of people who actually deserted because of the Vietnam war because I would think that those who deserted because of the war would be, you know, the last to come back. I would expect. It seems that if their reasons for returning would be that they desert the war for that reason, that there would be a much much greater reluctance as the war continued for them to come back, rather than those who have taken the jeep out of the motor pool.

General BENADE. It is possible, Mr. Chairman. I have no way of verifying that.



Senator KENNEDY. You also said, 2,323 who deserted are abroad. Isn't it true that all you're really saying is that you have the addresses abroad for that number and that a substantial number of the other 27,000 could also be in foreign countries.

General BENADE. It is possible, Mr. Chairman.

The 2,323 that I referred to are those that have been identified as being in foreign countries. It is possible that there are others who have not been identified.

Senator KENNEDY. Do you make any kind of an evaluation as to those who had the Vietnam war as a sort of a secondary reason for or secondary cause for desertion?

General BENADE. I believe that it is, Mr. Chairman, and I would like to amplify on that a little bit.

I have before me—and I would be very happy to submit it for inclusion in the record—a typical absentee-deserter profile. Very briefly, it indicates that the typical absentee-deserter profile for the Army is 21 years of age grade or rank is E-4 or below, they are single, non-high school graduate. He averages about 20 months in service.

For the Navy, he is essentially the same. His average age is 21 to 22. His pay grade is E-3 or below, single, non-high school graduate, and usually in his first enlistment.

For the Marine Corps, average age is 19 or 20, rank is E-4 or below. Marital status, single. Educational level, nonhigh school graduate. He averages about 10 to 11 years of schooling, and time in service averaged 12 to 18 months.

In the Air Force, age runs just a little bit higher, 20 to 22, with the pay grade E-4 or below. Marital status, single, educational level is a high school graduate. Time in service is 24 months or less.

Now, as I indicated this morning, Mr. Chairman, there are certain didn't submit to induction and fled the country. It is a rather different profile, the characteristics that have been associated with them are immaturity with a history of previous personal failures, the product of an unstable home, either a broken home or a home plagued by some type of social-psychological maladjustment. Another finding, the individuals have a low frustration threshold.

Fourth: Is a repeat AWOL offender and a history, one out of three, of disciplinary and administrative action.

Senator KENNEDY. That would certainly indicate that those who are involved in the desertions are rather different from those who didn't submit to induction and fled the country. It is a rather different profile, as I understand, for those two different classes of individuals.

As I understand, the deserters, primarily, are of a lower economic, education, and perhaps social level than the other group. They might be slower in realizing or recognizing, perhaps, a higher responsibility to conscience than those who have been more fortunate in terms of either education or religious connection.

Just very briefly, now, on page 6, you talked about differentiating the evader from the deserter, and you mentioned that if military obligations and laws are to have any continued meaning, they must not be rendered inoperative by an untimely extension of the amnesty.

You say that the deserter, he also violates the military law any more?

General BENADE. I think the added significance that once the individual he thereby subjects him Military Justice, still laws. The importance of man, would be difficult to maintain strength levels, without leave, that can effectiveness of their unit.

Obviously, a unit that to the unit than perhaps.

But there is a direct impact on the effectiveness of a unit in combat or who always been treated in other circumstances.

Senator KENNEDY. Someone who deserted profile which you had actually deserting.

General, you have today.

I'd like to just submit to thank you very much (See app. 2 below.)

Senator KENNEDY. (Assistant Attorney General Department of Justice)

Mr. Maroney, I understand for some 20 years, and we have received from

And perhaps you mention, and then we will

STATEMENT OF SENATOR KENNEDY
GENERAL BENADE, U.S. ARMY
JOHN J. SAVITT, U.S. ARMY
SECURITY DIVISION
SELECTIVE SERVICE

Mr. MARONEY. Mr. Maroney, on behalf of the Department of Justice's request of February



I am accompanied here today by Mr. John Davitt on my right, Chief of the Criminal Section of our Division, which has the immediate supervisory responsibility of the handling of selective service matters. I am also accompanied on my left by Mr. Robert W. Vayda, an attorney in our Selective Service Unit.

In your letter, Mr. Chairman, you requested testimony from the Department on the Policy considerations in granting amnesty, particularly as it affects pardon and paroles. You also requested that the Department provide the subcommittee with data on the numbers of individuals believed to be in exile abroad, the number of individuals avoiding prosecution for selective service violations in the United States, the numbers of complaints now pending, and the recent experience of the Department in the prosecution of selective service law violators.

The Internal Security Division responded to your letter under date of February 23, 1972, and if the Chair will permit, I propose to use the body of that statement as the basis for a formal opening today.

I shall endeavor to answer in order the specific inquiries which were raised in the chairman's letter of February 10th.

First, with respect to clemency. Any provision for clemency at this time would be in contravention of the executive policy recently enunciated by President Nixon on two specific occasions. The President clearly rejected any consideration of amnesty at this time, while hostilities continue and American soldiers remain as prisoners of war in North Vietnam.

Historically, a grant of amnesty to males who have refused to serve their country during a period of time when the country was engaged in actual hostilities, is without precedent. The President's policy is in consonance with the acts of past presidents. Only twice in our history has a President accorded clemency to persons who refused to comply with the draft laws and serve their country. On both occasions clemency was granted only after cessation of hostilities, and it was granted only to those draft resisters who had been convicted for their offenses. In 1933, President Franklin D. Roosevelt granted pardons and restored citizenship to about 1,500 persons who had been convicted of violating the draft and espionage acts during World War I. In 1947, President Harry S. Truman granted pardons which restored civil and political rights to 1,523 individuals who had been convicted of draft evasion and sentenced under the Selective Service Act during World War II.

With respect to the question of parole, it should be observed that in situations where an individual has been convicted of refusing induction or performance of civilian work as a conscientious objector and has been remanded to the custody of the Attorney General, he has the right under existing selective service regulations to apply for release from such custody on parole for service in the Armed Forces or to perform alternative civilian work. Although the present regulations contain no provision for the pardoning of such paroled individuals who served in the Armed Forces or performed alternative civilian work, nevertheless, the right to seek a Presidential pardon is, of course, available to them.

Next, our informal there were 4,201 fugitives were outstanding based on complaints issued for selective service approximately 2,300 approximately 460 are thought to be in foreign countries. Thus, the balance whereabouts are unknown in the United States.

As of the end of January, 6,091 defendants against whom pending cases report attorneys for violation of the law are awaiting consideration by the U.S. attorneys for presentation to the grand jury. During the past year, these cases will be disposed of. Completed investigations incurred inadvertently valid excuses for appearance to rectify their delinquent status.

Three, our recent examination of law violators shows that 10 percent of the defendants ordered to report to the orders. However, eventually comply with the orders to remove their delinquent status. Completion of an FBI survey indicates that 10 percent of these are awaiting induction. Their status is as follows:

There is contained in the following table the number of indictments filed in such cases terminated for the following reasons:

As earlier noted, the number of indictments is due primarily to draft delinquents who have not stood trial. In the matter of policy, decisions regarding aggravating circumstances and relatedly submitted to an order to report to the induction.

It should also be pointed out that those who have experienced induction or alternative civilian work in the past several months were dismissed because of their failure to report for induction. As a matter of policy, those being dismissed since January 1, 1972, are as follows:

The recent acceleration of selective service cases was under the constitutional right

