

SECRET



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CONGRESSIONAL FACT-SHEET
ON AMNESTY

I. The President's Clemency, or Earned Re-Entry, Program was largely a failure, even on its own terms.

A. By the end of the program, only 19% of those eligible had even applied for consideration.

1. Department of Defense: provided immunity from prosecution for alleged violators of Articles 85, 86, and 87 of the U.C.M.J. (desertion, A.W.O.L., missing movement) in return for the promise to do up to 2 years of alternate service and the signing of an admission of guilt and a reaffirmation of allegiance to the U.S. After initial processing, the individual received an "undesirable" discharge which would be changed to a new "clemency discharge" upon completion of alternate service (usually 18-24 months).

a. Statistics:

5495 persons were processed through Fort Benjamin Harrison (including approximately 600 already in prison the day the President's program was established).

765 persons received an "undesirable" discharge "for the good of the service" through the "Chapter 10" process, which was available at Fort Dix throughout the "clemency period" as well as long before. (Participants did not have to sign pledges of alternate service or reallegiance, so this was seen by most who found out about it as a more desirable route than the clemency program itself.)

44 persons received "Honorable" or "general" discharges through normal administrative channels.

Total absentees whose cases were resolved: 6304.

2. Department of Justice: provided immunity from prosecution for certain violations of the Military Selective Service Act (including refusing induction, failing to register, refusing alternate service, and others) in exchange for agreeing to complete up to 2 years of alternate service and to waive certain Constitutional rights including protection against double jeopardy and the right to a speedy trial).

a. Statistics:

730 persons signed agreements, generally involving 2 year work terms

3. Presidential Clemency Board: was established to provide, on a case-by-case basis, "clemency" for persons who had already been convicted of a draft law violation, or who had been convicted or administratively discharged for a military absenteeism offense. Persons who completed any required alternate service received a pardon and, if a veteran, a "clemency" discharge.

a. Statistics:

15,500 eligible persons made application for a review (approximately 13,500 were veterans with less-than-Honorable discharges for absenteeism and 2000 were draft law violators.)

The Board made the following recommendations:

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| Civilian: | 1) <u>1731</u> clemency offers (<u>1432</u> not conditioned on alternate service) |
| | 2) <u>26</u> no clemency |
| Military: | 1) <u>11,872</u> clemency offers (<u>4620</u> not conditioned on alternate service) |
| | 2) <u>885</u> no clemency |

Note: No final recommendations have been made in approximately 1900 cases. These are being handled by a special Clemency Office in the Dept. of Justice.

4. Selective Service System: administers the program of locating jobs for persons assigned to alternate service. Each person was enrolled with a state director and was then permitted a short time to find a job on his own before the S.S.S. assigned him one. Note below however, that S.S.S. has been unsuccessful in locating jobs for most applicants as of 1/15/76.

a. Statistics:

Department of Defense:

4526 enrolled: 1098 are working
 185 have completed work
 2919 have dropped out of program
 324 are "in process"

Note: Many persons "in process" will soon be dropped because they have decided not to complete the alternate service. Terminated persons from the DoD program will not be prosecuted. To do so, military authorities would have to prove that at the time the individual signed his agreement to perform alternate service he intended to defraud authorities in order to obtain a discharge (violation of Article 83, U.C.M.J.). This is nearly impossible. The Administration officially says that they knew such a "loophole" existed all along (991 persons did not even enroll).

Dept. of Justice:

730 enrolled: 470 working
 45 completed
 88 dropping out of program and are being prosecuted
 127 are "in process" of trying to locate a job

Presidential Clemency Board:

2652 enrolled: 534 working
 82 completed
 88 dropped out
 1948 "in process"

Note: Selective Service anticipates that about 3500 of those eventually offered conditional clemency will not even enroll.

Summary: Presently, only 30% of the enrollees are doing, or have completed, alternate service. The others are, temporarily at least, being granted unconditional amnesty.

II. Defects in the Clemency Program:

A. Alternate Service:

1. Practically difficult to administer. Economic realities today, particularly high unemployment levels, made few jobs non-competitive. When Selective Service needs to find short term employment for P.C.B. applicants, their "success" rate is likely to go below the current 30% level.
2. Viewed as punitive by recipients - only 19% of Vietnam-Era draft eligible males were even called to serve. The other 81% proceeded on fairly normal course. There appears to be little justification for continued punishment of men who have spent up to 10 years in disrupted lives while they knew that most of their peers had not been asked to do anything.

B. Case-by-case approach of Board:

1. Judgments are, in fact, difficult to make. The last full-scale evaluation of conscience was done by local draft boards. In 1970, they rejected 80% of conscientious objector claims as "insincere." (Congressional Quarterly April 2, 1971). Most of these people were unwilling to subject themselves again to a bureaucratic determination of their own morality.
2. The administration of this program has proven incredibly costly. Approximately 500 staff members worked to complete 1000 cases per week. Most of those persons who did case reviews were not sufficiently knowledgeable about draft and military law to uncover defects and errors made by the government in the initial handling of the cases. Estimate of program cost: in excess of 6 million dollars.

C. Remedies:

1. Pardons: - Dramatic as it sounds for former Presidents, "pardons" are only a first step toward removing the stigma and collateral consequences of a felony conviction. Records should be expunged and convictions vacated in order to achieve real redress. Similarly, persons who received discharges for absenteeism administratively were never convicted of having committed any crime. Although they too are getting "pardons" they do not need them. What they need is an Honorable discharge.

2. "Clemency discharges" - These discharges, given under "less-than-Honorable" circumstances, will redress none of the problems associated with such administrative discharges. They clearly mark a person as a "deserter" for the rest of his employment life and grant him no V.A. benefits (even if he does 2 years of alternate service and has already served in the military). The Arizona State Legislature has already passed a law denying publicly funded jobs to persons who hold such a discharge!

D. Alternatives were seen as more desirable:

1. Military - The "Chapter 10" process gave Army Personnel a better route out of legal jeopardy (as explained above). For veterans who already hold less-than-Honorable discharges for absenteeism, they could have their case heard before one of the Discharge Review Boards. Difficult as this process is, a man at least had a chance to be given a discharge "under honorable conditions."
2. Civilian - The DOJ has been remarkably unsuccessful in prosecuting draft evasion cases lately. Selective Service made so many processing mistakes and abused their discretion so frequently, that most outstanding draft cases are defective and cannot be successfully prosecuted.

a. Statistics of interest:

-In a review of outstanding draft indictments ordered by DOJ in 1974, the U.S. Attorney in the No. Dist. of California dropped 434 as "lacking prosecutive merit", this constituting 92% of all such cases in his district. Regrettably, not all U.S. Attorneys conducted this review in such good faith.

-In fiscal 1973, only 28% (977 of 3,495) of those prosecuted for Selective Service violations were actually convicted. Fiscal 1974 brought a similarly low 33% (686 of 2070) conviction rate.

- b. Note: Since many courts will not consider pre-trial motions to dismiss if the defendant is in "fugitive" status, it is of course difficult and frightening for an underground or exiled draft resister to present himself to the court, even though he has a 2 out of 3 chance of not being convicted.

III. Who Still Needs Amnesty:

A. Draft Resisters:

1. 4,400 persons who registered for the draft, but still face legal jeopardy for other Selective Service violations. (These persons are known to the Justice Dept. A list of these names was given to the United Church of Christ by Senator Edward Kennedy). Most have not acquired foreign citizenship.
2. 100,000 persons who never registered for the draft at all, but still face a possible sentence of 5 years in jail and a \$10,000 fine. (This figure is considered conservative and is based on comparisons between male births and draft registrations 18 years later.)
3. 7,500 American males who acquired Canadian citizenship during the Vietnam-Era. Most of these individuals are not even permitted to visit the U.S. because of 8 U.S.C. 1182 (a) (22) - a section of the Immigration and Nationality Act which excludes visits from persons who obtained foreign citizenship in order to "avoid or evade service or training in the Armed forces." To "prove" such intent is easy under the Act and subsequent case law.
4. 8,619 persons who have already been convicted for Selective Service violations and need convictions vacated.

B. Military Resisters:

1. 4,200 persons still classified as "deserters-at-large" by the DoD.

-This figure is highly suspect, however, because a large percentage of the 5495 men and women processed through Ft. Benjamin Harrison were not initially listed as "deserters" even though they, in fact, were. The actual "at-large" figure is probably around 8,000.

2. 425,000 veterans who received other-than-Honorable discharges during the Vietnam-Era. (90% were given administratively - generals and undesirables - and more than 90% for "offenses" that have no parallel in civilian life.)

-Other-than-Honorables lead to significant social stigma and high unemployability. In one recent survey conducted by Rep. John Seiberling, 73% of the respondent-corporations admitted to discrimination in hiring persons with Dishonorables

62% with Bad Conducts, 61% with Undesirables, and 41% with Generals (Cong. Rec. Nov. 28, 1973, p.E. 7547)

-These persons need amnesty and an Honorable discharge if they are to rebuild their lives. All persons with other-than-Honorable discharges for non-violent offenses have suffered long enough with their post-service albatrosses. Most of them were not even covered by the severely limited redress of President Ford's programs, including:

- 1) Men who refused orders to Vietnam, went to prison for their acts, but did not desert.
- 2) Persons whose only "crime" was to speak out against the injustices of the war in Indochina. See, for example, the cases of U.S. v. Howe (17 U.S.C.M.A. 165 - off duty demonstration in civilian clothes leads to 2 year sentence), U.S. v. Daniels (19 U.S.C.M.A. 529 - 10 year sentence and a Dishonorable for talking privately in the barracks about racial implications of the Vietnam War), and those of thousands more.

C. Civilian Resisters:

Thousands of civilians hold felony or Federal misdemeanor records for non-violent opposition to the war. These persons may have destroyed draft files, failed to obtain proper permits for demonstrations, or violated one of several other Federal statutes prohibiting "interference" with military operations.

IV. What Could Congress Do?

- A. It has the Constitutional authority to grant immunity from prosecution for Selective Service Act and U.C.M.J. violations, to transform the discharge system to provide for retroactive Honorable discharges, and to vacate convictions: "Although the Constitution vests in the President 'power to grant reprieves and pardons for offenses against the U.S.' . this power has never been held to take from Congress the power to pass acts of general amnesty..." (Brown v. Walker 161 U.S. 591 (1896)).
 1. A fundamental strength of the American legal system is its flexibility in dealing with prosecutions of individuals charged with violations of laws no longer deemed valid by society. An article in the 12 Harvard International Law Journal 119 (1972) noted a parallel between violation of Southern trespass laws and violation of Selective Service Act and U.C.M.J. provisions: "For Congress does have the power to abate prosecutions by means of legislation

subsequent to the performance of unlawful acts. In Hamm v. Little Rock, 379 U.S. 306 (1964), for example, the Supreme Court held that after the enactment of Title II of the Civil Rights Act of 1964 ... states could not prosecute participants in sit-ins even though the sit-ins preceded the enactment of the Civil Rights Act and were at the time unlawful under the law."

- B. The House and Senate Judiciary Committees have before them legislation that goes a long way toward the amnesty we seek. Amnesty is an idea whose time has surely come. We can do nothing for the dead, but we can heed the Scriptural call of Leviticus: "You shall not seek vengeance, nor bear any grudge against the sons of your own people."

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Note: The Center for Social Action is an affiliate of the National Council for Universal Unconditional Amnesty, 235 East 49th St., N.Y.C., N.Y. 10017.