

The Question Of Amnesty

By William Flynn

Harsh punishment for men who refused military service during the Vietnam war is unlikely, an Examiner review of the amnesty question finds.

Although President Nixon has declared draft evaders "must pay the price," the men who fled to Canada or hid out to avoid service apparently don't have too much to worry about.

"Probably, to some extent, they have beaten the system," says United States Attorney James Browning Jr., of San Francisco.

The reasons:

- Officials charged with prosecuting "selective service resisters" have not changed the practices that sent only 459 individuals to prison last year. The terms averaged 22.1 months.

- Federal judges have established what amounts to a sliding scale of amnesty, granting proba-

Despite Tough Talk, U.S. Unlikely To Be Harsh

tion with alternative service with increasing frequency, while reducing the prison sentence from the high of 37.3 months established in 1968.

- Revision of Selective Service regulations by court decisions which wiped out the basis for prosecution in many cases and established conditions which will not support a "legally sufficient" case for prosecution.

- Continued use of the Selective Service law to provide bodies for the military rather than punish men resisters requires "forgiving and forgetting" if the individual will accept induction for peacetime service.

Statistically, the draft resister problem is a minuscule one when related to the nation's total military roster, 2.3 million men and women in uniform. Currently only

6100 "resisters" have been indicted. About 4500 of them are fugitives and an estimated 2400 of them are in Canada and other foreign nations.

There were 4287 Selective Service defendants after World War II in 1945. The government failed to convict 1449 defendants. Of the 2838 convicted, only 238 went to prison for an average of 31.9 months.

Last year, the resister defendants totaled a record-breaking 4910 but the number not convicted also set a modern record — 3267.

Although President Nixon made clear that he believes "those who deserted must pay the price," the Department of Justice has done little to encourage more vigorous prosecution.

"I haven't had any signals at all out of the Department of Justice," Browning said.

He waits for the local board officials to report violations.

"I don't have to go out looking for them," he said.

But when the draft board sends in a valid case, conviction and induction not certain, his statistics reveal.

Between December 1 and March 1, 29 of an average 300 pending cases a month were dismissed, with 80 percent of the dismissal number "submitting" to induction. But when reporting for duty between 60 and 70 percent were dismissed for physical, emotional or psychological reasons that made them "unfit."

Of the remainder of the 300 cases pending in the San Francisco district, "a lot never come up for formal prosecution," Browning said.

There are a number of reasons — the induction order procedure may have been faulty; the latest court decisions may have invalidated the legal sufficiency of the case; and the individual may be willing to serve now the shooting is ended.

If he is, then all the papers are forgotten and he becomes a member of the armed services, for peacetime duty.

Browning was emphatic that all would be forgiven in exchange for a tour of duty in the peacetime army.

"If an individual comes back from Canada and he is willing to submit to induction, we will dismiss," he said. "If he goes, there are no charges."