

U.S. Says Hill Lacks Power On Amnesty

By William Claiborne
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The Justice Department suggested for the first time yesterday that Congress does not have the constitutional power to legislate amnesty for Vietnam era deserters and draft evaders, but that the sole power for such forgiveness lies with President Nixon.

In any case, according to Leon Ulman, deputy assistant attorney general, all nine amnesty bills pending in the House contain "serious constitutional defects" and should be defeated.

Ulman's constitutional interpretation of the amnesty issue came on the first of three days of hearings by a House Judiciary subcommittee, headed by Rep. Robert W. Kastenmeier (D-Wis.).

Buttressing the Justice Department's position was the general counsel of the Selective Service System, Walter H. Morse. He argued that granting amnesty to draft evaders would infuriate many of the 1.8 million men who served during the war, turning them into a "divisive element" in the nation.

Moreover, Morse said, amnesty for past draft violators would undermine the current enforcement of the Selective Service Act, which still requires 18-year-olds to register.

"How can we explain or justify amnesty for those who broke the law in times of armed conflict but refuse it in times of peace? Such a position is illogical on its face," said Morse.

The administration testimony at the first congressional amnesty hearing since the end of the Vietnam war indicated that President Nixon's stance on the issue has not softened.

In a March position paper, the President declared, "What those who fled the country now seek is not amnesty or forgiveness. They seek vindication, approval by the United States government that they were right and the U.S. wrong. To grant what those few thousand deserters demand would be to dishonor those millions who served their country with honor."

As they have since the controversy began, conflicting statistics on deserters and draft resisters were heard yesterday.

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AMNESTY, From A1

Amnesty lobbyists argued that more than 1 million men would be eligible for forgiveness, including 9,000 convicted draft violators, many of the 500,000 military men who deserted during the war, 30,000 to 5,000 deserters and resisters living abroad, and the 50,000 GIs who received less-than-honorable discharges during the war.

Referring to the desertions, Henry Schwarzschild, director of the American Civil Liberties Union's Amnesty Project, said, "This is extraordinary testimony against a demoralized military in a divided country."

The Defense Department contends, however, that although more than a half a million men deserted during the war, all but 28,000 have returned to military control and have had their cases settled. Of the 4,206 GIs who deserted to foreign countries during the war, 2,808 remain abroad, according to the Pentagon.

Morse said yesterday that of the 19,271 draft evaders indicted, 7,932 were convicted. Half got jail sentences and half were placed on probation, while only 134 remain in prison, he added.

In addition, Morse said, 5,100 draft evaders are under indictment and another 3,080 under FBI investigation.

"In sum, then, we are speaking of a maximum number of less than 17,000 violators who could be affected by a blanket or general amnesty, which amounts to less than 1 per cent of the total number of in-



REP. R. W. KASTENMEIER



LEON ULMAN

... panel chairman and amnesty critic

dicted men during the Vietnam conflict," he argued.

When asked by Rep. Robert F. Drinan (D-Mass.) whether there is no basis at all for granting amnesty, Morse replied, "That is the position of the administration."

Ulman, likewise, indicated that his views mirrored those of the President, saying, "It seems to me what you are doing is granting a pardon. You are putting the individual in the position of never having committed an offense."

Asked whether his testimony was an extension of Mr. Nixon's position, Ulman said, "My understanding is that the President has not changed his position." He also said he assumed his testimony had the approval of Attorney General William B. Saxbe.

While conceding that the scope of congressional authority in granting amnesty is "unclear at best," Ulman said Congress has never conferred amnesty and, as a result, the Supreme Court has never ruled on the constitutionality of the issue.

But, Ulman argued, the law is more specific about the President's power. He said the courts have held specifically

that Congress does not have the power to interfere with the President's right to grant pardons or amnesty.

In challenging the legality of the various amnesty bills, Ulman was particularly critical of a measure introduced by Rep. Paul N. McCloskey (R-Calif.) that would release persons serving draft-evasion sentences if they accept assignment to some form of national service.

"This feature not only is an obvious usurpation of the President's pardoning power, but an interference with the power of the courts with respect to sentencing and probation," Ulman said.

Schwarzschild, the first of several amnesty lobbyists to testify, attempted to refute both the legal and moral arguments against a general and unconditional amnesty.

"Amnesty today would not necessarily be a ratification of war resistance or draft refusal or desertion, any more than a pardon for a convicted felon suggests approval of the crime of which he stands convicted. It is a way of ending conflict and pain and hurt where there has been enough of that already," he said.