

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

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"betwixt the saddle and the ground the mercy sought and mercy found." This is a very old concept in philosophy, literature, and religion, that we can forgive. God forgives; man, too, can forgive mistakes—if they are indeed mistakes.

I am not adopting the position of the distinguished Senator from South Carolina, but pointing out that even if you refuse to concede the validity or sincerity of conscientious objection, nevertheless, there is a case to be made for forgiveness, for an individual ground and from society.

Senator HART. To be specific, I have never understood, unless it was to suggest what we now describe as a minimum wage law, why somebody that works 6 hours would get no more than somebody who worked 1. But that has very little to do with the problem here.

Mr. COMMAGER. Yes.

Senator HART. Thank you, sir.

Senator KENNEDY. Thank you very much, Professor Commager. We appreciate very much your coming.

Our next witness is Mr. David Harris, former Stanford student body president, convicted draft resister who has finished a 2-year term. Currently working as an organizer with the people's union, which has placed on the California ballot a referendum on the war in Indochina.

Mr. Harris, we want to welcome you here before the Committee.

STATEMENT OF DAVID HARRIS

Mr. HARRIS. A short statement I would like to make.

As I understand it, this committee is considering the question of amnesty. If amnesty were granted, the obvious reason I am here is that I would be subject to it. In January of 1968, I refused to submit to induction into the U.S. Armed Forces. My refusal bought me a sentence of 36 months in Federal prison. I was released from the Federal Correctional Institution of La Tuna, Tex., in March of 1971 after serving 20 months of my original sentence. I am presently under the supervision of the U.S. Board of Parole and will remain so until July of this year, when my original sentence expires. My own history makes amnesty a very pressing question. I am now a convict. I have no rights or civil liberties as they are commonly understood. I have a parole officer instead. But I did not start out as a convict. I started out as a high school football player who believed everything he was taught in his classes about American Government. I believed in liberty and justice for all, I believed in peace and democracy and freedom and all the virtues that the American state recites in its own honor. I believed in them so hard that I discovered they did not exist.

Its hard to say when that discovery began, but it is easy for me to remember when it became obvious, because it was then that I decided to be a convict.

I decided to be a convict because I believed in the peace and justice and freedom and democracy I had heard some people talk about. I decided to break the law because the law obviously stood

between me and those things I had learned to want. Before you gentlemen decide to give or not give amnesty, I think you should understand why people such as myself become criminals in the first place. I cannot speak for thousands of young people in this country who now live outside the law, but I can speak for myself.

I broke the law for three reasons. First, the law defined me and all the people I knew as pieces of property to be owned and manipulated however the Government saw fit. We are not citizens making the decisions citizens make. We are chattels who receive orders. The law I violated makes all of us pawns whose lives and deaths are not even our own. Terms such as those, no matter how comfortably they are made, are unacceptable to people whose freedom matter to them.

And I did not make the law I violated. Neither did any of the people I know or see everyday and neither did any of the people I was locked up with. The law I was punished for breaking was a law made 2,000 miles away by men with power such as yours. And you are very few men. The rest of us live with little or no control over the situations we find ourselves in. What we live with are the embodied interests of a few people who are allowed to sit on top and look down while the rest of us must squat on our haunches and look up. To submit to those interests and the power they exercise is to destroy the democracy the law claims to defend. Democracy, it seems to me, is a practice. And if it isn't a practice, it's nothing. The law I violated is a witness to its absence.

But the law I violated isn't an abstraction, as we all know. The law was made to serve a policy. And it was that policy that made me into a convict. We are all living in an empire, a society that has attempted to extend its control over as many people as it possibly can. It, like all empires before it, has accomplished its ends in a very simple fashion. It destroys whatever opposes it. That policy invaded the subcontinent of Southeast Asia determined to dictate the terms that the Vietnamese, the Lao, the Thai and the Khmer people must live under. It meets the attempt of those people to control their own fates with battalions of marines and enough raw explosives to turn all of Indochina into barren craters and graveyards. The policy pursued itself without mercy. It sent Americans 5,000 miles away to deny an entire subcontinent of Asians their right to live and exist as human beings. Anyone who respects his own liberty and the liberty of others has no choice but to refuse to be used for such slavery.

For acting upon all those reasons, I became a convict. And needless to say, there are more pleasant occupations. For 20 months I lived inside the operation of American justice. I learned to live inside bars and cages, I learned to exercise my freedom in very small and very dank places. I watched the police beat, extort, control and deny myself and all my fellow convicts. I learned to watch my son grow once a month for 8 hours in a prison visiting yard under the eyes of the Department of Justice. I learned to live without the simple rights that were supposed to be inalienable in my birthright. And I learned to wait for doors to open and lights to come on and for the screaming late at night to stop. And I don't

regret it. Given a choice between being a butcher and being a convict, I will choose convict every time.

And now you gentlemen are considering giving amnesty to people such as myself. To me, that means a lot. It means that thousands of young men like myself can walk out of their cell blocks and dungeons, return from their exile and their hiding places and walk on the streets like men are supposed to. I obviously have no objection to giving us amnesty. Of course it should be given. None of us should have ever been made criminals in the first place.

But I see some dangers in you gentlemen granting amnesty.

The first is that amnesty is traditionally considered an act of forgiveness and I do not feel like I have done anything wrong. Nor do I feel I want to be forgiven for the act I took. The wrong rests with the law and the policy the law enforces.

I spent 20 months on a maximum security cell block. There were two others in for offenses similar to mine. One burned draft files and the other refused induction. We used to talk about the possibility you men are discussing. And the conclusion we reached represents at least my feelings. We decided that we wouldn't accept a pardon but that we would take an apology.

The second danger I see is that I think it would be very easy for the U.S. Senate to find amnesty for an acceptable solution for people such as myself that have clear explanations for their actions and a constituency that you want to appease. But that you aren't nearly as inclined to give amnesty to the 19-year-olds who went AWOL because they were in love with the Chevrolet they left behind in Detroit. I think amnesty should be given to all people. I do not feel I can disassociate myself from those people any more than I can disassociate myself from all of the other victims of the policy the United States now pursues.

And the last danger I see is that I believe in giving things to those who need them most. Right now the people of Southeast Asia live under a death sentence. The policy that provoked my disobedience still flourished. It now uses machines instead of marines but it does the same thing. It is now massacring an entire civilization from 30,000 feet in the air. If amnesty is given, give it to Southeast Asia.

And the next day, after Southeast Asia has been spared from death by jellied gasoline and fragmentation bomb, release the rest of us from all the cages we've been put in and let all of us set making the nice words we recite into realities that live and breathe out where people live and not just in the documents we left behind 200 years ago.

[Applause.]

Senator KENNEDY. Mr. Harris, we appreciate your appearance here. The thrust of these hearings is to consider the administrative remedies that are available to a President as compared to the legislative remedies, also it is to try at least to provide an opportunity for those of us in the Congress, and most important of all, to the American people, to have an understanding of the depth of feeling of people like yourself who have had such a personal experience and are speaking with such conviction on this issue.

What are you suggesting to us as to what you would like to see in administrative action?

Mr. HARRIS. Well, I would like to see a series of actions I think, that run in this order. First, I would like to see the withdrawal of all American military presence from Southeast Asia. I think that that military presence is what creates people who need amnesty. It seems to me the first thing you want to do with amnesty is limit the number of people who need it and to continue that policy is simply to make more and more people who need amnesty.

I think secondly that a general amnesty ought to be declared for all people who have refused to be inducted into the Army who are either in prison at this point or in court processes or under the authority of the U.S. Board of Parole or who are in Canada or in hiding in the United States. I think to extend that amnesty to all those people who are in military prisons at this point, regardless, I think, of what crime they are in those military prisons for.

I think it would be a mistake to assume that, let's say, for example, that there is a man inside a military prison who is in there for stealing \$20. I do not think you can divorce the fact that that man stole the \$20 from the policy that he was supposed to be a tool of or the institution he was a part of. And I think the policy of trying to except those people out from each other is a process that is endless and possibly a proposition that is unjust. So I think we should extend general amnesty to all those people in military prisons as well and wipe the slate clean.

Senator KENNEDY. If you would follow that policy, you would close down all prisons.

Mr. HARRIS. For those of us who have been in prison, it is not all that bad an idea. I do not think the American people are served by the Federal prison system I experienced or any State prison system that I experienced as well. I do not think it's that bad to consider.

Senator KENNEDY. But I was trying to follow the logic of how you were identifying the two issues, those who, because of deeply held feelings and reservations about the war either suffered going to jail or going out of the country and those that steal a jeep and have fled the country. I must say I see a rather distinct difference. I am interested in the fact that you feel that those that have either stolen a jeep or are involved in other crimes ought to be treated the same as those who acted because of deeply held moral, ethical, or religious beliefs.

Mr. HARRIS. Well, my feeling—first, obviously, I am not holding my breath waiting for the Administration to grant amnesty, and neither are any other people who would be subject to it. But the point I am trying to make is if one is trying to dwell with what it is that generates those crimes in the first place, if one is trying to get back from the point of simply dealing with the effects and trying to deal with the causes that might either send me to prison because of a deeply held belief or send another man to a military stockade for, you know, stealing a truck or stealing a jeep, I think the same policy is responsible for both. I am all for clear and articulated positions and I am all for people trying to act with the most

sense possible and I obviously do not steal trucks or jeeps myself. I am not trying to put myself in the position of someone who does not have the background of people in this room, someone who has not had college and obviously has not succeeded in high school, someone who has had the option of being on the unemployment rolls or going in the Army and he went in the Army and ended up, instead of perhaps taking an open political position, which he might not have even understood existed, stolen the jeep instead.

My point is that man should never have been in the Army in the first place, because the only reason he was in the Army is because of the policy being pursued in Southeast Asia. My point is the only reason for the crime is as a distinct result of that policy. Most human beings do not have articulated politics. They get put into situations and they try to respond to those situations as best they can and most people do not respond to them very well. They are spontaneous and tend to panic and I think those people ought to be included in that decision.

I think that what we will find is that is, not a whole lot of people, that we are not expending ourselves in a great direction to grant amnesty for those people, but I do think they should be included.

Senator KENNEDY. It is your position that an individual who does not like a law or does not approve of a law ought to be able to interpose his own view in terms of violating the law?

Mr. HARRIS. I think that any of us as human beings has to fall back on that option. I think it is one of the options that democracy rests upon. Not that I would envelope an abstract theory about it. What I would say is faced with a situation where the law demands that you do things that are unacceptable to you as a human being, you have no choice but to either give up your existence as a human being and obey the law or disobey the law, and I think the choice in that is clear, that you take your own existence as a human being. I am not sure one builds an abstract philosophy around it, nor am I interested in building an abstract political philosophy, but I think that is an option open. Had I had an option that would have allowed me to do the things in my mind rather than go to the penitentiary, I would never have gone to the penitentiary. Simply because of the consequences, I try to break as few laws as possible. When you start pulling down those 3- and 4- and 5-year sentences end on end, civil disobedience is too widespread—a fashion ends up being a life commitment in a way that you did not want to make a life commitment. Yes, I think people have that right and I think that duty.

Senator KENNEDY. Would you reject the idea of a conscientious objector status?

Mr. HARRIS. Yes, I started to fill out a conscientious objection or form and I got about half way down it. First I realized that I was trying to convince five men whose job it was to send people out to kill each other that I was serious about not killing anybody. And I really thought if there was a doubt about somebody's sincerity in the question of killing people, the doubt rested on those five men and not myself and I did not feel I was under an obligation to

prove to those men that I was sincere, I think because I do not recognize the right of those men to draft me in the first place. I do not think that the Government owns 2 years of my life.

For the last 9 years of my life, I spent it trying to build those things that I think are real. I started as a civil rights worker in 1963 with SNCC in Mississippi and I worked as an organizer for the National Farmers Union and I was Stanford student body president and I organized draft resistance and I did my time in prison and I continue to act in that commitment. So I think people are capable of acting for the kind of society they want without a government ordering them to do it.

Nor am I willing to admit that the Government has that right and that function. Plus to my mind, the question was not just about my own personal statement. I could have gotten the conscientious objector classification, probably, and gotten myself free of the problem of whether I wanted—I had to pull the trigger or not. But the problem seemed to me much bigger than whether I had to pull a trigger. The problem was an institution designed to force young men just like me all around the country to go out and do that. What I wanted to do was deal with that larger problem not just the problem of my own fate. I felt myself to be more of a conscientious objector more than the law allowed. I was not only conscientiously opposed to my own participation in the Armed Forces, I was conscientiously objecting to the existence of those forces that put men in the Armed Forces.

Senator KENNEDY. Thank you very much. I appreciate your coming.

The next witness is Mr. Martin Kelley, Gold Star Parent, 149 Draper Street, Dorchester. Mr. Kelley is 65 years of age, has two daughters, and a son who was killed in Vietnam in 1968. Mr. Kelley, even though we know you have lost a son in Vietnam, we appreciate very much your willingness to come here and talk about this question. I am aware of your position and I think it is a position held by many, many people. I think the American people are entitled to your viewpoint and all of us in the Congress want to hear your viewpoint on this as well. I want to thank you very much for your presence here and your willingness to come.

STATEMENT OF MR. MARTIN KELLEY, GOLD STAR PARENT

Mr. KELLEY. Senator Kennedy, I would like to straighten out a few facts if I might. No. 1, I am not 65, I am 48. I did lose a son in 1968, his name was Daniel Kelley. He was a member of the 1st Cavalry Air Mobile, killed in the A-Shau Valley and as of this moment is still in the A-Shau Valley.

The gentleman who preceded me mentioned democracy several times. I was unaware that this is a democracy. I somehow felt it was a republic, when we pledge allegiance to a flag we pledge allegiance to the Republic of the United States, not to a democracy. Democracy is majority rule, period. A republic is majority rule with a constitution and bill of rights to protect the minority.

And I would also suggest that the gentleman, when he made his choice between being a butcher and a convict, presented himself to me as a very sick, a very sad animal.

"Traitor," has been mentioned twice, as I understand it, in the past few days in exchanges between members of the subcommittee and particularly Senator Thurmond and yourself, Senator Kennedy. I do not wish to use the word, "traitor." However, I would use two words, "ambush," and "betrayal."

"Ambush," is a very deadly tactic that is employed generally in wars, the nature of which this Vietnam conflict is being fought. We have had words from two Members of this Senate, and I mention those names—yourself, Mr. Kennedy, and Mr. McGovern, both Members of the Senate of the United States, which talked of total amnesty, the righteousness of draft dodgers who have crawled into Canada, Sweden, and wherever else they could pull their heels in after them. But I would suggest by this definition of their righteousness, this high moral and honorable draft dodger group, it follows that over 2 million and a half Americans have now been labeled immoral and dishonorable; the over 55,000 Americans who have been killed in Viet Nam, some of who now rest here at home in America in their graves, some of whom have gone to Vietnam never to return. Combat troops generally in a war, particularly in Vietnam, can expect and are ambushed and are betrayed. But the moment before that ambush, they are alive, armed, and could have at least attempted to defend themselves.

However, our courageous political leaders are expert in the tactics of ambush, because after all, men who are killed in action can't hear these words, that try to destroy reputations, that attempt to destroy memories of honorable and dedicated men.

They have heard these words of condemnation before; they have heard them many times from men such as the man who preceded me; they have heard them from Hanoi, they have heard them from Peking, and they have heard them from some groups in Canada. They have heard them from Laos, Cambodia, Viet Nam. And now without shame, these words are heard in this country. Indeed, heard from the mouths of men who passed laws sending them to their deaths in Viet Nam with the very casual statement, "Well, we were wrong and they were right:" men who have been several years predicting America could not win this war, America was losing the war, America must stop bombing, America must withdraw, America was engaged in an immoral and an illegal war, America was engaged in a racist war.

Do you wonder why the American people try to determine who wrote the script—Hanoi, the New York Times, maybe CBS or NBC? It was a no-win war because of restrictions placed upon the military. Who placed them and why? Fear of China coming in, Russia coming in? Maybe. But if China or Russia, or both, decided to come in, they could and they would manufacture an incident without any problem.

I believe that this war is as moral a war as this country has been in and I believe that the young men and the military forces serving

in this war were and are as honorable and as courageous as any this country has ever known.

And let me repeat, as honorable and as courageous as any this country has ever known.

I would add one sentence: I make no apologies to any man for these words I have just spoken.

Now, the purpose of this Committee, or subcommittee, was to decide whether or not we would grant blanket, total amnesty. I would suggest, number one, this Committee would be better engaged in suggesting and designing a memorial to the over 50,000 military men who died believing in this country's cause. Now in Viet Nam men are being wounded; they are being killed in Viet Nam; and we sit here with stinking empty platitudes, great philosophical flights. I would suggest perhaps that these discourses on philosophy might better be held in an upholstered outhouse, not here.

It is difficult for me to understand, to look, to know why someone would suggest total blanket amnesty.

I have not suggested that I am against the proposal that Senator Taft mentioned some time ago, which was conditional amnesty. But I do not feel that this amnesty, conditional amnesty, should be held, suggested, or put into effect until every American serviceman has left Viet Nam. And it is my thought and it is my suggestion that every American military man in Viet Nam should leave tomorrow, because they cannot win. This Government will not let them win.

When I hear the empty phrases of a Fulbright, of a Mr. McGovern, with the turn about of yourself, Mr. Chairman, when for 3 years, John F. Kennedy stood in the White House—John F. Kennedy who talked about bearing any burden, paying any price, et cetera. These words led men to join the Army, to accept the draft, and to fight for their country.

And now, with a very casual statement, "Well, we were wrong; these draft dodgers are right."

That is all I have to say.

Senator KENNEDY. Mr. Kelley, you have given us very powerful testimony this morning. I know that you speak from your heart and you speak with great concern; you have obviously given this a great deal of thought and there are many Americans who share that view.

Mr. KELLEY. I would apologize to this committee for two reasons. Number one, I did have, as was requested, 25 copies of my statement. In my rush to leave Logan Airport, the copies were inadvertently left at the airport.

Senator KENNEDY. You have done very well without it.

Mr. KELLEY. I would like to say to the people in the chamber that I am here only through the graciousness of Senator Kennedy. I did approach his Boston office; I did approach his Washington office; I did explain my stance.

They know exactly what my position was, maybe not the words contained. But they still, however, made every arrangement to see that I got here, were aware of the time and at every instance have treated me well.

Senator KENNEDY. Well, it is very important that all of us in this committee and the Senate understand it, Mr. Kelley. You have expressed that viewpoint as well as I think it could be expressed and I want to thank you very much for being down here with us this morning and for speaking to us the way you have, from your heart and as a concerned American and as someone who has suffered grievously.

I think the only point I would want to make at this time is in the references you made in terms of the courage and the commitment and the bravery of the young men who are serving in Southeast Asia. As long as I have been in the Senate and as one who has had serious reservations about our policy, as you well know, and have expressed them—as one who has visited Viet Nam on two different occasions and spoken about it, I do not think that there is any Member of the Senate—certainly not myself—who for a moment has anything but the highest admiration and respect for the American fighting man in Vietnam and who does not believe that he was carrying out his responsibility to the best of his ability and with the greatest patriotism and commitment to his country. I think the real expressions of reservations have been about the political leaders that sent them there and that continue to keep them there.

Mr. KELLEY. And I feel that these political leaders that did send them there and these political leaders who were there when the Southeast treaty resolution was signed, referred to as the Tonkin Gulf Resolution, I would remind the Senator that the vote in the Senate, as I understand it, was 88 to 2. I think Senator Morse and Senator Gruening, then Senator from Alaska, were the only two who declined and it passed unanimously through the House.

When I suggested the courage and the honor of the men in Viet Nam were being challenged, nobody can dispute that it has been challenged and in particular when from what's referred to as the so-called liberal press, immediately after—shortly before—the My Lai incident broke, we now hear terms such as Junkie Johnny. The gentleman preceding me has a choice between being a butcher or a convict. Those are the things I am talking about.

Certainly there have been many articles in the national newspapers and I am sure you are aware of them, there are men on college campuses that are perhaps looked upon as a strange breed of animal. Indeed they may be; in that particular campus; because the campus frankly does not know what courage and honor mean. I am talking about many, though not all of the participants in the mislabeled movement, the antiwar movement, and I would say the mislabeled movement which is called the peace movement—

Senator KENNEDY. Well, I think in fairness to my colleagues—I have heard, certainly not all of their speeches, but I have heard them debate and discuss the war. As a father, I would want you to realize that never on the floor of the U.S. Senate have I heard anything but the highest regard for the men ordered to Vietnam. I do not question that there are others who write about it or other groups or other people.

Mr. KELLEY. I am talking about two Senators who spoke on a radio station in Boston which I can name if you need, WBS. I am

talking in particular about Senator Hartke, I am talking about Senator McGovern, I am talking about what is laughingly referred to as a priest, Congressman Drinan, who have made statements much to the effect that the American fighting man is something less than a man.

Senator KENNEDY. I was interested in one of your final observations about getting the Americans home now. In speaking as one who has expressed those views about the war for a number of years—not as long as I perhaps should have—but I suppose that what concerns all of us is that we do not lose another American life over there.

Mr. KELLEY. I think that should be of prime consideration.

Senator KENNEDY. I know you have lost and you have suffered grievously. As I have the highest regard and respect for the position you have expressed here, I would hope sincerely that you believe that many of us in the Senate who have spoken about the war are equally concerned about insuring that there are not other fathers such as yourself who are going to have to lose sons.

Mr. KELLEY. The reason I am surprised, Senator Kennedy, is within the Constitution with regard to Congress, they, of course, can and do raise money to support an army. This can go on for a period of 2 years. At the end of those 2 years, they then have to acquiesce. As it were.

Senator KENNEDY. That is right.

Mr. KELLEY. This has been going on for quite some time.

Senator KENNEDY. I think that is a fair observation. You can say, well, if the Congress was so opposed to it, it should have cut off the military appropriation, and there are a number of people who share that view as well.

Mr. KELLEY. That is right.

Senator KENNEDY. Well, as I say, Mr. Kelley. I want to thank you very much. You are a forceful spokesman for a viewpoint. I know it is very sincerely held. You have given us very helpful and useful information. I want to thank you very much for coming.

Mr. KELLEY. Thank you for your consideration, sir.

Senator KENNEDY. Is Mrs. Valerie Kushner present?

(No response.)

Senator KENNEDY. Mr. Everett Brown Carson?

STATEMENT OF EVERETT BROWN CARSON, FIRST LIEUTENANT, MARINE CORPS, RETIRED

Lieutenant CARSON. Senator Kennedy. I would like to thank you for this opportunity to come today to speak on behalf of—well, on my own behalf but in behalf of the men who served in Vietnam.

I would just like to present my remarks with a brief response to the gentleman who just spoke and to his comment that the service of Americans in Vietnam was courageous and honorable. Certainly in a manner of speaking, that service was courageous and honorable, however misdirected. I would only like to add to that that we feel no pride—at least I feel no pride—in the part that I took in that war, and that however courageous or honorable that service may