

1034

KANSAS STATE UNIVERSITY LIBRARIES

9014  
Ar 5/3  
D45

Y4  
.Ar 5/3:  
D45

# MILITARY DESERTERS

GOVERNMENT

Storage

## HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES UNITED STATES SENATE

NINETIETH CONGRESS

SECOND SESSION

ON

THE PROBLEM OF DESERTERS FROM MILITARY SERVICE

MAY 21 AND 22, 1968

Printed for the use of the Committee on Armed Services

KSU LIBRARIES



✓  
562995 286395  
A11900 286395



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1968

000  
100  
200  
300  
400  
500  
600  
700  
800  
900  
1000

HEARINGS  
SUBCOMMITTEE OF THE  
COMMITTEE ON ARMED SERVICES

COMMITTEE ON ARMED SERVICES

RICHARD B. RUSSELL, Georgia, *Chairman*

JOHN STENNIS, Mississippi

STUART SYMINGTON, Missouri

HENRY M. JACKSON, Washington

SAM J. ERVIN, Jr., North Carolina

HOWARD W. CANNON, Nevada

ROBERT C. BYRD, West Virginia

STEPHEN M. YOUNG, Ohio

DANIEL K. INOUYE, Hawaii

THOMAS J. MCINTYRE, New Hampshire

DANIEL B. BREWSTER, Maryland

HARRY F. BYRD, JR., Virginia

MARGARET CHASE SMITH, Maine

STROM THURMOND, South Carolina

JACK MILLER, Iowa

JOHN G. TOWER, Texas

JAMES B. PEARSON, Kansas

PETER H. DOMINICK, Colorado

WILLIAM H. DARDEN, *Chief of Staff*

CHARLES B. KIRBOW, *Chief Clerk*

---

SUBCOMMITTEE ON TREATMENT OF DESERTERS FROM MILITARY SERVICE

DANIEL K. INOUYE, Hawaii, *Chairman*

THOMAS J. MCINTYRE, New Hampshire

JOHN G. TOWER, Texas

Brig. Gen. JAMES D. HITTLE, USMC (Retired), *Special Counsel*

(II)

## CONTENTS

Witnesses—	Page
Berg, Maj. Gen. William W., Deputy Assistant Secretary of Defense (Manpower)-----	29, 55
Fife, Lt. Col. James A., USA, Chief, Security and Discipline Branch, DCS PERS-----	10
Fitt, Hon. Alfred B., Assistant Secretary of Defense (Manpower and Reserve Affairs)-----	2
Hannigan, Col. J. F., USAF, Director of Military Justice-----	37, 64
Kennedy, Maj. Donald J., USA, Assistant Chief of Staff for Intelligence-----	32, 60
Parker, Col. Harold E., USA, Assistant Judge Advocate General for Military Law-----	30, 65
Schaefer, Wm. J., Special Assistant for SEC, Naval Investigative Service, Dept. of Navy-----	62
Sevier, Col. Charles B., USMC, Director, Judge Advocate General Division, Headquarters, USMC-----	16, 22
Smith, Jr., Frederick, Deputy Administrator, Bureau of Security and Consular Affairs, Dept of State-----	39
Stahl, John J., Jr., Chief, Special Activities Branch Directorate of Special Investigations (IG), Dept. of the Air Force-----	73
Temple, Col. William T., USAF, Office, Assistant Secretary of Defense (Manpower and Reserve Affairs)-----	56
Tyson, Col. William P., USA, Office, Assistant Secretary of Defense (Manpower and Reserve Affairs)-----	10, 38
Wilgus, Comdr. Carlton L., USN, Assistant Director, Enlisted Personnel Division, Bureau of Naval Personnel-----	65

# CONTENTS

12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----

## STUDY OF THE PROBLEM OF MILITARY DESERTIONS

---

TUESDAY, MAY 21, 1968

U.S. SENATE,  
SUBCOMMITTEE ON THE TREATMENT OF DESERTERS  
FROM MILITARY SERVICE  
OF THE COMMITTEE ON ARMED SERVICES,  
*Washington, D.C.*

The Subcommittee on the Treatment of Deserters From the Military Service, composed of Senators Inouye (chairman), McIntyre, and Tower met, pursuant to notice, at 10 a.m., in room 212, Old Senate Office Building.

Present: Senators Inouye and McIntyre.

Also present: William H. Darden, chief of staff; Charles B. Kirbow, chief clerk; and James D. Hittle, special counsel to the subcommittee.

Senator INOUE. The meeting will come to order.

At the outset I believe it appropriate to make a few remarks with respect to the purposes of the hearings and the procedures that the subcommittee will follow.

There is widespread concern both in the military services and throughout the country about the seriousness of desertions from the armed services.

The objective of this subcommittee is to determine both the magnitude and the seriousness of the problem of military desertions. In this connection, the subcommittee will seek information on the number of desertions within the United States and overseas; the disciplinary action that has been taken in the cases of those who have returned to U.S. jurisdiction; and the adequacy of pertinent provisions of the Uniform Code of Military Justice covering deserters, including, of course, those who have fled to foreign countries after absenting themselves from U.S. jurisdiction.

The subcommittee also hopes to be informed about the provisions of existing treaties and other arrangements for the return to U.S. custody of deserters who have taken refuge in foreign countries.

Another matter to be considered by the subcommittee is whether there are any organizations or individuals seeking to induce or otherwise encourage U.S. military personnel to desert.

With respect to procedures during these hearings, I am sure that members of the subcommittee share with me the appreciation that in the course of these hearings we will be listening to testimony that may be extremely sensitive in three areas.

First, we are dealing with the matter of desertion from the armed services, which is an offense under the Uniform Code of Military Justice. Therefore, it is extremely important that no statements be

made in open hearings that could be the basis of a claim that the interests and rights of any individual now being tried or who is tried in the future under the Uniform Code of Military Justice are prejudiced.

The second sensitive area pertains to information available to our intelligence agencies concerning efforts to induce or otherwise encourage military personnel to desert from the armed services.

The third area relates to testimony as to actions taken by U.S. Government officials in an effort to have foreign governments return U.S. military deserters to U.S. custody.

In view of the sensitivity of these matters, such testimony will be taken in closed hearings.

After consultation with Senators McIntyre and Tower, the Chair proposes that the following procedure prevail:

We will take the opening testimony by the principal witness of the Department of Defense, the Honorable Alfred B. Fitt, Assistant Secretary (Manpower and Reserve Affairs), in open session. Questioning by the subcommittee regarding Secretary Fitt's statement will also be in open session. However, if such questions touch upon sensitive matters, discussion will be postponed until we meet in closed session.

Following the completion of Secretary Fitt's statement and the appropriate subsequent questions and answers, the subcommittee will then go into closed session.

At this time the subcommittee will hear from our first witness, Secretary Fitt.

#### **STATEMENT OF HON. ALFRED B. FITT, ASSISTANT SECRETARY OF DEFENSE (MANPOWER AND RESERVE AFFAIRS)**

Mr. Fitt. Thank you, Mr. Chairman.

The Secretary of Defense has designated me to present testimony to this special subcommittee on the subject of absentees from the Armed Forces who have gone to foreign countries.

In my testimony today, as well as in the materials already supplied to the subcommittee, I have tried to present pertinent available statistical information concerning military absentees who have gone to foreign countries. It is important that you understand the general limitations on this statistical information and something of the manner in which the statistics were gathered.

It is important also that we all be aware of the overwhelming loyalty and steadfast devotion to duty of all but a handful of our military men. During a period of almost 2 years, through May 17, 1968, while only 181 U.S. citizens were absenting themselves from our military service to go to a foreign country, more than 25,000 enlisted men assigned to our Armed Forces in Europe volunteered for duty in Vietnam and were assigned there at their request. Another 60,000 servicemen in Vietnam volunteered during this time to extend their combat tours for at least 6 months beyond the normal 1 year. Much notoriety is given the relative few in uniform who absent themselves from duty. In my view, the dedicated service of the vast majority of our military men is deserving of special recognition.

Early this year, after several of our AWOL servicemen surfaced in foreign countries, making various types of political statements, we modified our reporting systems to include more timely and more comprehensive information on such absentees.

In gathering and updating information on individual cases on a worldwide basis, there is admittedly some lack of uniformity because of such things as the lag time in receiving and evaluating information, judgment factors in relating individual cases to the reporting criteria, and uncertainties in determining the whereabouts and motivations of a particular person who is absent without authority.

As a result of these uncertainties, the reports we have received have tended to include every absent serviceman who was suspected, however remotely, of having had some political motivation for his actions. In short, there has probably been some overreporting. Later and more refined information will undoubtedly disclose that some of those reported had no political motivation for their absence, but simply went AWOL for a completely nonpolitical personal reason.

Turning now to the issues at hand, every month there are men in our Armed Forces who go absent without leave—and return from that status. But probably over 95 percent of our men never go AWOL.

In fiscal year 1967, and assuming that each reported AWOL incident was a different man (which we know from experience was not the case) one man in 32 was absent without authority at some time during the year. Most return within hours or days, but slightly less than 30 percent of all AWOL's were gone more than 1 month.

Eventually 95 percent of all absentees are arrested or turn themselves in.

I have been referring to all unauthorized absences. This subcommittee is inquiring into those military absentees who go to a foreign country with a stated or suspected political motivation.

Between June 1, 1966 and May 17, 1968 there were 282 such cases reported to us. Of these 282, 26 were unsuccessful attempts by military personnel to go to a foreign country because of suspected political motivation.

Of the total number of 282 reported to us as suspected of political motivation, our information reveals only 49 who have given any positive indication of such motivation.

Of the 282, there were 101 who were aliens, returning for the most part to their country of birth.

So in the 23½-month period we have tabulated, there were 181 U.S. citizens who absented themselves from the U.S. Armed Forces and went to another country, or attempted to do so, for stated or suspected political reasons. This represents one person in 28,000 who served in the Armed Forces during the period.

Of the 181 citizens, as of May 17, 50 had returned to military control.

To give the subcommittee some indication of the general characteristics of military absentees we made a random sampling of completed cases of military absentees who were gone more than 30 days. That sampling reveals that 80 percent of the absentees were in pay grades E-1 and E-2, 64 percent being in grade E-1. Seventy-six percent had 2 years or less of service. Eighty-three percent were in the lower mental groups while 59 percent had 9 years or more of education. Sixty-six percent were volunteers and 33 percent were inductees. Eighty-two percent had a prior military disciplinary record and 20 percent had a civilian record. Only 9 percent showed evidence of psychiatric difficulty. Sixty-nine percent were under 22 years of age and 67 percent were single.

In comparing the general characteristics of the group of absentees to foreign countries with the group of so-called ordinary absentees just described, we found that of the 230 reported to the subcommittee prior to the hearings as having gone to foreign countries, 59 percent were in the lower two pay grades as compared with 80 percent in the group of so-called ordinary absentees. Pay grade E-3 was represented by another 20 percent. 27 percent were in the grade of E-1 as compared with 64 percent in the ordinary group. 81 percent had 2 years or less of service as compared with 76 percent in the ordinary group. 58 percent were in the lower two mental groups while 83 percent of the ordinary group were in this range. 92 percent of the foreign-country group had 9 years or more of education compared to 59 percent of the other group. 72 percent of the foreign-country absentees were volunteers compared with 66 percent in the other group. 49 percent had a prior military disciplinary record as compared with 82 percent in the other group. 17 percent showed evidence of psychiatric history as compared with 9 percent in the other group.

As you know, we have already provided the subcommittee with a great deal of requested information regarding each of the military absentees who has sought or attempted to seek refuge in foreign countries for the stated or suspected purpose of expressing some kind of protest against the United States or its policies. Additionally, we have identified which of those persons has returned to military control and the action taken in each instance. We have done this on a classified basis, because most of the cases are still not complete, and we wish to avoid any possible charge of improper command influence under article 37 of the Uniform Code of Military Justice.

We have also provided the subcommittee with such information as is available to the Department of Defense regarding organizations or groups that are attempting to induce members of the Armed Forces to become absent without authority and take refuge in foreign countries.

The subcommittee also requested, and we have provided, information regarding the legal authorities available to the United States for having returned to its jurisdiction those persons who absent themselves from the Armed Forces and take refuge in a foreign country. In general, these matters fall within the jurisdiction of the State Department, and I understand that you intend to go into these areas further with representatives of that Department. Therefore, I would defer to the State Department for any detailed discussion of these issues.

In my appearance here today I would like to discuss in general terms the detailed information already provided to the subcommittee, to amplify and clarify that information as required by the subcommittee, and to endeavor to satisfy any questions which the subcommittee may have. Representatives of the military services are here to assist me in responding to any questions you may have regarding a particular military service.

There are four points that I would like to make at this time:

First, I believe that it would be helpful to define the way in which we use the term "deserter." Understandably, we do not classify a person finally as a deserter until he is convicted by a court-martial of the offense of desertion pursuant to the Uniform Code of Military Justice. Another and much larger group of persons to whom this term is applied consists of those persons who are administratively characterized as deserters after they have been absent without authority for more than

30 days. This action has no legal significance. It does permit certain statistical actions and enables us to issue apprehension requests to civil authorities to facilitate their making arrests pursuant to article 8, Uniform Code of Military Justice.

For purposes of discussion with the subcommittee, I will use the term "absentee" in referring to persons who are absent without authority, and the term "dropped from the rolls absentee" when it is necessary to distinguish those who have been absent for more than 30 days.

Second, I would like the subcommittee to understand that we do not maintain master lists containing the names of all military absentees, no matter how long they have been gone, nor do we have lists by name of every convicted deserter. While each of the military services keeps records differently, each does maintain statistics on absentees, as well as appropriate files and records which permit them to locate information concerning a particular absentee when needed.

Third, it is the policy of the Department of Defense that we desire to have all absentees, including those in foreign countries, returned to military control as soon as possible. Upon their return it is our policy, in keeping with the statutory requirements of the Uniform Code of Military Justice and the decisions of the U.S. Court of Military Appeals, that the action to be taken in each instance will be determined on an individual basis in light of all the facts and circumstances surrounding the absence, including extenuating, mitigating, and aggravating factors.

So far as the Department of Defense is concerned, there is not and will not be any "special" policy regarding the disciplinary treatment or disposition of persons who return to military control from unauthorized absences in foreign countries. Under the Uniform Code of Military Justice and relevant decisions of the Court of Military Appeals, any such "special" policy would unquestionably be in violation of article 37 of the code, which makes unlawful any attempt to coerce or by unauthorized means to influence the outcome of a court-martial.

We have provided the subcommittee with information as to actions taken against those 40 absentees and attempted absentees to foreign countries who had returned to military control as of May 1, 1968. That information reveals a wide range of punishments, as might be expected in reviewing a group of sentences imposed in criminal proceedings over time and in many courts. The punishments range from a \$15 fine imposed for a 7-day absence to Sweden, to a general court-martial sentence of bad conduct discharge and 2 years' confinement at hard labor for a 5-month absence to Canada. One individual who sought acceptance by the Soviet Embassy in Tokyo was tried for desertion together with other offenses and received a general court-martial sentence of dishonorable discharge, total forfeitures, and confinement at hard labor for 3 years. In at least one instance of an attempted absence to a foreign country it was determined that no punishment was warranted and the individual is reported to be in good standing in his service.

We have analyzed a random sampling of punishments administered in 375 so-called ordinary cases involving an absence of more than 30 days. These cases show the same range of punishments as those thus far administered to the special category of absentees being discussed here who have returned.

We have no way of knowing the judgment factors that went into arriving at the punishment imposed in any of these cases. Under the

independent judicial system established by law in the military services, free from unlawful command control, these matters are determined by military juries and officials administering military justice in accordance with their judicial prerogatives.

Fourth, when the matter of absentees seeking refuge in foreign countries began to come to light and gain more notoriety late last year, we decided to initiate special reporting procedures on those absentees who were believed to have some political motive including a by-name roster showing relevant information on each of them. We were particularly desirous of determining if these acts were symptomatic of underlying problem areas requiring our attention and what impact, if any, these absentees were having on military effectiveness. Some of the conclusions we have reached from information received concerning these absentees are:

1. The number of this category of absentees has proved to be very small. As already mentioned, considering U.S. citizens only, it represents one serviceman in 28,000.

2. The absentees are scattered throughout some 30 countries with the largest group being in Canada, with Sweden, France, and Mexico, following in that order.

NUMBER OF SPECIALLY REPORTED ABSENTEES IN FOREIGN COUNTRIES

	Report as of May 1, 1968	Report as of May 17, 1968	Trend of absentees by time period					
			Report as of May 1, 1968		Report as of May 17, 1968		U.S. citizens	
			Month absence began	Number	Month absence began	Number		
In Argentina.....	1	1	April 1966.....	1	April 1966.....	1	0	
In Canada.....	61	79	June 1966.....	3	June 1966.....	3	2	
In Colombia.....	3	5	July 1966.....	4	July 1966.....	5	2	
In Costa Rica.....	1	1	August 1966.....	1	August 1966.....	2	0	
In Cuba.....	1	1	September 1966.....	2	September 1966.....	2	0	
In Dominican Republic.....	1	1	October 1966.....	5	October 1966.....	7	2	
In Ecuador.....	2	3	November 1966.....	1	November 1966.....	1	1	
In England.....	5	6	December 1966.....	6	December 1966.....	6	3	
In France.....	27	29	January 1967.....	5	January 1967.....	10	4	
In East Germany.....	1	1	February 1967.....	3	February 1967.....	3	1	
In West Germany.....	5	5	March 1967.....	3	March 1967.....	4	1	
In Holland.....	2	2	April 1967.....	1	April 1967.....	2	0	
In Honduras.....	1	1	May 1967.....	6	May 1967.....	9	3	
In Iceland.....	1	1	June 1967.....	5	June 1967.....	7	3	
In Ireland.....	0	1	July 1967.....	8	July 1967.....	12	5	
In Italy.....	2	2	August 1967.....	14	August 1967.....	15	7	
In Jamaica.....	1	1	September 1967.....	15	September 1967.....	16	7	
In Japan.....	2	1	October 1967.....	16	October 1967.....	16	6	
In Malaysia.....	1	1	November 1967.....	13	November 1967.....	14	12	
In Mexico.....	12	14	December 1967.....	9	December 1967.....	9	8	
In Nicaragua.....	1	1	January 1968.....	22	January 1968.....	23	19	
In North Vietnam.....	1	1	February 1968.....	33	February 1968.....	39	31	
In Panama.....	1	1	March 1968.....	30	March 1968.....	38	30	
In Peru.....	2	2	April 1968.....	13	April 1968.....	25	21	
In Poland.....	1	1	Unknown.....	11	May 1968.....	1	1	
In Russia.....	0	5	.....	.....	Unknown.....	12	12	
In Sweden.....	48	50	.....	.....	.....	.....	.....	
In Spain.....	0	1	.....	.....	.....	.....	.....	
In West Indies.....	1	1	.....	.....	.....	.....	.....	
In Yugoslavia.....	1	1	.....	.....	.....	.....	.....	
In U.S. control.....	40	55	.....	.....	.....	.....	.....	
Unknown.....	4	6	.....	.....	.....	.....	.....	
Total.....	230	282	.....	230	.....	282	181	
Army.....	191	229	.....	.....	.....	.....	.....	
Navy.....	15	23	.....	.....	.....	.....	.....	
Marine Corps.....	5	10	.....	.....	.....	.....	.....	
Air Force.....	19	20	.....	.....	.....	.....	.....	
Total.....	230	282	.....	.....	.....	.....	.....	

3. There was an upward trend until February 1968, but the data reported for March, April, and thus far for May suggest a decline.

4. The actions of these absentees have had no discernible impact on military effectiveness, although obviously we would prefer that no member of the U.S. Armed Forces ever absent himself without leave, for whatever purpose.

5. We have no proof that any of the organizations seeking to induce desertions has been successful in a single case.

Programs are continually being carried out to attempt to prevent unauthorized absences, to remove the causes, and to point out to servicemen the serious consequences and effect on their future lives which may result from unauthorized absence. In addition, special programs have been instituted by military commanders to deter persons from seeking refuge in foreign countries. For example, some of the measures being employed in the European command are as follows.

#### United States Army, Europe:

(1) The command information approach on the subject has been to point out:

(a) The great disadvantage of less-than-honorable discharge upon his future life.

(b) That the present plight of absentees in Europe is not enviable.

(c) That absentees have a hard life ahead of them as a result of their failure to adhere to military discipline.

(d) That nearly all absentees were fleeing personal and career problems:

(2) These points form the substance of U.S. Army Europe command information troop topic issued early in February and are being used as basis of presentations to troops now being held throughout the command.

(3) Other materials being used to support presentations include films, magazine articles, and Department of Army pamphlets.

#### U. S. Navy, Europe:

(1) Group discussions are held within the framework of the Navy leadership program, usually conducted in groups of about 15 under the leadership of a petty officer. These discussions are normally held in all commands at least twice a month. Topics treated include absenteeism and desertion, character building, motivation, and the detecting and counteracting of subversive influences. This program has been and will continue to be earnestly prosecuted within every Navy ship and shore command in the European command area.

(2) Each Navy shore command in the European command area also conducts an indoctrination program for newly arrived personnel, tailored to local needs and conditions. Ship visits to European ports are preceded by a similar indoctrination and information effort. Absenteeism, desertion, and potential exposure to subversive influences are subjects commonly covered in this context. The provisions of article 137, Uniform Code of Military Justice, requiring periodic explanation of punitive articles, including unauthorized absences and desertion, are also fulfilled.

(3) Recent publicity given to U.S. deserters and their statements and actions have prompted increased emphasis on the loyalty and allegiance aspects of the leadership program.  
U.S. Air Force Europe:

(1) Has established a strong orientation program for newcomers to the theater, mandatory for military and encouraged for dependents, in which commanders stress duty obligations as representatives of their country and personally advise on standards of conduct including AWOL and desertion.

(2) Conducts annual training and testing on Code of Conduct material which is strongly applicable to this situation. Also Article 85 (Desertion) of the Uniform Code of Military Justice, is carefully explained to each enlisted member at the time of his entrance into active duty and again 6 months thereafter, and again each time he reenlists.

(3) Conducts monthly commander's call stressing discussions of U.S. actions in Vietnam and other key areas as well as the moral and legal obligations of individual servicemen.

(4) Identifies at an early stage through supervisory action and AFM 35-99 human reliability program potential disciplinary problems in individuals. Counseling, or disciplinary or administrative action, if required, is then used to guide the individual into acceptable avenues of conduct.

We believe that all the services are conducting sound leadership programs on the subject of unauthorized absences, and that all have shown responsiveness to changing conditions and are able and in fact do adjust their programs accordingly.

Gentlemen, this completes my prepared statement.

Senator INOUE. Mr. Secretary, thank you for your prepared statement. It is most helpful. We have a few questions we would like to ask at this time.

I note in your testimony that there is an administrative designation of deserter for those men who have absented themselves from military jurisdiction for more than 30 days, is that correct?

Mr. FITT. That is an administrative designation, yes, sir.

Senator INOUE. Is anyone who has been absent for less than 30 days ever tried for desertion?

Mr. FITT. Yes, sir. The crime of desertion is the going off without authorization, with intent to remain away permanently, so this action can be completed within 30 days.

Senator INOUE. What is the maximum punishment for desertion?

Mr. FITT. It depends on the kind of desertion that is involved. I have a list here. If the desertion was with intent to avoid hazardous duty or to shirk important services, the maximum punishment is a dishonorable discharge, total forfeiture, and confinement at hard labor for 5 years.

Other cases of desertion not involving the intent to avoid hazardous duty, and so forth, if terminated by apprehension, the maximum is the same except that the confinement maximum is 3 rather than 5 years.

If the man turns himself in, then the maximum for the confinement is 2 years. Otherwise the maximums are the same.

In other words, the dishonorable discharge and the total forfeitures.

Senator INOUE. I have here a compilation of name, rank, and some history of absentees. Is this classified?

Mr. FITT. Yes, sir; that is.

Senator INOUE. We will ask questions on this in closed session.

Is there any office in the Department of Defense which serves as the central agency for monitoring and handling of the problem of desertion.

Mr. FITT. Yes, sir, my office serves that role. We, as I mentioned, secure periodic reports. I have a weekly report on this subject, and we serve as the focal point for then redistributing the information to other offices within the office of the Secretary of Defense, to the Department of State, and the military services maintain liaison with the Department of Justice as well.

Senator INOUE. I notice in this compilation you submitted to the subcommittee that the so-called deserters are not identified by services. Could you give us a breakdown by services?

Mr. FITT. Yes, sir. Of the 282, 229 were reported by the Army, 23 by the Navy, 10 by the Marine Corps, 20 by the Air Force.

Senator INOUE. Can you give us the proportionate rate?

Mr. FITT. I should point out that these men are not all deserters as I have used the term in my statement. Some of them have returned within a matter of hours and have not been charged with desertion.

Senator INOUE. These are not men who have been away for more than 30 days.

Mr. FITT. No. These are men who have gone to or attempted to go to a foreign country with a suspected or stated political motivation for this action. In some cases they have been away just a few hours. In others it has been over a year. So that the 30-day rule was not the standard for this compilation.

As I mentioned in the statement, we probably have some over-reporting of cases here. In other words, the Army has furnished us with the names of 229 individuals who gave some reason to suppose that their departure was motivated by political reasons, opposition to the war in Vietnam or whatever. But as those men return, and as we get more information about them, I am sure that many of them will prove to be what I would call an ordinary kind of absence. They are fleeing from difficult personal problems of some kind or another.

Senator INOUE. I presume that this reporting includes political and nonpolitical desertions?

Mr. FITT. No. As I say, this reporting does not include the ordinary absentee whom we know has gone because he has been in a variety of troubles. He has a history, perhaps, of AWOL's. He is having a row with his wife. He is in debt. He just goes away. That is the typical absentee. These figures do not include that kind of absentee.

Senator INOUE. These absentees are politically motivated?

Mr. FITT. Those have been reported to us as either having stated their intentions or are believed by the reporting office to have had some political motivation, but as I mentioned in the statement, in only 49 cases of the 282 has there been confirmed political motivation.

Now, 101 of those persons are aliens, and for the most part they have just simply gotten homesick and gone home. That is what has happened to them. They are in some 30 or 40 countries listed.

Senator INOUE. No attempt is being made to have them brought back?

Mr. FITT. Yes, sir. We endeavor to bring about the return of every absentee, including aliens. In some cases they are given a discharge in absentia, but the policy, as I have stated it, is that we wish every man who is a member of the Armed Forces and who has absented himself without leave to return to military control.

Senator INOUE. With what office and individual in the Department of State does the Defense Department coordinate concerning military desertions?

Colonel TYSON. Director, Passport Office is one, and the Division of Protective Security, Office of the Deputy Assistant Secretary for Security.

Senator INOUE. And what sort of coordination is there between your office and the FBI?

Mr. FITT. There is none directly between my office and the FBI. This is through the services.

Senator INOUE. What sort of coordination is there between the services and the FBI?

Mr. FITT. Can the Army respond?

Colonel FIFE. Sir, we regularly supply the FBI with the names, identifications and whatever information we have that will assist in apprehension of all Army individuals who have been absent more than 30 days.

Senator INOUE. Is this done by all the other services?

Colonel HANNIGAN. Yes, sir. There is a form that is filled out. I am under the impression the form is similar in all three services. What we do is supply stated information to the FBI, and they assist us in trying to apprehend the person who is AWOL for more than 30 days.

Commander WILGUS. That is right, DD form 553. All services use the same form.

Senator McINTYRE. Mr. Secretary, I take it then from your study that you don't consider that desertion is at an alarming rate?

Mr. FITT. That is in general, correct. We of course would prefer that no man absent himself improperly or without authority. The trend in the desertion rate has not been of such a nature to cause us any special concern.

Senator McINTYRE. You say on page 8, in summation, that "The number of absentees has proved to be very small, considering U.S. citizens only, represent one serviceman in every 28,000."

That certainly is a very slight figure, it seems to me. In considering U.S. citizens only, this of course excludes the aliens that you have mentioned in your statement. This also gets into this nomenclature of absentees without leave, administrative deserters, and deserters who have been convicted.

Mr. FITT. Yes. My statement which you quoted refers to the 181 citizens we have been discussing.

Senator McINTYRE. Would it be possible actually to go back to 1966, and to determine how many convictions for desertion we have had since January 1, 1966, to date?

Mr. FITT. Yes. I have the number of final approved general court-martial convictions for each of the military departments for each of the fiscal years going back to fiscal year 1958.

Senator McINTYRE. My particular concern is with the period of the Vietnam conflict.

Mr. FITT. Yes, sir. I think if we were to start with fiscal year 1964, the figures would be meaningful.

Senator McINTYRE. All right.

Mr. FITT. There were, in the Army, 109 convictions in fiscal year 1964. The following year, fiscal year 1965, 107; in fiscal year 1966 55; fiscal year 1967, 94; and in the first half of 1968, which ended last December, there were 39.

In the Air Force in fiscal year 1964, there were eight; in fiscal year 1965, 16; in fiscal year 1966, 11; in fiscal year 1967, 15. I don't have figures for fiscal 1968.

In the Navy in fiscal 1965 there were 12; in fiscal 1966, there were four; in fiscal 1967, 25; in fiscal 1968, for the first half, there were 11.

In the Marine Corps in fiscal 1964 there were 14; fiscal 1965, there were 27; fiscal 1966, there were 21; fiscal 1967, 43; and the first half of fiscal 1968 there were 82.

Senator McINTYRE. These are men who have been convicted of the military crime of desertion, is that right?

Mr. FITT. That is correct, sir, and the conviction has gone through the appellate process and has been fully upheld.

Senator McINTYRE. I notice that there is this practice in the service where after 30 days, the man is taken from a classification of AWOL and placed in the classification of desertion. I wonder if the services have ever given any thought to changing that term, which you say is not one that is fixed in any sense of the word. I mean a man is not a deserter simply because he is carried on the administrative rolls in desertion. But in thinking about it the other day I wondered if this sometime might lead to a false impression of just how heavy the desertion rate is in the services.

Mr. FITT. Yes.

Senator McINTYRE. It seems to me there would be some other term you could use.

Mr. FITT. That is why we use the rather clumsy phrase "dropped from the rolls absentee" to indicate such a man, and we do not report a desertion rate in terms of those who have been absent for more than 30 days.

Senator McINTYRE. In answer to Senator Inouye's question, did you give the maximum punishment that a man may receive for desertion?

Mr. FITT. Yes, sir; dishonorable discharge, total forfeitures, confinement at hard labor for 5 years, if the nature of his desertion involves shirking hazardous duty. That is currently the maximum punishment, sir.

Senator McINTYRE. One of the things that has bothered me, and I think you referred to it on page 6, is that these sentences are of course determined pretty much on the overall circumstances surrounding the absence. I wonder if you could give me an opinion as to whether the fact that five or six of these men desert and appear on television or make statements publicly for the press in foreign countries, that are highly prejudicial to the United States of America, would be considered by the average court as an aggravating factor.

Mr. FITT. I would rather discuss that kind of question in closed session, Senator. I think all of us are disturbed by such conduct, but I don't want to offer an opinion as to how the courts might or ought to deal with it.

Senator McINTYRE. Of course we would all agree if a man deserted and while he was in desertion status actually aided and abetted the enemy, that this would be an aggravating factor, would we not?

Mr. FITT. I would also like to pursue that question in closed session.

Senator INOUE. Senator McIntyre, this will be fully discussed in closed session.

Senator McINTYRE. All right.

On television I have seen indications of various operations going on in Canada that seek to advise draft evaders.

Senator INOUE. That will be discussed in closed session also.

Senator McINTYRE. On page 9 you make the statement that "The present plight of the absentees in Europe is not enviable." Would you expand on that for me, please?

Mr. FITT. These are men who have left their homes their friends and all of their associates and gone to a strange land where they usually don't know the language. They don't have any money. They have been in difficulty, at least half of them, already in the past, and they have compounded that difficulty by separating themselves from all of the roots and loyalties and attributes of U.S. citizenship and presence with their fellow Americans. They are despised by most people, I believe, and I think correctly, and I just don't believe that is an enviable situation to be in. They are, as I say, for the most part penniless, without job prospects, and they lack a great many of the things that we think necessary to happiness.

Senator McINTYRE. At the bottom on page 3, Mr. Secretary, I think you make a very significant statement, in talking about these absentees and deserters. You say: "82 percent had a prior disciplinary record, and 21 percent had a civilian record."

May I infer from that that these figures overlap to some extent, so that the figure is something in excess of 82 percent who have had prior difficulties in either civilian life or in the military?

Mr. FITT. These figures cited are for the random sampling we did of 480 cases, I believe, other than the men we have reported. The characteristics of the 230 men that we were able to assemble in time for this hearing show that rather than 82 percent having a prior military disciplinary record, the percentage is 49 percent.

Senator McINTYRE. As I read this statement, it seems to me that 82 percent had a military disciplinary record, 21 percent had a civilian record. It may be that the 21 percent is telescoped into the 82, but is it correct to say that in excess of 82 percent had some prior difficulty?

Mr. FITT. Who have absented themselves, yes.

Senator McINTYRE. Thank you, Mr. Secretary.

Thank you, Mr. Chairman.

Senator INOUE. Of the 282 reported to this subcommittee, how many absented themselves from duty in Vietnam? I ask this because I gather that most of them were serving either on the continent, here, or in Europe.

Mr. FITT. We don't have the statistics broken down in that fashion, Senator, but we will do so and supply it to the committee.

(The information requested follows:)

Available reports indicate that eleven of the 282 absented themselves from units in Vietnam. Nine of the eleven failed to return to Vietnam from Rest and Recuperation in Japan.

Senator INOUE. If a man absented himself from duty in Vietnam, would he be considered immediately as a deserter who has left to avoid hazardous duty?

Mr. FITT. I think you would have to look at each case, Senator, to determine that question.

Senator INOUE. I note on this chart designated "Military Absentees Fiscal Year 1967-68" that in the Marine Corps you have "Not available."

Mr. FITT. That is correct, sir. They don't maintain their statistics in the same way the other services do. They do not report centrally on the number of under-30-day absentees. Of course they keep track of their men who are absent for any period at all but they don't have a central compilation the way the other services do. But all the services have a central recording of men who have been absent for more than 30 days, as you can see in the right-hand column there.

Senator INOUE. From this am I correct in assuming that there is no uniformity in reporting among the services?

Mr. FITT. No, sir. The reporting is uniform. The definition of absentee over 30 days is common for the four services. The only thing that is not common is that the Marine Corps doesn't keep in one office the total number of absentees, including those who have been gone for 1 hour as well as those who have been gone for more than 30 days.

Senator INOUE. Possibly, Mr. Secretary, you are not prepared to answer this question as it is not completely relevant to the inquiry. But we have been reading accounts of the alleged high rate of desertions among the South Vietnamese troops. Just for my personal information, is it true that in the South Vietnamese Army, a man is considered a deserter as soon as he absents himself?

Mr. FITT. I do not know the answer to that, sir.

Senator INOUE. Will you furnish this committee the South Vietnamese definition for desertion?

Mr. FITT. Yes.

(The information requested follows:)

#### DEFINITION OF DESERTION UNDER THE LAWS OF THE REPUBLIC OF VIETNAM

Article 106 of the GVN Code of Military Justice defines peacetime desertion as AWOL for the following periods and categories of military personnel:

- a. More than six days, for personnel who have served in the armed forces more than three months.
- b. More than thirty days, for personnel who have served in the armed forces less than three months.
- c. More than fifteen days, for personnel on leave or in travel status.

As to wartime desertion the Ministry of Defense Memorandum Nr. 1187/TTM/I/PQ/PC dated 20 July 1966 provides that desertion is complete for all categories of personnel at 0001 hours on the 17th day of absence.

Desertion is tried by Military Field Courts under the provisions of Decree Law 015/66 dated 21 April 1966, as amended by Decree Law 026/66 dated 15 July 1966.

Minimum punishment is five years at hard labor to be served in a battlefield labor unit. Confinement for a period in excess of five years is authorized if the desertion occurred while the unit was engaged in operations or had received orders to engage in operations. Hard labor for life is authorized if the desertion was in the presence of the enemy. The death penalty is provided for those who abandon their unit and join the enemy.

Senator INOUE. I would like to call on General Hittle, special counsel of the subcommittee.

General HITTLE. Mr. Secretary, there is always some question whenever statistics are used, and for purposes of clarification, I think it would be helpful to the committee if we had definitely in mind what these totals here represent.

You speak of the political motivation of those who are reflected in the figures here. Now, are there any others who have absented themselves for over 30 days in foreign countries who are not included in the totals here?

Mr. FITT. There are others who have absented themselves for more or less than 30 days who are not included in those totals.

General HITTLE. Do you have the figures on what those totals would be for those who have absented themselves, regardless of proven or suspected political motivation, for over 30 days to a foreign country?

Mr. FITT. We don't have it compiled in that fashion, showing who went to a foreign country. We did not ask the services for this special kind of report, where the individual absented himself for some reason other than one supposed or suspected or stated to be politically motivated.

There are a great many problems of definition here, in trying to set up a reporting system that the services can handle. If a man is absent from his unit in West Germany for a day or two, for example, he is an absentee in a foreign country, but he is not the kind of man we have been interested in for the purpose of this particular inquiry. I am not sure just what kinds of information we could supply the committee readily on this question, but I would be glad to go into it with the staff and furnish you locality rares, if they are available.

General HITTLE. Making the cutoff in the criteria 30 days or more, could you provide it by country, then, in order to give an idea of the scope of the desertion problem and do not limit it to the question of motivation or suspected motivation?

Mr. FITT. I will inquire into the availability of the statistics you asked for. I think ultimately we should be able to supply it, but I am not sure how rapidly. I take it you don't wish to exclude the absentee who is absent over 30 days but is believed to be in the same country, even though it is a foreign country?

General Hittle. That is right. What we would like to have, in addition to those with political motivations which you have designated here, is the total number of deserters for over 30 days and the country where they are located, if you know.

Mr. FITT. All right, I will check to see exactly how quickly we can supply that, and we will furnish it.

General HITTLE. I think it should be clear for the record, Mr. Chairman, that this figure of 286 pertains to those who are politically motivated, or are suspected of it.

(The information requested follows:)

## ARMY—NUMBER DROPPED FROM ROLLS FOR DESERTION AND RATE PER 1,000

Year	Army south <sup>1</sup>		Europe		Pacific <sup>2</sup>		Japan		Vietnam		Korea	
	Number	Rate	Number	Rate	Number	Rate	Number	Rate	Number	Rate	Number	Rate
Fiscal year 1967.....	52	7.1	796	3.7	110	4.5	31	6.5	1,117	5.9	209	4.5
Fiscal year 1968 (July-February).....	30	3.7	870	4.1	143	6.7	19	4.4	786	2.4	77	1.6

<sup>1</sup> Panama and Puerto Rico.

<sup>2</sup> Headquarters Pacific, U.S. Army Hawaii, U.S. Army Ryukyu Islands, Thailand.

Note: Statistics above show, by country of occurrence, the number and rate per thousand average strength of incidents in which individuals were dropped from rolls after 30 days absence for fiscal years 1967 and 1968 to date. In the countries of occurrence, or in Conus, individuals must remain hidden as fugitives to avoid apprehension. Only in countries that will permit them residence and where United States cannot exercise jurisdiction can an AWOL surface. For this reason we cannot say in what country all these men are now located.

## NAVY—ABSENTEES GONE MORE THAN 30 DAYS BY COUNTRY

Country	Fiscal year 1967	Fiscal year 1968 (March)	Country	Fiscal year 1967	Fiscal year 1968 (March)
Australia.....	3	0	Morocco.....	0	1
Bahamas.....	1	0	New Zealand.....	0	1
Bermuda.....	0	1	Newfoundland.....	2	0
Canada.....	2	2	Okinawa.....	1	0
Cuba.....	7	1	Philippines.....	47	70
France.....	1	1	Puerto Rico.....	5	1
Guam.....	1	3	Scotland.....	1	2
Hong Kong.....	2	0	Spain.....	7	0
Ireland.....	1	0	Vietnam.....	9	13
Italy.....	1	1			
Japan.....	12	<sup>2</sup> 11	Total.....	105	109
Midway Island.....	2	1			

<sup>1</sup> 1 going UA for "political" reasons.

<sup>2</sup> 6 going UA for "political" reasons.

## MARINE CORPS

There were 6,654 absentees gone more than 30 days in FY 1967 and 5,658 for the first three quarters of FY 1968. Data showing from which country these individuals absented themselves is not readily available, however, the table below shows the known or suspected location of Marine deserters now suspected to be in foreign countries.

*Absentees believed to be in a foreign country, by country*

Brazil.....	1	Mexico (3) [1].....	9
Canada (26).....	43	Norway (1).....	1
Columbia.....	1	Okinawa.....	4
Cuba.....	1	Philippines (2).....	2
Germany [1].....	1	Sweden (2).....	2
Haiti.....	1	United Kingdom (1).....	3
Holland (1).....	2	Vietnam (1).....	30
Iceland (1) [1].....	1	Unknown.....	14
Japan.....	2		
Jordan (1).....	2	Total (39).....	120

Note: Figure in parentheses indicates the number of personnel known to be in that country. Figure in brackets indicates the number of men "disillusioned" with U.S. policies in that country.

AIR FORCE—STATISTICS SHOWING ALL ABSENTEES GONE FOR MORE THAN 30 DAYS, BY COUNTRY, FOR FISCAL YEARS 1967 AND 1968

Country	Fiscal year 1967 <sup>1</sup>		Fiscal year 1968 (9 months) <sup>2</sup>	
	AWOL in foreign station	AWOL on leave in United States	AWOL in foreign station	AWOL on leave in United States
Canada.....	1	1	0	0
England.....	0	0	4	0
Germany.....	2	0	2	0
Greenland.....	1	1	0	0
Japan.....	0	0	2	1
Korea.....	1	1	0	0
Netherlands.....	3	0	0	4
Okinawa.....	2	2	6	0
Philippines.....	3	2	5	0
Spain.....	0	0	1	1
Thailand.....	0	0	2	0
Taiwan.....	1	1	0	0
Vietnam.....	0	0	5	2

<sup>1</sup> All of these absentees have returned to military control.

<sup>2</sup> All but 6 of these absentees have returned to military control.

<sup>3</sup> On leave in England.

NUMBER DROPPED FROM THE ROLLS AS DESERTERS BY COUNTRY IN WHICH INDIVIDUALS ABSENTED THEMSELVES

Service and period	Europe <sup>1</sup>	Pacific <sup>2</sup>	Japan	Vietnam	Korea	South <sup>3</sup>	North <sup>4</sup>	Total
Army:								
Fiscal year 1967.....	796	110	31	1,117	209	52		2,315
Fiscal year 1968 (July-February).....	870	143	19	786	77	30		1,925
Navy:								
Fiscal year 1967.....	11	54	12	9		13	4	103
Fiscal year 1968.....	5	75	11	13		3	2	109
Air Force:								
Fiscal year 1967.....	4	6			1		2	13
Fiscal year 1968 (July-April).....	7	13	2	5				27
Marine Corps:								
Fiscal year 1967.....		1	1					2
Fiscal year 1968.....	1	6		15				22

<sup>1</sup> Includes Morocco, United Kingdom, Europe.

<sup>2</sup> Includes Hawaii, Thailand, Ryukyu Islands, Australia, Philippines, Okinawa, etc.

<sup>3</sup> Includes Panama, Puerto Rico, Bahamas, Bermuda.

<sup>4</sup> Includes Newfoundland, Greenland, Canada.

General HITTLE. I am intrigued a bit by the unavailability of Marine Corps figures. What is the best figure that the Marine Corps could provide that would be pertinent to a comparison here?

Colonel SEVIER. For the absence of under 30 days, this is an individual command responsibility. We in the Marine Corps Headquarters only take the ones who are administratively declared deserters for central figure headquarters. These may be also ones in confinement, broken stragglers orders for less than 30 days. But it would have to come in on the unit diary which comes in about a month or two late and runs through the computer machines.

General HITTLE. I think it would be helpful if a comparative figure of some type could be prepared so that there is a relationship shown here. I might say parenthetically that in this day of computers, it ought to be possible to come up with some kind of an answer on that.

(Information requested follows:)

A further examination of available data reveals that statistics on the total number of Marine absentees for any given period are not available. Only data on absentees of over 30 days are on record at Headquarters, U.S. Marine Corps.

Under the Uniform Code of Military Justice at the present time, Mr. Secretary, is there any distinction between desertion per se and desertion accompanied by denouncement of the United States by those deserters?

Mr. FITT. No, sir.

General HITTLE. Has the Department of Defense come to any conclusion, or is it considering proposed changes in the Uniform Code of Military Justice, setting forth as a separate or aggravating offense the denouncement of one's country while in the status of a deserter, or flight from U.S. jurisdiction?

Mr. FITT. We queried each of the military departments on this subject as to whether the present array of charges and possible punishments on the Uniform Code should be adjusted to meet the situation you describe. The answer that we got from each was that they all thought the present array was adequate, and they had no recommended legislation on this score.

General HITTLE. Could you provide for the committee, if you don't have it at the present time, what percentage of those who have been absent for over 30 days have been charged, tried and upheld, on the offense of desertion rather than AWOL?

Mr. FITT. We have supplied the committee with the charges and the results for those cases who have come to that stage of discipline up to this point. It is a very small number, as you know.

General HITTLE. Do you have an approximate percentage figure? We want a reduction of that to a percentage.

Mr. FITT. We will have to supply that for the record, sir. You are speaking of the larger group, not just the 200?

General HITTLE. That is right, of the entire problem of desertion.

Mr. FITT. Yes, sir.

(The information requested follows:)

What percentage of those absent more than 30 days have been charged, tried and convicted for desertion? FY 67 and FY 68.

#### ARMY

Assuming, but knowing it is not so, that each dropped from the rolls incident represents a different man AWOL more than 30 days, the Army completed conviction for desertion action on 0.35% of the 26,782 dropped from the rolls in FY 68 and 0.26% of the 14,691 dropped from the rolls in the first 2 quarters of FY 68. It is also pertinent to observe that the two data elements do not relate to each other in time. The desertion incident may be part of prior year statistics while the trial is recorded in subsequent years.

#### NAVY

Fiscal year 1967, .389 percent.  
Fiscal year 1968, .476 percent.

#### MARINE CORPS

Data is not available concerning the number of Marines charged with desertion under Art. 85, UCMJ after absents themselves for more than 30 days. The data below, therefore, reflects only the total number of Marines administratively designated as deserters and the number convicted of desertion during the period:

	Absent over 30 days	Convicted under art. 85	Percent
Fiscal year 1967.....	6,654	43	0.65
Fiscal year 1968 through March 1968.....	5,658	111	1.96

## AIR FORCE

During these FYs the number absent from the Air Force over 30 days were: FY 67—375, FY 68 (9 mo)—318.

During the same FYs, the number of convictions for *desertion* and their proportion to the number of absences over 30 days were:

Convictions of desertion:

Proportion to over-30-day absences:

FY 67—14	-----	37/1000
FY 68 (9 mo)—13	-----	41/1000

While it was agreed that this information would be furnished only in terms of *convictions*, in view of the small number of Air Force cases the following tabulation of those tried for *desertion* and the results of those trials is furnished as a matter of interest:

	Fiscal year 1967	Fiscal year 1968 (9 months)
Tried for desertion	27	25
Convicted of desertion	14	13
Convicted of lesser offense of AWOL	13	10
Acquitted	0	2

Comparison between the number of Air Force personnel dropped from the rolls administratively as absent over 30 days with convictions for desertion in the same fiscal year is very misleading, as:

(a) Those convicted of desertion may or may not include those dropped from the rolls in the same fiscal year.

(b) Absentees may be convicted of desertion though absent less than 30 days; other factors may prove the intent necessary under the Code.

(c) In criminal prosecution, the dropping of a person administratively as a deserter plays no part in the ultimate proof.

(d) Experience indicates that most persons dropped from the rolls return to military control soon afterward. In most cases there is no proof of the intent necessary to prove one of the types of desertion and the case is disposed of as an absence without leave.

General HITTLE. What is the general feeling within the military services concerning difficulties, if any, that might exist under the provisions of the Uniform Code of Military Justice, with respect to proving cases of desertion?

Mr. FITT. I didn't make an inquiry of that kind to the services in connection with the preparations for this hearing. There was some discussion of the problem, the difficulty of proving the intent to remain away permanently, which is an element of desertion. The desirability of being able to make a prima facie case based on a defined period of absence, say 1 year or 2 years as carrying the burden of the Government must bear to show intent was discussed.

This used to be the practice in prosecutions for desertions but the matter was reviewed by the Court of Military Appeals which held that proof of desertion in that manner was not permitted under the laws as the court interpreted them.

General HITTLE. Is it the general impression at the present time that it is unduly difficult to establish a case and prove a charge of desertion, under the rulings of the Military Court of Appeals?

Mr. FITT. As I mentioned, General Hittle, I didn't go into this area of inquiry in any depth with the services. I would like to defer an answer and give you a considered response to this point.

(The information requested follows:)

The provisions of the Uniform Code of Military Justice are adequate to deal with the type of absentees under discussion in these hearings and no amendments are needed.

There have been no decisions by the Court of Military Appeals which have made it unduly difficult to prove desertion. The substantive law governing the elements of the offense is the same as that in existence prior to establishment of the Court in 1951. The Court has spoken in two primary areas involving desertion cases but both concerned erroneous instructions to the members of a court by the law officer or president. In *U.S. v. Cothorn*, 8 USCMA 158, 23 CMR 382, a case where the accused has been AWOL for 17 days, the Court of Military Appeals held erroneous an instruction that if the condition of absence without proper authority is much prolonged and there is no satisfactory explanation of it, the court would be justified in inferring from that fact alone an intent to remain absent permanently. Another instruction held to be erroneous by the Court was one which advised the fact-finders that a purpose to return, provided a particular but uncertain event happens in the future, could be considered as an intent to remain away permanently (*U.S. v. Rushlow*, 2 USCMA 641, 10 CMR 139; *U.S. v. Shaughnessy*, 8 USCMA 416, 24 CMR 226). In both of these areas the instructions considered were clearly erroneous because they permitted the Court to substitute a single factor for determination by the Court that the accused intended to desert. None of the decisions prevent a Court from considering length of absence as a factor in reaching their decision. The Court's determination of intent properly should take into consideration all relevant factors, and the thrust of the decisions by the Court of Military Appeals has been to correct erroneous instructions which permitted one factor to be singled out as controlling over the others.

General HITTLE. Has the Department of Defense considered the advisability of a change with respect to the Uniform Code of Military Justice to establish as a distinct charge the offense of absenting one's self from military service through flight from U.S. jurisdiction.

Mr. FITT. I am not sure I understand the question, General Hittle. I understand the question as to whether we have given consideration to it, but I am not sure I understood the implications of the offense you stated there.

Senator INOUE. The general is asking if you are considering a special provision in the laws to cover a person who absents himself in a foreign country from which, because of treaty arrangements, we are unable to get him back?

Mr. FITT. No, we haven't given consideration to that, Senator. As I mentioned, each of the services responded to the effect that present crimes specified in the Uniform Code and the punishments prescribed in the manual were adequate, in their judgment, for dealing with the situation.

General HITTLE. Is there any definite office within the Department of Defense, Mr. Secretary, that is charged with the responsibility of maintaining a cumulative record on the deserters in foreign countries who engage in anti-United States actions?

Mr. FITT. That is my office, sir.

General HITTLE. What is the nature of the record that is kept on these individuals, without, of course, disclosing anything of a sensitive nature—just the general description?

Mr. FITT. Well, it is really a compilation of the vital statistics about the individual involved, obviously his name and grade, place of birth, and his period of service, when he absented himself, when he returned, what kind of punishment was administered in his case, what he did while he was gone.

As I mentioned in the statement, we develop sort of a profile on these people, their educational level, their mental level, whether they were volunteers or draftees, the other information I described to you.

General HITTLE. With specific reference to the deserters who recently have been reported in the press as going on television in a foreign country, or stating to the press that U.S. troops engage in atrocities, germ warfare, and other offenses of a propaganda nature, is that material assembled and a record kept of it with respect to the individuals to whom it may pertain?

Mr. FITT. We don't maintain an organized file of that kind, General Hittle. We subscribe to the same newspapers that you do, and we read these stories.

General HITTLE. The reason I posed that question, though, was with respect to the time that this individual, or the individuals concerned, might return to or be returned to U.S. jurisdiction; what is the assurance that whoever prepares the charges and presents the case is aware of what anti-United States action these individuals may have taken while they were away from U.S. jurisdiction?

Mr. FITT. The prosecution of military offenders is a matter that is handled in the military departments, not by OSD, of course; and each department, I am sure, has its own means for preparing cases adequately against these people.

General HITTLE. What I am trying to ascertain is whether or not a record of such offenses is kept, and by whom, and whether or not it is a matter of regular procedure, so that these individuals who have denounced their country are appropriately charged. Is the committee correct in assuming, then, that this material is assembled within the military departments, with respect to the records of the individuals who are in the status of a deserter?

Mr. FITT. I hesitate to give a categorical answer. Each case is prosecuted or disposed of in one way or another by the military departments. As I mentioned, in some instances there is no prosecution at all, and these judgments are made by the court-martial convening authority in the command where the man is assigned.

General HITTLE. To simplify this issue, then, is it correct for the committee to assume that whoever prepares this case has a full record of what this individual has done or has been reported doing while he was in an absentee status and engaged in anti-United States activities?

Mr. FITT. It is the responsibility of the prosecutor to establish the charge and to prove it. In some cases I am sure that the elements of proof are easier than in others, and the amount of information in some cases is, I am sure, greater than in others. We are talking about men who have absented themselves and gone to other countries. Some of them have not surfaced for several months. When they are returned, there is an inquiry made obviously as to what they were doing while they were gone, and any other relevant information that can be developed by the command is developed by it.

We don't have, as I say, at the Office of the Secretary of Defense level, a dossier built up on each of these men for the purpose of assisting in the prosecution of the individual. That is up to the command.

General HITTLE. What action is taken by the Department of Defense agencies, if any, to invalidate the ID cards of military personnel who have deserted to foreign countries?

Mr. FITT. I will defer to General Berg on that.

General BERG. General Hittle, what time are you speaking about now? The reason I raise this question, if you are talking about while a man is absent in a foreign country, obviously there is no way we can get at him to invalidate the actual ID card he may be carrying with him. We have taken some action to furnish to the State Department the names of these people.

General HITTLE. That is what I mean.

General BERG. So that they won't issue them a passport or if they do happen to have a passport, won't issue them a visa of any kind.

General HITTLE. That is what the point was, because within the NATO countries, an ID card is the equivalent of a passport for transit and the individual should certainly be deprived, it would appear, of that means of travel. Are there any of these individuals who are absent from the armed services at the present time in a deserter status, who hold passports, because of the nature of their duties?

General BERG. I assume the answer is yes, from the response of the people from the services here. We do have some in that category.

General HITTLE. Could you tell the committee what action is taken in those cases of individuals who have absented themselves and hold a passport?

Colonel TYSON. The State Department would have to address the question of what they do, sir. We furnish the information, the name, dates and places of birth and other vital statistics to the Director of the Passport Office.

General HITTLE. Mr. Secretary, would you provide for the committee copies of instructions from the Department of Defense and/or the military departments which DOD has transmitted since July 1 of 1966 to overseas commands, which is our arbitrary starting date here, as to the handling of the problem of U.S. military deserters in foreign countries and procedures for seeking to obtain their return to U.S. custody?

Mr. FITT. I think you said DOD there.

General HITTLE. Department of Defense.

Mr. FITT. To us that means the entire sum of the military departments, the Defense agencies, the Joint Chiefs, the Office of the Secretary of Defense. Is that the scope of your question?

General HITTLE. Yes, from the Department of Defense and appropriate agencies that have sent instructions relative to handling of military deserters.

Mr. FITT. I would like to suggest that we determine with you, after we have had a chance to define the scope a little more precisely, what kind of documents can be submitted. We are talking about a period of some 23 months, and a great many different agencies, and I would like to make sure we can meet your requirement.

(The information requested is too voluminous for printing and is retained in the committee files.)

General HITTLE. Yes. The other questions that I have, Mr. Chairman, with the exception of one, can be held for executive session.

On the last page, page 9 of your prepared statement, Mr. Secretary, under the listing of what the various services are doing with respect to seeking to deter AWOL's and desertions, I note that there is a program for the Army, the Navy and the Air Force, and once again curiosity compels me to ask does the Marine Corps have a program?

Mr. FITT. This was an example from the European Command.

I don't believe the Marine Corps has a significant number of people in the command. They have a few people attached to the embassies. Does the Marine Corps representative want to expand on my response?

Colonel SEVIER. Of course we have so few people in Europe that it is not a problem. A few embassy detachments and maybe a ship's detachment. But for our overall program, yes, this begins right in recruit training, and continues on right after that in the infantry training regiment by periodic explanations, under article 137 of the code. It is in the training syllabus, recruit training and the infantry training regiment, the basic training. It is on the training schedule directed by Headquarters, Marine Corps, for all the unit training. It is covered by directives in Vietnam, overseas, it is basically a matter of small unit leadership senior noncommissioned officers, the unit officers who live with these people, who know them, and by their personal example and guidance, and knowing the men.

General HITTLE. Thank you.

Senator INOUE. Before proceeding into executive session, I have a few more questions.

I doubt if this can be answered at this moment. If not, will you furnish the committee the appropriate information?

No. 1, will you give us the number of men who have absented themselves from duty in Vietnam?

No. 2, the number of men who have absented themselves after receiving orders to serve in Vietnam?

No. 3, the number of men who have absented themselves after having served in Vietnam?

No. 4, do you have any commissioned officers on the so-called absentee list?

Mr. FITT. If you are speaking of the list of 282, there are three commissioned officers.

Senator INOUE. What services are they from?

Mr. FITT. All three are Army officers.

Senator INOUE. And finally, I note in your testimony, Mr. Secretary, that 72 percent of the foreign country absentees were volunteers. How do you explain this high number of volunteers in the absentee group? I ask this because one would gather that if a man volunteered, he enters the armed services on his own free will, hopefully being appropriately motivated, and then suddenly he decides, in most cases after less than a year or 2 years of service, to leave. Have you made a study of this?

Mr. FITT. Only of the 230 cases that we had available at the time we began that particular analysis. I don't know what the answer to the question is. I suspect that we are talking about a very small sampling, 230 out of some 5,200,000 who have served in the Armed Forces in that period, and I don't know whether there is a statistically significant difference in this situation between 66 percent and 72 percent.

Senator INOUE. Possibly this may help. Are these so-called alien absentees inductees or are they volunteers?

Mr. FITT. Most of them are volunteers, but I will have to get you precise figures on that, Senator.

(The information requested follows:)

## ARMY

Prior to 1 April 1967, Army data does not reflect the number of men absent without authority after getting orders to Vietnam. Beginning with the 4th quarter of FY 67, when the ports of embarkation were made responsible for personnel accounting of casual replacements enroute to Vietnam, firm data on such individuals is available. The table below reflects the number of men who were reported AWOL from the port for more than 30 days and those who were reported absent from units shipping to Vietnam. It does not show those who were late arriving at the port for a matter of days nor those who went AWOL from parent units after receipt of orders to Vietnam, but prior to beginning movement enroute to Vietnam. In short, it is not believed this data properly responds to the question that is the basis for the request for data. Further, comparison to the total dropped from rolls data for the same period to derive insight as to how many individuals seek to evade combat service in Vietnam through AWOL is not meaningful.

Army records will not reveal the number of men absent without authority after serving in Vietnam.

*Personnel dropped from rolls while on orders to Vietnam*

Fiscal year 1967, 4th quarter only <sup>1</sup> .....	603
Fiscal year 1968, through April 1968.....	3, 250

<sup>1</sup> Prior to fourth quarter FY 67 the CONUS unit to overseas unit transfer system precludes recovery of the data.

Note: Data includes only replacements who failed to report at ports for onward movement who were reported dropped from rolls after 30 days and those absent from units when unit shipped to Vietnam.

## DUTY TO ABSENT WITHOUT LEAVE IN VIETNAM

	Number	Rate per 1,000
Fiscal year 1968 to (July to February).....	4, 710	19. 6
Fiscal year 1967.....	4, 380	23. 3

## NAVY

Number of men absent without authority in Vietnam: FY 1967 and FY 1968.

Fiscal year 1967.....	9
Fiscal year 1968.....	13

Number of men absent without authority after getting orders to Vietnam? FY 1967 and FY 1968.

Fiscal year 1967.....	Unable to determine
Fiscal year 1968.....	Unable to determine

Number of men absent without authority after serving in Vietnam? FY 1967 and FY 1968.

Fiscal year 1967.....	Unable to determine
Fiscal year 1968.....	Unable to determine

## MARINE CORPS

Information as to the number of Marines absent without authority in Vietnam in FY 1967 and FY 1968 has been requested from appropriate Field Commands but has not been received. Data will be provided when received.

The majority of Marines going to RVN are processed through one point. The data below reflects the records of that central processing point in regard to the number of personnel processed overseas and how many of that number were in an absentee status over 30 days.

	Number of marines processed for overseas	Absent over 30 days from overseas processing point
Fiscal year 1967.....	68, 945	2, 063
Fiscal year 1968 through April 1968.....	30, 515	885

Note: Data is not available on the number of men who absent themselves after having served in RVN.

## AIR FORCE

Number of men absent without authority in Vietnam? FY 1967 and FY 1968.

Fiscal year 1967.....	0
Fiscal year 1968 (9 months).....	5

Number of men absent without authority after getting orders to Vietnam?  
FY 1967 and FY 1968.

Fiscal year 1967.....	4
Fiscal year 1968.....	8

Note: These figures represent men who fail to show up for their port call and therefore are assumed to be "men absent without authority after getting orders to Vietnam."

Number of men who absented themselves without authority after serving in Vietnam: Data not available.

Of the 230 individuals reported to the committee prior to the hearings, 80 were aliens. Of those 80 aliens 47 were volunteers and 33 were inductees. Of the 282 individuals reported as of 17 May 1968, 101 were aliens. Of those 101 aliens 58 were volunteers and 43 were inductees.

Among enlisted personnel in the Department of Defense, inductees represent slightly less than 15% of the total population. Since voluntary enlistees thus comprise 85% of our military population, it is not surprising that they should have a substantial representation among both the foreign country and ordinary absentees, particularly in an era when the pressure of the draft causes the so-called "voluntary enlistment" to be less, frequently, than a completely voluntary act.

Senator INOUE. So that would raise the percentage to 72 percent.

Mr. FITT. That would contribute to it.

Senator INOUE. Any further questions?

Senator McINTYRE. Just one or two, Mr. Chairman.

Mr. Secretary, referring to that chart, "Military absentees," I wonder if the services have any comparable records for the years of World War II, 1943-44.

CHART 1—MILITARY ABSENTEES, FISCAL YEARS 1967 AND 1968

Military service and period	Number of absentees	Rate per 1,000	Number of absentees over 30 days	Rate per 1,000
Army:				
1967.....	96,803	78.0	26,782	21.4
1968.....	118,753	89.7	39,234	29.1
Navy:				
1967.....	14,810	22.4	6,416	9.7
1968.....	9,589	14.4	5,621	8.5
Marine Corps:				
1967.....	119,900	.....	6,654	26.8
1968.....	124,000	24.9	8,104	22.4
Air Force:				
1967.....	3,155	3.6	375	0.42
1968.....	3,194	3.6	393	0.44

<sup>1</sup> Estimated

<sup>2</sup> 1-day sampling, July 30, 1968.

Mr. FITT. We have records but they are not comparable. I will be glad to supply that.

Senator McINTYRE. This might give us a norm.

Mr. FITT. I am not sure you can read that, but why don't you look at my chart?

CHART 2.—ABSENTEE AND DESERTION<sup>1</sup> RATES, ALL-SERVICE COMPARISON, VIETNAM, KOREA, AND WORLD WAR II

War and year	Army	Navy	Marine Corps <sup>2</sup>	Air Force
Absentee rate (rate per 1,000 average strength. Persons absent less than 30 days):				
Vietnam:				
Fiscal year 1968 .....	89.7	14.4	<sup>3</sup> 4.9	3.6
Fiscal year 1967 .....	78.0	22.4	( <sup>4</sup> )	3.6
Fiscal year 1966 .....	57.7	29.2	( <sup>4</sup> )	3.3
Fiscal year 1965 .....	60.1	26.8	( <sup>4</sup> )	2.9
Korea:				
Fiscal year 1954 .....	116.7	37.6	( <sup>4</sup> )	38.32
Fiscal year 1953 .....	158.0	36.3	( <sup>4</sup> )	58.44
Fiscal year 1952 .....	181.0	31.9	( <sup>4</sup> )	62.0
Fiscal year 1951 .....	( <sup>4</sup> )	28.4	( <sup>4</sup> )	( <sup>4</sup> )
World War I: 1945, 1944, 1943, and 1942 .....				
Desertion rate (rate per 1,000 average strength. Persons absent more than 30 days and administratively classified as deserters):				
Vietnam:				
Fiscal year 1968 .....	29.1	8.5	22.4	.44
Fiscal year 1967 .....	21.4	9.7	26.8	.42
Fiscal year 1966 .....	14.7	9.1	16.1	.35
Fiscal year 1965 .....	15.7	6.7	18.8	.39
Korea:				
1954 .....	<sup>5</sup> 15.5	<sup>6</sup> 6.9	<sup>7</sup> 2.2	( <sup>4</sup> )
1953 .....	<sup>5</sup> 19.5	<sup>6</sup> 8.7	<sup>7</sup> 29.6	( <sup>4</sup> )
1952 .....	<sup>5</sup> 22.5	<sup>6</sup> 6.2	<sup>7</sup> 19.7	( <sup>4</sup> )
1951 .....	<sup>5</sup> 14.8	<sup>6</sup> 3.1	<sup>7</sup> 10.1	( <sup>4</sup> )
World War II:				
1945 .....	<sup>5</sup> 45.2	<sup>6</sup> 3.5	<sup>7</sup> 5.4	( <sup>4</sup> )
1944 .....	<sup>5</sup> 63.0	<sup>6</sup> 3.0	<sup>7</sup> 6.9	( <sup>4</sup> )
1943 .....	( <sup>4</sup> )	<sup>6</sup> 3.1	<sup>7</sup> 8.8	( <sup>4</sup> )
1942 .....	( <sup>4</sup> )	<sup>6</sup> 5.5	<sup>7</sup> 7.3	( <sup>4</sup> )

<sup>1</sup> "Desertion" as used herein refers to persons who have been absent without authority for more than 30 days and administratively classified as deserters. Separate statistics for persons convicted of desertion are not shown.

<sup>2</sup> Marine Corps maintains statistics only as to persons who have been absent for more than 30 days and administratively classified as deserters. Separate statistics showing absentees for less than 30 days are not kept.

<sup>3</sup> Reported for July 30, 1968, 1-day sampling.

<sup>4</sup> Not available.

<sup>5</sup> Not applicable.

<sup>6</sup> Calendar year.

<sup>7</sup> Fiscal year.

<sup>8</sup> July 1953.

<sup>9</sup> Dec. 1, 1941, to June 30, 1942.

Senator McINTYRE. I don't want to take the time of the committee. I am glad it will be made part of the record, so that it will provide somewhat of a norm that we might refer to.

The other question, if you will go back to the military absentee chart, I want to refer to the third column. The figure of 96,803 includes the soldier who went out on a 24-hour pass and got back 3 hours late for formation and was given a summary, a court-martial for being late.

Mr. FITT. That includes that kind of man, no matter what his punishment was. That is not a list of men who were punished. That is a list of men who were absent.

Senator McINTYRE. That is an administrative figure.

Mr. FITT. Yes.

Senator McINTYRE. On the company rolls.

Mr. FITT. That is right.

Senator McINTYRE. I think I would like to stress the fact that when we talk about desertions here, we ought to distinguish between the convicted deserter and the desertions that are part and parcel of the military records of the Army, the Navy, Marine Corps, those absent without leave, deserters administratively.

Thank you very much, Mr. Chairman.

Senator INOUE. Mr. Secretary, many of the members of the committee have been following some of the activities of men who have absented themselves and are now living in Sweden, and men who are now appearing before television and having press conferences. We note that one soldier just returned about a month ago, with his wife and child, and as I recall from reading this account, he received 3 months' suspended sentence.

Is the Defense Department or some other agency in contact with these men who have absented themselves, and offering certain enticements for them to return?

Mr. FITT. No, sir. This is a point we checked very carefully. There were two cases in which there was communication, direct or indirect, with men who subsequently returned. One was a man named Fitzpatrick, in the Air Force, in which the Air Force was in contact with the man's family in Chicago, and suggested letter writing, and so on, a statement of arguments in letters and suggested telephone calls to the man, but there was no direct communication, as I recall it, between the Air Force and Fitzpatrick, now was there any promise of a particular sentence, or, for that matter, any promise with respect to prosecution.

Senator INOUE. What was his sentence?

Mr. FITT. He was given a general court-martial, convicted on the 16th of May and received a bad conduct discharge and 4 months at hard labor and total forfeitures.

Now, that occurred so recently that it has not gone, obviously, through the review process.

The other case involved a man named Jones, I believe, and he got, as it turned out, an identical sentence. He was an Army private who returned in mid-March to Germany, and there had been a newspaper editor for the European edition of one of the service journals who was in Sweden attempting to influence deserters or these military absentees to return to military control, and this newspaper editor, whose name is William Russell, got to know Jones, and at that time, as I recall it, none of the Swedish absentees, the absentees in Sweden, had returned. [Deleted.]

Senator INOUE. You have testified that all these men undergo orientation courses, I suppose the same as we did when we were in World War II, where the company commander stands before the men and with all the gory details tells how bad it would be if one deserted. Keeping that in mind, it would seem inconceivable to many of us that these men would voluntarily return to the United States, expecting a possible sentence of 3 to 5 years at hard labor. But yet the facts indicate, according to this document, that with the exception of very few, most of them have received what I would consider very light sentences.

It would appear to me that instead of burning draft cards, the easiest way to get out of service would be to volunteer, desert, make a few statements, then arrange through some third party to return and get 4 months' hard labor and go free, and never be drafted again.

Mr. FITT. May I respond to that, sir?

Senator INOUE. Yes, please.

Mr. FITT. There have been 20 cases thus far completed of the men who have returned. There were three general courts-martial, each of which resulted in a bad conduct discharge, one with a sentence of 2

years and the other two, the ones I have just been talking about, with a sentence of 4 months. There were 13 cases involving a special court martial. In none of these was there a punitive discharge ordered, and in no case did the sentence exceed 6 months.

In two of the cases, the sentence was suspended. One was a 4 months' sentence; the other was a 3 months' sentence.

Then there were four other cases, making the total of 20, handled under article 15, which is what we use to term company punishment, nonjudicial punishment. Two of those men were sent on to Vietnam after whatever the company punishment was.

Now, looking at this, the reaction is that this is awfully lenient for these people who have gone off and made a disloyal spectacle of themselves, have been an embarrassment to this country and have in general conducted themselves in a fashion that nobody would approve. But there is another side to it.

These are men who are in the Armed Forces and we have several motives that govern us in connection with our handling. First of all, we want them back. Secondly, we want to deter others from doing the same thing. And, thirdly, we don't want to reward a man who has absented himself by giving him punishment which in effect will remove him from the hazards of combat, or the obligations of military service.

Some of these men have, as I say, received discharges and relatively short periods of confinement. I don't know what the motives or the factors were that led the courts to assess those punishments, and—

Senator INOUE. Do you think it will serve as a deterrent?

Mr. FITT. There is no way to inquire into their motives, and that has been prohibited by law, and I think it is an excellent law, because we do want to keep an impartial judicial system in the Armed Forces.

The other men, who have not been sentenced to long periods, and who have not been discharged, owe us the time that they were gone without authority. They also owe us the time that they will spend in the stockade, so that if a man was gone for 3 months and he picks up a 4-month sentence, that is 7 months that is tacked onto his period of enlistment, or if he is a draftee, to his 2-year military obligation, and we think it is important to get these men back and to get useful service out of them, and try to rehabilitate them, for one thing. But, more importantly, not to create the impression that by this kind of conduct, they can insulate themselves from hazardous duty or difficult assignments.

Senator INOUE. Can you tell us the differences between all these different discharges? You have bad conduct discharge, dishonorable discharge.

Mr. FITT. Yes, sir, there are five kinds, three of which are administrative. They are the honorable discharge, the general discharge and undesirable discharge. The honorable and general discharges are both honorable discharges. General discharge is for the ineffective serviceman who is not a bad actor, there is nothing evil about him.

Then the third kind of discharge is the undesirable discharge. This is for the man who is a poor serviceman and who is a bad actor.

Senator INOUE. What are the legal consequences under the GI bill of rights?

Mr. FITT. Yes, sir, I will come to that.

The other two kinds of discharges may only result from a court-martial conviction. One of those is the dishonorable discharge and the other is the bad conduct discharge.

There is no significance between those two, if they have been awarded as a result of a general court-martial action. A man loses everything in terms of veterans benefits, the GI bill, unemployment compensation, whatever assistance the Federal Government gives a veteran is denied these men.

We have a complicated chart which we are going to leave with you, which explains the benefits that are lost under these different kinds of discharges.

(Information requested is retained in committee files.)

Mr. FITT. If a bad conduct discharge is awarded as a result of a special court-martial rather than a general court-martial, then the Veterans' Administration, in administering its programs, makes a judgment on each case as to whether the man will be found eligible.

We are talking about medical care, pensions, prosthetic devices, seeing-eye dogs, the whole battery of Veterans' Administration programs.

Senator INOUYE. What is the worst discharge?

Mr. FITT. The dishonorable discharge.

Senator INOUYE. I suppose the courts must have had some reasons, but I see but one dishonorable discharge listed.

They are all bad conduct discharges. Isn't desertion considered serious enough for dishonorable discharge?

Mr. FITT. Most of these cases have not been tried for desertion.

Senator INOUYE. You mean if a man is away from September 1967 to February 28, 1968, he is not tried for desertion?

Mr. FITT. The period of time of his absence doesn't govern that question, Senator. The real question is the element of proof that is involved. The man must have intended to absent himself permanently.

Senator INOUYE. So if he does not show any intent to absent himself permanently, what would be the maximum sentence?

Mr. FITT. This would be an AWOL case then.

Senator INOUYE. What is the maximum sentence in an AWOL case?

Mr. FITT. I have that, sir. In general, a 1-year confinement is the maximum.

Wait a minute. I beg your pardon.

Absent without leave from unit, organization, or other place of duty for more than 30 days is dishonorable discharge, total forfeiture, and confinement at hard labor for 1 year.

Senator INOUYE. How do you explain this Pvt. L. L. Andrew, who returned February 28, 1968, voluntarily, convicted by general court-martial, sentenced to discharge and 2 years' at hard labor?

Mr. FITT. I will have to check on the specific point, but he must have been charged with an offense greater than AWOL, if he has a confinement that is greater than 1 year.

Senator INOUYE. That could be desertion?

Mr. FITT. It could be.

Colonel PARKER. May I answer that?

The record is not here yet for review but our information card shows he was tried for desertion and for some attempt at some other kind of offense. The records we have here at the present time do not show what the offense was, but there were two offenses actually for which he was tried, and the record has not reached Washington yet.

Senator INOUYE. My curiosity evolves around why not dishonorable discharge, why just bad conduct?

Mr. FITT. That is a curiosity that I can't satisfy, Senator. These sentences are fixed in the first instance by the court where the man is convicted. They are then reviewed by the court-martial convening authority. He can reduce them. He can't increase them. Depending upon the severity of the sentence, they are then reviewed at higher levels in each of the military department judicial systems.

Senator INOUE. I note in your report on Private Perada, he was in Sweden, and it says here he was apprehended. Did you apprehend him in Sweden?

General BERG. Senator, he came back. He absented himself from an organization in Germany, and he came back and he was actually apprehended in the town adjacent to where his unit was located in Germany, indicating that he was en route to return, but he was recognized by some member of his organization and they actually picked him up in Germany.

Senator INOUE. I am trying to figure out this one, also. Private Thompson, Private Tipton, both of whom were apprehended by the Yokohama harbor police, and it seems, according to the report, they absented themselves by going to Sweden. How do you figure that one out?

General BERG. You are reading from the second one, which talks about the summary of actions taken regarding attempted absentees. That is the people who never got there.

Senator INOUE. How do you determine that he wanted to go to Sweden?

General BERG. I don't know if there is anybody here who has better information on that case than I do, but here is the information that we got on it, sir.

The provost marshal at Camp Zama, Japan, received information from a source, who stated that he had met the particular people involved, the cosubjects in Yokohama and was informed that the individuals were AWOL and claimed to be working for a Japanese construction firm on the outside of Yokohama. Their employer had offered them a ticket to Sweden by air. The subjects claim that they had refused the offer as they intended to return to military control on the 13th of March. However, during the morning of the 13th of March, the source received a telephone call from Tipton who stated that they had changed their minds about turning themselves in, that they were going to Tokyo to make contact for the trip to Sweden.

They were apprehended by the Yokohama police when they were just about to get onto the airplane to go there, so that is the reason for the categorization there. They were going to try to go to Sweden, but they stopped them.

Senator INOUE. Senator McIntyre?

Senator MCINTYRE. Thank you, Mr. Chairman.

If a soldier absents himself from his unit during a period when his country is involved in I will say a period of marked hazardous duty, and yet all the external evidence of this soldier's actions, intentions, his letters and everything during his period of absence indicate that all he had in mind was to get out of the jurisdiction of the military while this particular hazardous period was underway, and then he assured his family back in the States that he would want to come home and take whatever punishment was meted out to him, would this effectively bar a trial judge advocate from charging this man with desertion, in the absence of any ability to prove the animus, the intention, would the trial judge advocate have to say, "The only thing we can get this fellow on is absent without leave"?

Mr. FITT. We have Judge Advocate General officers in each of the military departments here, and I will call on the Army Judge Advocate General to speak first and then the others to add any comments they wish to.

Colonel PARKER. You have to prove an intent. As Mr. Fitt said earlier, intent to avoid hazardous service can be desertion, also unauthorized absence plus the intent to avoid hazardous service would also be desertion, so in the case that you posed, if you could obtain the proof that you described, you could charge him with desertion, and that would be the 5-year type of desertion.

If you could only find proof that he intended to remain away permanently with nothing about avoiding service, then it would be in the 3-year maximum category.

Senator McINTYRE. That answers my question, because I had begun to wonder whether the military crime of desertion involved not only the physical absence but you as the prosecutor had to prove intention to remain away permanently. But you do say that this period of hazardous duty comes in to assist you in fixing of a charge of that nature.

I don't have any knowledge of the Jones case at all. What is the background? What are the mitigating circumstances in the Jones case? Was he, for instance, one of four who went away? What can you tell us about the Jones case?

Mr. FITT. I can't tell you, sir, in any great detail beyond the bare statistics that we have furnished the committee on the Jones case.

Again, I just don't know what went into it.

Senator McINTYRE. Isn't that the case with the 4 months sentence and the good conduct discharge?

Mr. FITT. Yes.

General HITTLE. Ray Jones.

Senator McINTYRE. Can you tell me how long he was gone?

Mr. FITT. Yes, sir. He was gone, I think, about 15 months.

Senator McINTYRE. Fifteen months?

Colonel PARKER. Senator, the record of that case is now in Washington. It could be made available for the members to look at. The record would probably be the best way to see what was presented.

Senator McINTYRE. This is the case involving the editor of some service paper?

Colonel PARKER. The Army Times.

General HITTLE. Army Times European edition.

Senator McINTYRE. He was a United States of America Civilian?

Mr. FITT. Yes.

Senator McINTYRE. He went over to Sweden, talked to the young man [deleted]. But I wonder if the commanding general, in looking over the Jones case, felt it was one that deserved a lot of consideration because of circumstances. I agree with you, Mr. Secretary, that as we probe into these things that you find that even the usual tough court-martial will bend before circumstances involving a young man, say, of low grade mentality or a poor mentality who was, perhaps, influenced to go along with two or three of his buddies and they get him over there and he is in a fix. I don't know whether we want to go into the individual cases, but you seem to think that Jones case is a pretty bad example. Maybe we should.

Senator INOUE. Senator McIntyre, I brought the Jones case up because we have received many letters from servicemen on this Jones case. It was highly publicized. There were pictures of his beautiful wife and baby. He was on just about every television screen, and 15 months away from duty. He indicated he enjoyed himself for a while there. Then he come out of his trial with a 4 months' sentence.

Senator MCINTYRE. Perhaps the question to ask the Secretary, then, in view of what you have stated as the overall policy of the services toward these men, is do you think it is appropriate for the services, either directly or indirectly, to try to contact these men in foreign countries to induce them to return?

Mr. FITT. I think it depends on the circumstances. We are anxious to get them to come back, obviously. There have been, to our knowledge, and this is after specific inquiries to the military departments, attempts of this kind in connection with Jones and Fitzpatrick, and only in those two cases, the contact through the family in the one case and the contact through Russell, the editor, in the other case.

There have been other kinds of contacts made with these men through various intermediaries, State Department people at the Embassy. The men come to the Embassy and telephone people on the staffs of the consuls and so on in these countries, but to my knowledge the Jones and Fitzpatrick cases are the only two where the services were involved.

Is it appropriate to do so?

Again, I don't think it is possible to express a useful judgment on this.

Senator MCINTYRE. I suppose you are right to a certain extent, because each individual case would have its pros and cons, but I query the statement you made here a little while ago, and I could be wrong, that in bringing these men back and attempting to rehabilitate them with a light sentence and making sure that they are not rewarded by being relieved of any opportunity to be subjected to hazardous duty, I wonder if it doesn't fall within the same context that the last thing in the world I would want is some guy who had pulled this sort of trick as a squad leader or one of the men I had to rely on, if I were in a tough position.

But I can understand why you say you don't want to reward them. But I wonder how you reward the fellow that he is fighting next to.

Senator INOUE. Will you yield?

Senator MCINTYRE. Sure, I will be happy to yield.

Senator INOUE. In some of the letters these servicemen suggest that Jones was returned to the United States not as a prisoner. Secondly, transportation and other expenses were furnished him and his wife and child, and these servicemen are wondering, "How come my wife can't get the same deal and I have been serving for 9 years?"

Mr. FITT. So far as I know, Jones is in Europe in a stockade.

Senator INOUE. But he says the wife and child came back.

Colonel FIFE. Yes; the wife and child were returned to Germany, sir. But if there is any money available to Jones this will subsequently be recovered from him. He has been given an advance on his pay to be accrued, in this sense I believe, unless this was paid by the State Department. If paid from Army appropriated funds, which it could be, it will be recoverable from him.

General HITTLE. Is this the normal procedure in those cases?

Mr. FITT. Is this the normal procedure to pay the man's transportation?

General HITTLE. No; to make advances while he is under disciplinary confinement.

Colonel FIFE. Yes; it would be normal, sir. We would move the man to that place where we wanted him, from where he had put himself, but we would charge him for the movement, because he put himself there, but we would move him to where we wanted him.

General HITTLE. Of course the confusing point in this, if I may say so Mr. Chairman, is: Where was his wife at each stage of this, and who paid for her transportation?

General BERG. I think what they are discussing, General Hittle, is the fact that they paid the transportation for the man and his wife from Sweden back to where he was going to be tried in Germany, only there, and that is the normal procedure, if he doesn't have the money to pay his transportation either from wherever he is apprehended or turns himself in back to where he can be tried, and in a lot of cases we issue him the transportation request or else give him the money and then charge his account for it. That is normal procedure.

Colonel PARKER. That doesn't include his wife, of course. That would be just the service member himself.

General BERG. That is right.

Colonel PARKER. I have never seen anything to indicate that the Army paid for his wife. I don't know what the details were on that.

Senator INOUE. Senator Tower?

Senator TOWER. No questions at the moment.

Senator MCINTYRE. Mr. Secretary, is there any evidence that organizations operating in Canada to assist draft evaders have attempted, by pamphlet or any other form of communication to influence men in the armed services to absent themselves?

Mr. FITT. You are talking about organizations in Canada?

Senator MCINTYRE. That is the only place I know where they are. There may be others.

Mr. FITT. Well, I would like to get a member of the intelligence service to respond to that. Again I will take the Army first and then the other services in turn, what the response to that question is, as far as the Army is concerned.

This is Major Kennedy.

Major KENNEDY. There is a known group in Canada that has made attempts. Now, this might be misleading. There is no evidence to indicate that they have actually induced. Now, induced and attempted are quite a bit different. All of these organizations, or a great number of them throughout the world, have attempted to induce these individuals to desert.

Senator MCINTYRE. What manner or means do they employ?

Major KENNEDY. In Canada the only thing that I know of is pamphlets. In the States there are a number of groups and the anti-Vietnam, antimilitary newspapers.

Senator MCINTYRE. Do these organizations actually send these pamphlets to members of the armed services?

Major KENNEDY. Yes, sir.

Senator McINTYRE. Do they send them in sufficient bulk to say that someone whom they might think was a sympathizer with their feelings could distribute?

Major KENNEDY. There actually hasn't been a tremendous effect. One of the largest newspapers in the United States that is in this business is the Bond, which was formerly published in Berkeley, Calif., and now in New York, I believe. They send to individuals who send in their names and also a number of individuals, it has been noted, have sent in lists, unit rosters and the Bond has sent out groups of the newspapers to the individuals listed on the rosters.

Senator McINTYRE. They are currently operating in America?

Major KENNEDY. Yes, sir.

Senator McINTYRE. [Deleted.]

Major KENNEDY. [Deleted.]

Senator McINTYRE. But you don't know of any organization in Canada that operates to the extent that the Bond has?

Major KENNEDY. No, sir; not to this extent. Now a list of organizations, I believe, was furnished.

Senator INOUE. It is classified.

Senator McINTYRE. I presume, Mr. Chairman, that there may be a more appropriate time to ask questions about what arrangements we have with Canada or with Sweden.

Senator INOUE. The State Department will have a witness.

Senator McINTYRE. I will reserve them for that time.

Thank you very much, Major.

Thank you, Mr. Chairman.

Senator INOUE. Senator Tower?

Senator TOWER. I arrived late and don't know what has transpired before. However, we had a case in our office involving a family in my hometown, a Pvt. James B. Nail, who deserted and went to Sweden, and we helped his father go to Sweden, where his father induced his boy to go back to Germany and turn himself in and also induced two or three other boys.

Can you give me anything on that case?

Mr. FITT. According to our records, Senator, he was convicted by a special court-martial, sentenced to hard labor for 6 months, forfeiture of two-thirds of his pay for each of those 6 months, and reduced to E-1, the lowest category, and the Army is thinking about eliminating him from the service.

Senator TOWER. I understood that he was returned to Germany with private funds. In other words, the Army did not pay his transportation from Sweden back to Germany.

Mr. FITT. I don't have an answer one way or the other on that, Senator. Nail was gone for 17 days.

Senator TOWER. Were there other boys who returned with him, because of this boy's father talking to them?

Mr. FITT. I will have to check that, sir. My records aren't organized that way.

General BERG. We have an indication, Senator Tower, that this particular boy was having a lot of difficulty adjusting to military life. He had a record of punishments, you know, under article 15, and other disciplinary actions prior to the time that he went absent.

Senator TOWER. Thank you, Mr. Chairman.

Senator INOUE. Mr. Secretary, there has been a lot of interest shown in the Jones case. Therefore, the subcommittee would like to, to inspect the record, if the rules permit.

Mr. FITT. All right, sir.

Senator INOUE. We would also like to know who or what agency paid for Mrs. Jones' transportation and other expenses.

Mr. FITT. All right, sir.

(The following information was subsequently furnished:)

The Army Times Publishing Company paid for the transportation of Private Jones, his wife, and the child.

I add only one note of caution. I want to be sure that we don't somehow prejudice the case against Jones as a result of some inquiry to the recordkeepers where his records are now under review as a result of his having received a bad conduct discharge as part of his sentence. I am assuming that we can arrange to get the records for the committee, but I want to be sure to do it under circumstances that won't somehow lead to our losing the right to prosecute this man.

Senator TOWER. Mr. Chairman, will you yield for a question on that point?

Senator INOUE. Surely.

Senator TOWER. Actually, I think the chairman covered the fact, in his initial statement, that we do want to avoid prejudicing any cases.

Mr. FITT. Yes, sir.

Senator TOWER. And as long as what is revealed to us is not made public, I think that there is no hazard, is there?

Senator INOUE. I wouldn't think so, but we will leave the procedure up to you.

Mr. FITT. Yes.

Senator INOUE. If you feel that this would prejudice your case or deny Jones any of his rights—

Mr. FITT. Well, I had answered very rapidly when you asked if we could make it available and I said yes, and we will, but I just want to make absolutely certain that the timing used here does not in some way or fashion result in our losing our prosecution against Jones, that is all.

Senator INOUE. Senator McIntyre?

Senator McINTYRE. Is the case up for review here in Washington?

Mr. FITT. Yes, sir; it has to, and the records are in Washington now.

Senator McINTYRE. The case has been tried? The only thing that could happen now is a reversal or a reduction of sentence?

Mr. FITT. That is correct.

Senator INOUE. I would like to ask one question.

I recall your testimony on the Jones case to the effect that officers who sat on the general court-martial were not privy to this [deleted].

Mr. FITT. That is correct.

Senator INOUE. You are absolutely certain of that?

Mr. FITT. Yes, sir. The way this works is that the man is represented by his counsel, and whatever arrangements he may have made with respect to a negotiated plea are not known to the members of the court who pass on the sentence to be administered, and this is standard in all the military departments.

Senator INOUE. Did the officer who was in charge of the prosecution know of this [deleted].

Mr. FITT. I assume he was, but I would like to ask the Army to respond to that.

Colonel PARKER. Sir, after Jones was back in Army control, his defense counsel submitted a formal request to the commanding general, we call it pretrial agreement, in which Jones offered to plead guilty, if the sentence would be limited to so much, and this was accepted. This was known to the members of the prosecution and defense, to the commanding general, of course, but not to the members of the court-martial.

[Colloquy deleted.]

General HITTLE. I have a couple of questions, Mr. Chairman.

Senator INOUE. Go right ahead, General.

General HITTLE. Mr. Secretary, without trying to belabor the point unduly, I do want to come back to this matter of what agency, if any, within the Department of Defense is responsible, and if there isn't one, should there not be one responsible for keeping a record of the anti-U.S. activities of the individuals who are in a deserter status?

For instance, I am sure you have read this newspaper, but for the members of the committee I would just like to mention a few quotes here, and this is for the International Herald Tribune of Thursday, the 9th of May. It tells of one of the U.S. deserters in Russia at the present time being interviewed and giving information to Izvestia, which couldn't be a more anti-U.S. propaganda device.

Mr. Arnett, who is identified here as one of the deserters: "named several members of his unit and described several of their favorite methods of torture.

"One liked to line up villagers and 'knock out their gold teeth with the butt of his rifle. In his sack, he kept several fingers with rings and ears with golden earrings. From many dead Vietnamese, he also cut out hearts, dried them and showed them to everybody.'

"Another private, Mr. Arnett said, 'had a weakness for the human liver. I understand he now lives in Florida and shows his collections to his pals at parties.' "

And it goes on stating what kinds of statements by way of propaganda this individual made.

Is the committee to understand that there is no agency within the Department of Defense that keeps a record of such aid and assistance to the enemy on the part of these deserters so that whoever prepares the case against them at such time as they are returned to U.S. jurisdiction is aware of what this record is?

Mr. FITT. As I have said, my office does not maintain or seek to maintain a record that would be of assistance in the prosecution of these cases on the return of the individuals. I would like to ask each military department representative here who is in this field to respond, to describe what sort of, you might say, advance preparation there would be for the disciplinary action to be taken against these men on their return.

Again, I will call on the Army first. Colonel Fife?

Colonel FIFE. Yes, sir, I can speak to this. The Army procedure would be that this type of information would be collected by the intelligence service, with all of their intelligence-gathering capabilities brought to bear on it, the other agency capabilities, also.

The information would flow to his intelligence dossier, one of which would be created on each of these men, and when the man finally did return to military control, this dossier, with all of this information, would be made available to the commander, who would then have the requirement to deal with the man in a disciplinary fashion. These men would, in all cases, be of interest to the intelligence personnel from the point of view of debriefing, to find out their own version of what had occurred while they were in their desertion, or in this case we would label them defectors, and the defector procedure, making this man an intelligence item of interest, would be an effect on him.

Senator INOUYE. Colonel, what is this defector business?

Colonel FIFE. We have another category of people, sir, that have been leaving us, not in great numbers, but of great interest, for years, those who have skipped across the border in Germany to East Germany, those in Korea who go to North Korea, and who otherwise put themselves in a hostile country environment.

That is different from these gentlemen who are going to Sweden.

Senator INOUYE. Then I would presume that a defector would receive punishment worse than a deserter?

Colonel FIFE. That would depend entirely upon the circumstances.

Senator INOUYE. What is the maximum punishment?

Colonel FIFE. I think there would be a complex variety of possible actions regarding a defector, all the way from possibly treason to other items in the code which could be brought to bear more usually than desertion.

Is that correct?

Colonel PARKER. Yes. Defector trials we have had as such were people who stayed in Korea and some of them came back, some with misconduct in prison camps. They were charged with a variety of things, giving aid to the enemy, which is one of the most serious offenses under the code, uttering disloyal statements, with the design to promote disaffection in the forces within the United States, in time of war.

There is a wide variety of offenses which potentially these people might have committed, and you have to have the individual case and the circumstances, to sift out which charges would be appropriate.

Senator INOUYE. I bring this up because, if I recall, after the Korean conflict, and upon the return of these so-called defectors from North Korea and China, there was quite some controversy in the United States over the very light sentences that were being meted out to a lot of these men.

Light sentences considering that there were thousands of others who decided to withstand the pressure and the torture and die, if necessary.

Mr. FITT. Senator, the most spectacular cases, these were the men who refused to be repatriated after the Korean armistice, and who went to China or stayed in North Korea, were given administrative dishonorable discharges, in absentia. This removed any possibility of subsequent military prosecution, and there was considerable controversy about it for years afterward.

If a man has been discharged from the military service, he can't be prosecuted by military authorities.

Senator INOUYE. I recall a couple of them were seeking back pay and they may have gotten the back pay.

Mr. FITT. There was a problem, because they could have challenged the validity of the dishonorable discharge that had been

given to them, and to do so, they would have had to concede that they were still in the Armed Forces, and, therefore, I don't believe their request for back pay was ever pressed.

Senator INOUE. Is anyone here familiar with this recent cause celebre involving an Army doctor who had his picture on the front pages?

Mr. FITT. Levy.

Senator INOUE. What sentence did he receive?

Mr. FITT. Three years.

Senator INOUE. At hard labor, dishonorable discharge?

Colonel PARKER. Dismissal.

Mr. FITT. Which is the officer equivalent of dishonorable discharge?

Colonel PARKER. Three years.

Senator INOUE. Here is a man who is advising others not to serve in Vietnam who gets 3 years, dishonorable discharge. Some other fellow goes to Sweden, stays there maybe over a year and says the same thing in essence, and he may get 6 months.

Colonel PARKER. Senator, may I make a point there?

Senator INOUE. Yes.

Colonel PARKER. I don't think we have had those kinds of people coming back from foreign countries yet. Mr. Fitt could probably check this, but it seems to me the ones who have come back so far have been the ones that have been quiet. By their very actions you may say they have implied that other people should follow their conduct, but I am not aware, at least from the Army's side, of those who have come back from foreign countries who have been the propagandists.

Colonel HANNIGAN. I would like to make a point, if I may.

I go along exactly with what he said, but I would like to highlight one point. If an individual is in desertion and he makes disloyal statements, this is another separate and distinct charge that we can charge a man for, and I am sorry my manual has been borrowed, but it is under Articles 133 and 134 of the Uniform Code of Military Justice, in which this would be a separate and distinct charge, in addition to the desertion charge, so that there is a vehicle, if an individual were to make disloyal statements, that we could take in addition to the desertion, assuming we could prove it.

Senator McINTYRE. This would certainly be true, also, in the case of a defector, wouldn't it?

Colonel HANNIGAN. Right, sir.

Senator McINTYRE. The book would be pretty wide.

Senator INOUE. You just brought up a very interesting point on discharge in absentia. I believe in your testimony you noted that some of these 282 men who are listed on your chart had been discharged in absentia.

Mr. FITT. Yes, sir.

Senator INOUE. Now they can return to the United States and they are free.

Mr. FITT. These were aliens, and the discharges that they received were administrative discharges, not dishonorable discharges of the kind that can be awarded only by the action of a court, and the controversy that I spoke of earlier with respect to the men who refused to be repatriated from North Korea arose in part out of the fact that they were given dishonorable discharges, not as a result of orders of a

court, but as an administrative action. That occurred around 1954 or 1955.

Senator INOUYE. General Hittle?

General HITTLE. What is the policy of the Department of Defense at the current time with respect to a discharge in absentia for these people who have absented themselves and gone to a foreign country?

Mr. FITT. Well, we haven't a specific policy on that point, General Hittle. None of the men we are talking about who have gone to Sweden, as far as I know, have been given any administrative discharges.

Colonel Tyson?

Colonel TYSON. There is a Defense Department directive which authorizes discharge, administrative discharge, in absentia for an individual who has been gone for more than a year. The type of discharge authorized is undesirable, the undesirable discharge.

These two individuals that have been mentioned, these two aliens, were discharged on that basis. They had been gone more than a year.

However, this was back at the early stages when people who were going to foreign countries started coming to our attention.

Since that time, each of the military services has reviewed the whole procedure, and each has reported to us that they will not use the authority given to discharge in absentia those people who have been gone more than a year, with respect to the group of people on this chart, except for aliens. Each of them has indicated they will review the alien cases on an individual basis to determine whether there is any justification in seeking to get the return of those aliens who, for the most part, have returned to their home country, and indicated they don't want to return to the United States.

As far as the U.S. citizen group is concerned, however, the authority to discharge in absentia is not being used.

General HITTLE. Why isn't it being canceled then?

Mr. FITT. I will answer that. It is not necessary to cancel it, in view of the fact that the separate services are not planning to use it. As Colonel Tyson said, this is not an across-the-board arrangement. It is simply applicable to this special category of men who have gone to another country, and who are believed to have political motivation for their absence.

It would still be within the authority of the departments to use an administrative discharge for a man who has been AWOL for more than a year in other kinds of cases. This has been true for years.

Now, at some point each service has to make a judgment on each case as to whether they wish to keep carrying him as a man in AWOL status.

Senator INOUYE. Any further questions?

If not, on behalf of the subcommittee, the Chair would like to thank you, Mr. Secretary, and the members of your staff for being most helpful.

Tomorrow morning at 10 a.m., we will resume our inquiry with witnesses from the Department of State and the Department of Justice.

Until then, the hearings are in recess.

(Whereupon, at 1:15 p.m., the subcommittee recessed, to reconvene at 10 a.m., Wednesday, May 22, 1968.)

## STUDY OF THE PROBLEM OF MILITARY DESERTIONS

WEDNESDAY, MAY 22, 1968

The subcommittee met, pursuant to recess, at 10 a.m., in room 212, Old Senate Office Building.

Present: Senators Inouye (chairman, presiding) and McIntyre.

Also present: Charles B. Kirbow, chief clerk; and James D. Hittle, special counsel to the subcommittee.

Senator INOUE. This morning we will resume our inquiry on the matter of military absenteeism.

We are most pleased to have with us Mr. Frederick Smith, Jr., the Deputy Administrator of the Bureau of Security and Consular Affairs of the Department of State.

This testimony will be received in open session, but the interrogation will be done in executive session.

During this executive session we will also receive testimony from the intelligence branches of our military services.

Mr. Smith, we are most pleased to have you.

### STATEMENT OF FREDERICK SMITH, JR., DEPUTY ADMINISTRATOR, BUREAU OF SECURITY AND CONSULAR AFFAIRS, DEPARTMENT OF STATE

Mr. SMITH. Thank you.

I appear before the subcommittee today on behalf of the Department of State to testify on the problem of deserters and absentees from our Armed Forces who are living in foreign countries.

First, I think it is helpful to bear in mind the proportions of the problem. The problem we are discussing involves at this time less than 300 individuals out of some 3½ million members of the U.S. Armed Forces. This is a relatively small number; nonetheless the impression often has been given abroad—and to some extent in this country—that these desertions are a problem of great magnitude, involving large numbers. This is especially true among those abroad who question the U.S. position on Vietnam.

In our view, we must have two objectives in dealing with this problem—to take whatever measures are practicable to see that the deserters are returned to the jurisdiction of the United States and also to see that the problem of desertion from our Armed Forces is not magnified out of proportion or distorted to support anti-U.S. arguments. And in taking steps to achieve one of these objectives we should not lose sight of the other.

I should like to mention at this point another issue; that is, the extent to which the United States has a legal right to demand the return of deserters from other countries.

In most instances, one who breaks U.S. law and flees to another country can be returned under one of our extradition treaties. None of our treaties, however, provide for the extradition of deserters from the Armed Forces. This is generally true of the extradition treaties of all countries. Indeed, the prohibition against extradition for military offenses, such as desertion, is matched in its universality in the extradition laws and treaties of the countries of the world only by the prohibition against extradition for political offenses. None of our extradition treaties list any military offenses in their coverage. And many of them, such as the one with Sweden, expressly prohibit the return of military offenders. The laws of most countries prevent those countries from extraditing for such offenses or entering into extradition treaties that would cover such offenses. Consequently, we have no legal basis under extradition treaties for demanding the return of deserters, nor is there any prospect that we could negotiate such a treaty.

It has been suggested that we might rest a demand for the return of a deserter upon the various status of forces agreements we have signed, such as with the NATO countries and Japan. Our Status of Forces Agreement with the NATO countries obligates the parties to "assist each other in the arrest of members of a force \* \* \* and in handing them over to the authority which is to exercise jurisdiction \* \* \*" (article VII, 5(a)). However, article I defines "force" to include only military personnel "within the territory of [deleted] Party \* \* \* in connection with their official duties \* \* \*" Therefore, the agreement does not obligate our NATO partners to locate, detain and deliver up deserters who are not on official duty in the country concerned.

Our Status of Forces Agreement with Japan contains broader language and does cover deserters even though in Japan otherwise than in connection with their official duties. In fact, we have based many requests to the Japanese Government on our Status of Forces Agreement rights, and the Japanese Government has cooperated with us on that basis.

Therefore, any effort to secure the return of deserters usually cannot be based upon some obligation owing to the United States by the foreign country in which the deserters are found. Instead, we must attempt, within the limits of the laws and regulations of the foreign country—and its concepts of the proper functions of foreign governmental representatives in their country—to convince the Americans involved that they should return to the United States or to their unit and take their punishment.

The extent to which we can actively pursue such a course varies somewhat from country to country. Every country considers that the question of whom they admit to their territory for temporary or permanent residence is for them to decide. And most countries, including those that have been publicized as a haven for deserters also consider that, even though a person in their territory may be in our eyes a deserter, they are not obliged either to turn him over to us, to force him to talk to us, or to inform us of his presence in their country. And, they do not consider that it is an appropriate function of our representatives in that country to seek out these deserters to persuade them to leave that country. As a general matter, these men

do not come to our embassies or consulates. If our people manage to get in touch with them, they usually refuse to see or to talk with them. We have, on some occasions, been able to talk with some of these men and to pass messages from, or put them in touch with their parents or other relatives in this country. We have also taken certain unilateral actions designed to effect their return. Our embassies and consulates abroad are being kept informed of the names of such deserters as they are supplied to us by the Department of Defense and have been instructed not to issue passports to them except passports valid only for direct return to the United States. We have also authorized the granting, when necessary, of repatriation loans to these men for their return either to their unit abroad or to the United States.

This approach has not been without success. Last year some 55 deserters did in fact leave the countries to which they had gone and returned to their unit or to the United States. While this approach to the problem is dictated largely by the legal limitations on our actions in the foreign country, we believe that, in the circumstances, it is the soundest one from the view of our overall national interest. It is, necessarily, not productive of quick results, for it depends largely on the passage of time during which the individual has second thoughts, often accompanied or inspired by a gradual disillusionment regarding his situation in the foreign country, cut off from friends and relatives. But, if we carry out our efforts in public or if we engage in fruitless legal squabbles with the foreign countries, we only focus attention on the deserters making them local heroes to anti-American groups in those countries and defeat our efforts to have them return.

Thank you, Mr. Chairman. I would be glad to try to answer any questions.

Senator INOUE. Mr. Smith, in behalf of the subcommittee, I thank you for your testimony.

The Department of State has suggested that since the interrogation of witnesses will touch upon sensitive areas, that the interrogation be conducted in closed session, and if printed that deletions of a security or sensitive nature be made. The subcommittee will abide by this request. Therefore, we will now enter into executive session.

(Whereupon, at 10:10 a.m. the subcommittee went into executive session.)

Senator INOUE. The committee will come to order.

Mr. Smith, our subcommittee counsel, General Hittle, has prepared a few questions to start this executive session, so I will call on General Hittle.

General HITTLE. Could you give us some examples of where representations have been made, attempts have been made by U.S. Government officials with foreign countries seeking to return from those foreign countries military personnel who are absent without leave from the U.S. armed services, and discuss what the general reaction of those countries was in those cases?

Mr. SMITH. This has varied from country to country.

In the case of Sweden, for example, our people on several different occasions and at several different levels made it clear to the Swedish governmental authorities that we wished to obtain the return of these men, that we wished to be informed when such men arrived in Sweden, and to be informed of what was done with their cases.

The Swedish authorities made it quite clear that in their eyes and in accordance with their traditions as a neutral country and a place of asylum for people from various countries, there was no point in discussing the matter of returning these people to the United States or to U.S. control, and indeed as a general matter their position was that this is a matter entirely for decision and determination by Swedish authorities.

Consequently, while we have made what I would call informal representations at different times regarding the handling of these cases by the Swedish authorities, we have had to depend in large part on public sources of information with respect to what happened, both as to who was arriving in Sweden and what disposition was being made of their case by the principal body in Sweden which determines this, that is the so-called Aliens Commission.

In the case of France, for another example, about a year ago the French authorities made it very clear [deleted] that henceforth American servicemen coming to France would be treated just like anyone else, and that their cases would be considered on a case-by-case basis as to whether they would be permitted to remain and to receive a work permit, and so forth.

So, actually [deleted] they made it clear what their course of action was going to be.

So I can't say in the face of that there has really been any formal approach to French authorities regarding return of these people.

Senator INOUE. I would like to ask a question at this point. It is quite enlightening to note in your testimony that none of our extradition treaties provide for the return of military absentees. I would like to know what policy we follow in the United States relating to military absentees of other countries. Let's say a French soldier decided to stow away on a ship and he lands in New York City and he declares that he is a deserter from the French Army. What do you do with him?

Mr. SMITH. So far as concerns returning him by extradition, we could, of course, not do so, because the authority of the United States to return people or to extradite people is dependent entirely upon the existence of a treaty, and, of course, the case must come within that treaty. I would assume that in that case, we would also be of the view that that person's case was not covered by the NATO agreements, inasmuch as he would not be in the United States in connection with his official duties.

Conceivably, his case might be handled in an immigration context. If he had entered illegally, for example, there would be a basis for forcing his departure, by exclusion or deportation proceedings.

Senator INOUE. What you are trying to tell this committee is that with the possible exception of high ranking Russian or Red Chinese type officers, we do follow such provisions in our law to get out of our country military deserters. We don't keep them here, do we?

Mr. SMITH. I can't speak from knowledge of particular cases, Mr. Chairman.

Senator INOUE. Let's make it nearer to home. What happens when a Canadian soldier comes here?

Mr. SMITH. I think I would have to defer to the military authorities on that.

Insofar as the State Department is concerned, we, to my knowledge, have not had any occasion to participate in the return of any Canadian soldiers.

Senator INOUE. Have you participated in the return of any foreign soldier?

Mr. SMITH. No, not to my knowledge. This would be more for the Immigration Service. They would probably have grounds to return an individual who came over from Canada.

Senator INOUE. Can any of you in the Intelligence Branch enlighten the committee as to whether any foreign deserters are on American soil?

(No response.)

Senator INOUE. I would like to call a short recess at this point because there is a live quorum. We should be back in a few minutes.

(Brief recess.)

Senator INOUE. Shall we proceed?

Mr. SMITH. Senator, it might be helpful if I briefly explained the division of responsibility and authority regarding the question of people coming from foreign countries into this country.

An alien coming to this country, except for certain nationals of contiguous territories, such as Mexico and Canada, must have a visa.

However, once he gets here, he is the responsibility, so to speak, of the Immigration and Naturalization Service, which is part of the Department of Justice. While the Department of State is responsible for matters of extradition, which is the return to a foreign country of a person who is charged in that country with a crime, that is the extent to which we are involved in the return of these people. If a deserter from the French Army, for example got to the United States in one fashion or another, it would be a question for the Immigration Service primarily whether he was here legally or not, and, therefore, whether there would be a basis for deporting or expelling him. And deporting or expelling would not necessarily be to, for example, France.

In deportations and expulsion, the primary concern is to force the individual to depart from this country, and not as in the case of extradition to a particular country where he is wanted.

Senator INOUE. On deportation, don't you deport him to the country of origin?

Mr. SMITH. Not necessarily. The law lists some eight alternatives which do not have to be followed in any particular order by the Immigration Service when they are trying to select where to deport him. The first on the list is the country of his nationality. The last on the list is any country which will accept him.

In practice, the country of nationality is usually the country chosen. But as a matter of practice, if the individual is willing to leave the United States, only in rare cases will the service insist on deporting him as opposed to permitting him to depart voluntarily.

Senator INOUE. Your testimony indicates that in our treaty arrangements there is no provision requiring a foreign country to return military absentees, but how are military absentees treated in other countries, like Sweden?

Take, for example, Holland. Would the Government of Holland treat a military deserter there the same way we would treat a foreign military deserter, deport or expel?

Mr. SMITH. [Deleted.]

Senator INOUE. Can you give us a list of those countries that have or are cooperating with us?

Mr. SMITH. I can try to provide that information.

Senator INOUE. And also a list of those countries that are not cooperating with us.

Mr. SMITH. Yes.

(This information retained in Committee files.)

Senator INOUE. Senator McIntyre, do you have any questions?

Senator McINTYRE. Mr. Smith, can you explain to me why it is that in these Status of Forces agreements or treaties that countries will respect the fact that a man might be fleeing from justice, having committed a crime, but what is the rationale briefly behind the exception being made of the military deserter? This man is guilty of a military crime. There must be some very obvious reason why sanctuary is granted to a military deserter, where it would not be granted to, say, a murderer.

Mr. SMITH. The exception from extradition for military crimes is one of long standing, and great tradition. I think probably the principal reason is that it is in a sense considered to be similar to a political offense. And some of the same reasons for excluding so-called political offenses from extradition apply in the case of military offenses.

In the case of everyday, garden variety felony, there is the general feeling that the criminal is an outlaw insofar as every country is concerned. It is not controversial. It is an area in which countries can cooperate quite freely, without any vital national interests getting mixed up in it, without any political factors being involved, in most cases.

But, in the case of the political offense, and to some extent the military offense, you get into a situation where countries perhaps can't be trusted to deal with the matter on an objective basis.

If a country is seeking the return of someone it charges with a political offense, this raises questions as to how the fellow is going to be treated if he is returned; for example, if he is one who has been charged with trying to overthrow the government which is seeking his return by extradition. And I think, to a lesser extent, this is true in the case of the military offender.

I think, too, that while all countries have pretty much the same attitude with respect to crime, they have different attitudes with respect to such things as compulsory military service and the role that the military plays in the life of that country and in its traditions and institutions.

In short, it is like a political offense, something which involves other factors that may complicate the whole process and make it something other than a clear-cut objective process of the administration of justice and the prevention of crime.

Senator McINTYRE. Thank you for that answer.

Turning briefly to the Chairman's question on the French military deserting, wouldn't it seem that if such a situation occurred, and it could be any nation, would there be any control point anywhere in our system that would immediately tab that fellow so that if the CIA was interested in him he could be contacted before he was thrown out? Certainly it would be true if it was a question of a mainland Chinese defector who suddenly appeared here, of high military rank or even high political rank. Would there be any opportunity for the CIA to move in on him and perhaps interrogate him?

Mr. SMITH. I don't know. This would really be a matter to be worked out between the Immigration Service or the Department of Justice.

Senator McINTYRE. You don't know of any place in our Government where such an occurrence if it took place would be noted by the interested agencies of the Government so they could contact him if they desired to?

Mr. SMITH. There is, of course, in the Department of Justice an Internal Security Division, which maintains close liaison with other agencies of the Government. Yes. Also, the Federal Bureau of Investigation is a part of the Department of Justice, too, so there is close contact between those parts of the Department of Justice.

Senator McINTYRE. We have no information, do we, that any of these countries, and in particular Sweden, officially has anything to do with arranging for these men to go on television or radio? I presume it is the same thing that happens here, that private companies seek out the individual and put him on television.

Mr. SMITH. So far as I know, that is the case.

Senator McINTYRE. We don't know of the involvement of the Swedish Government officially?

Mr. SMITH. No, I know of no such involvement.

Senator McINTYRE. I would like just briefly to review with you what actions are taken by the State Department in the case of desertion from the armed services of our country to a foreign country.

As I understand it, we contact the government involved, saying we want to be informed as to where and when this man is being admitted or where he is being held. Then there is another step of possibly a direct contact by members of our embassy staff, an indirect contact by attempting to get his family in touch with him, so they can correspond with him.

Then apparently there are all sorts of details that we could work out with him.

For instance, we can advance a loan to get him back to the States. What other things are there that we do to try to induce this man's return without offense to the government involved?

Mr. SMITH. I don't want to mislead the committee on the scope or extent of our activities in this regard. There is not any grand plan which has been circulated to our embassies abroad with respect to what they should do vis-a-vis the host government, where these people are found. Certainly in the case of many countries, our people would not know or do not know that such an individual or individuals are in that country, except as they might see it in the press, if it becomes publicized, as is usually the case in Sweden.

So it is dealt with on a country-by-country basis.

I described the situation in Sweden and in France. In the case of those countries, it is extremely difficult for our people to get in touch with these people. Even when they do, these people are generally reluctant to or refuse to talk with them. They just don't want contact with other people. Most of the governments say either "We have no legal obligation" or indeed they may say, "We have no legal authority to turn this person over to you or to force him to leave this country."

Of course in the case of certain countries, this is very much tied up with that country's position vis-a-vis the Vietnam situation whether

or not these people are in that country because of any feelings about Vietnam.

Senator McINTYRE. On page 8 of your statement you refer to various activities. You say:

Our embassies and consulates abroad are being kept informed of the names of such deserters as they are supplied to us by DOD and have been instructed not to issue passports to them except passports valid only for direct return to the United States.

You also talk about repatriation loans. You try to put them in touch with their parents or other relatives in this country. I would suspect that you probably cooperate if a father wants to go over and see his son in Sweden and would probably help him to do this.

Mr. SMITH. That is correct.

Senator McINTYRE. You also state on page 8 that:

We also take certain unilateral actions designed to effect their return.

Have you now enumerated them or does the statement contain all of the so-called unilateral actions that you take to effect their return, or are there others?

Mr. SMITH. Those particular unilateral actions are pretty much those that we take.

Senator McINTYRE. Thank you, Mr. Chairman.

Senator INOUE. Mr. Smith, there are a few questions I would like to ask.

Would it make any difference if we decided, by legislation, to convert the military offense of desertion into a civil criminal offense?

Mr. SMITH. You mean would this make it possible then to obtain the extradition of these individuals?

Senator INOUE. Yes.

Mr. SMITH. I doubt very much that it would. Certainly the foreign country would look to the substance of the offense. They wouldn't be bound by what we might denominate it.

I think, too, that this would raise other problems. We have to bear in mind that this matter of extradition is a two-way street, and that we might be, in a particular case, on the other end of this action.

Senator INOUE. We have been advised that there is official coordination and liaison between the various agencies of our Government on the matter of deserters. Does this coordination and liaison go beyond paper or does it actually exist? What I am trying to say specifically is this: Let's say that the Embassy in Sweden receives information through their informers or otherwise of two new deserters entering into the host country. Do you immediately notify the Defense Department?

Mr. SMITH. What happens in such a case is that our Embassy will report, normally by telegram, to the Department the names and any other information that they have regarding the presence of the new arrivals in Sweden. This telegram receives distribution throughout the Government, the Department of Defense, and various parts of that Department receive copies of it, the Central Intelligence Agency does, the FBI does, the Department of Justice as a whole does. It is not so much a case of the information coming straight to the State Department and then our sending that information to, the Department of Defense, for example. They automatically receive copies of these communications from our Embassy.

Insofar as I know, in the case of Sweden certainly, every case of an arrival in Sweden of a military absentee has been reported, and the report given the distribution that I described.

Senator INOUE. In a foreign country, who has the final say or who makes the final decision as to plans on contacting these deserters? Can the military enter on their own, or must the military coordinate its contact with the Ambassador?

Mr. SMITH. You mean our military?

Senator INOUE. Yes.

Mr. SMITH. All of the representatives of the United States in a foreign country are under the jurisdiction of the Ambassador. Of course, our military representatives in that country, as well as representatives of other parts of the Government, have normal working contacts with their counterparts in the foreign government. But as a general matter any action that they would take in this regard would be under the aegis of the Ambassador.

Senator INOUE. Mr. Smith, you have suggested that our military absentees in Sweden are not there seeking political system. Would you say that they are accepted there on the grounds of humanitarianism?

Mr. SMITH. I don't mean to question the motives of these people who are there. I do, however, think there is certainly some question in a large number of the cases whether they are motivated by any feelings against the war in Vietnam. This is just my personal conclusion from reading some of the past disciplinary records of these individuals.

[Deleted.]

Senator INOUE. I asked this because we are advised of an incident which happened in 1946, commonly called the Baltic affair. Are you familiar with this?

Mr. SMITH. In a very general way.

Senator INOUE. I believe at that time there were approximately 3,000 Germans, Estonians, Latvians, and Lithuanian soldiers who had sought asylum in Sweden, and in 1946 the Swedish Government decided to and did in fact hand these 3,000 soldiers over to the Soviets.

Now, if Sweden did that for the Soviets, can you advise us why they can't do it for us now?

Mr. SMITH. I don't know what the circumstances of that event were or what the motivations of the Swedish authorities may have been in that case, or what sort of pressures they may have been under by the Soviet authorities.

Senator INOUE. I bring this up because if the Swedish Government is at least administratively permitting our deserters to reside on their soil for humanitarian reasons, there must have been the same reasons for keeping those 3,000 men there.

Mr. SMITH. I just don't know, Mr. Chairman. I know that the Swedish authorities have, for example, mentioned to us that in World War I, they did receive and permit to remain in Sweden many deserters from the German Armed Forces. That perhaps is a little inconsistent with the occurrence which you cite.

Senator INOUE. Can you give us a report on the Baltic affair?

Mr. SMITH. I will see what I can find on that.

(The information referred to follows:)

According to information in the files of the Department of State, it appears that in April and May, 1945, about the time of the German capitulation, some 2700 personnel belonging to the German Armed Forces arrived in Sweden and were interned there. It was discovered only later that among this group were 167 Balts. On June 15, 1945 the Swedish Government, in response to a Soviet request, reached an agreement by an exchange of notes with the Soviet Government for the return to the territory from which they had fled, now occupied by Soviet authorities, of German or German-controlled military personnel who had arrived in Sweden on or after May 1, 1945.

The agreement to return this group of internees to Soviet authorities was apparently based on the premise that they should be returned to the allied power in control of the territory from which they had fled. It was also suggested that Swedish authorities agreed to the return of the military internees to be in a better position to resist any pressures for the return of some 30,000 Baltic civilian refugees in Sweden.

With the realization that 167 Balts were to be included in the military personnel to be returned, a campaign in the press and wide-spread public protest developed against the agreement. The opposition party charged that the long tradition of asylum for political refugees would be seriously compromised and with it Sweden's moral position in the world. The Government stated that it was always intended that military internees were to be handed over to the allies so that they would not be able to escape the consequences of German surrender. It also took the position that it was bound by its agreement with the Soviets to hand over the internees. Nevertheless, the Swedish Government apparently sought, by approaches to the Soviet authorities, to exclude the Balts from the group to be returned. The Soviet Government was, however, adamant that the agreement be fully complied with.

On December 3, 1945, 1,850 military internees were placed on a Russian ship and later an additional 526 on a Russian hospital ship. None of the 167 Balt were in either of these groups.

There are conflicting reports as to what eventually happened to this group of Balts. The *London Times* of January 24, 1946, reported the return of 140 Baltic refugees to Soviet authorities. Other later reports indicated that the Balts were not forced to return but in fact remained in Sweden.

Senator INOUE. General Hittle?

General HITTLE. One of the concerns, I believe, of the subcommittee and the public generally relates to whether or not the Swedish Government is cooperating with the United States with respect to these deserters in returning them if possible under Swedish law. For the purposes of the record, and reference, I would like to quote from the *Army Times* for April 3, 1946, which, in turn, quotes from a member of the Alien Commission of the Government of Sweden with respect to these deserters.

This says:

There is no guarantee that a deserter will be allowed to stay in Sweden unless he becomes a Swedish citizen, and obtaining Swedish citizenship requires a minimum of seven years.

That is the end of that quote.

And another one:

The military representative on the commission—

That is the Swedish Alien Commission—

is strongly against giving asylum to American deserters because he feels that a deserter violates his oath as a military man when he deserts.

I now refer to that portion of your testimony on page 4 where you state with respect to extradition treaties that:

Many of them, such as the one with Sweden, expressly prohibit the return of military offenders.

Would you comment on your statement with respect to the reported statement of the member of the Swedish Alien Commission that grants these permits for residency?

Mr. SMITH. Again, I think we are dealing with two different things. One, the question of whether a country will permit its territory to be used as a place of refuge or asylum; secondly, whether that country will deliver up to authorities of another country a person within its territory who is charged by those authorities with some offense.

The extradition treaty between the United States and Sweden, as I mentioned, specifically prohibits the extradition of military offenders. This is based primarily on a provision of the Swedish extradition law, which has a specific prohibition to that effect.

So, clearly, extradition is excluded.

Swedish authorities could, of course, say, "Surely we can't extradite this person, but we are not going to let such persons stay in our country."

Apparently, at least one member of the Alien Commission thinks that that is the position that the Swedish Government or the Alien Commission should take, but obviously the majority of that commission hasn't taken that position.

General HITTLE. If I may clarify this just for a moment; there were two positions stated here. One, that the military representative voted against, within the commission, permitting U.S. deserters to stay. The other is the statement by a member of the Alien Commission to the effect that, "There is no guarantee that a deserter will be allowed to stay in Sweden," which indicates that their status there is almost on a day-to-day basis at the suffrance of the Swedish authorities.

Mr. SMITH. I think that is very much the case.

General HITTLE. It is?

Mr. SMITH. Yes. I think that is very much the case in France, too, unless these people can obtain something that would be equivalent to our permanent residence status. This would be a matter for their internal law, which I am just not familiar with. It is, in any event, a very tenuous existence, and I understand their continued presence is subject to a change of view by the Swedish authorities at any time. I think this is the case in France, and this is one of the things which certainly works to cause a number of these people to leave.

It is our understanding, for example, that in France these people have generally not been given work permits, and they are leading a pretty unpleasant existence, a hand-to-mouth existence, there.

Senator INOUE. I would like to ask a question at this point.

In listening to your testimony, I gather the impression that the Department of State is not making any serious efforts to effect the return of these absentees. I get the impression that it would be better to just let things take their natural course, because of the Department's desire not to rock the boat, or to bring about a squabble, as you say here. Is my impression correct?

Mr. SMITH. I would say that our position is, first, we have no legal basis in most of these situations for demanding the return of these individuals.

Secondly, the governments concerned have made it quite clear to us what their position is as to these individuals. That is that they are not going to turn them over to us, and that, at least at this stage, they

are going to permit them to remain in their country. This, of course, results from the situation in that country. They have their own internal political problems, and I would say in general our feeling is that it serves no useful purpose for us to make protests which usually just result in getting their backs up more over these individuals.

Senator INOUE. I am not suggesting that you should make each desertion case a cause celebre or make a protest, but are our embassy or consular officials making serious efforts to get in touch with these men and communicate with them?

I ask this because your testimony says, "We have on some occasions been able to talk with them," somehow impressing me that no effort is made to communicate.

Mr. SMITH. We do make efforts to communicate with them. There are certain practical difficulties. One is that we frequently don't know where they are. We don't know how to get in touch with them. [Deleted.]

We have on occasions gotten in touch with some of these people, and had some rather unfortunate occurrences. In one case, as you may have read, one of our consuls agreed to meet with one of these absentees, and it was what might be described more or less as a trap, in that when he got there, there was a photographer there who took pictures. The whole thing was described by the local papers as an example of U.S. authorities in Sweden trying to pressure U.S. personnel there to return. This was, I think, set up by one of these groups in that country who are assisting such deserters for political reasons.

Senator INOUE. I may be naive, but I gather the impression here in Congress that we do spend large sums of money for our intelligence arms, whether they be military or otherwise, and it surprises me to hear you say that you have no way of knowing where these men are or when they come in. I would think that with our so-called network, if we are not getting this information, we are not getting our money's worth.

Mr. SMITH. I think that is something that representatives of other agencies would have to respond to, Mr. Chairman.

So far as our reports of these individuals coming in, [deleted] quite frankly some we get from the newspapers in Sweden.

Senator INOUE. If your rules on classification will permit, can you furnish this committee any directives or instructions that have been issued to our embassies abroad relative to military deserters, if such directives have been issued?

Mr. SMITH. Yes, I will see what I can do.

As I say, it is primarily on a case-by-case and post-by-post basis. (The information referred to follows:)

Apart from an instruction to appropriate posts not to issue passports to U.S. military deserters except on instructions of the Department, there have been no general instructions issued. Instructions have been issued on an *ad hoc* basis in particular cases which have arisen or were anticipated. In general, such instructions, which are classified, have covered such matters as how to deal with deserters who might seek assistance in returning to their unit, responses which might be made to press inquiries, making repatriation loans to deserters who wish to return to the United States rather than to the nearest U.S. military base, and facilitating contacts of relatives with deserters.

Senator INOUE. What you are suggesting here is that there is no general policy?

Mr. SMITH. There is no general instruction which has gone to all posts as to what procedure should be followed in seeking to return or obtain the return of deserters to the United States.

Senator INOUE. I would assume that there must be some sort of policy, because your testimony says that you have furnished money or made loans. You have made certain contacts.

Are there no instructions covering this?

Mr. SMITH. Yes, there are instructions covering this, but again it is on a country-by-country basis. For example, in the case of Japan we have had virtually no problem, because of the Status of Forces Agreement, and the Japanese have turned back any number of people to us.

In the case of Sweden, we have extended repatriation loans when we have gotten in touch with the individuals or they have gotten in touch with us and expressed a desire to return.

Senator INOUE. My final question: Are you familiar with the Ray Jones case?

Mr. SMITH. Yes.

Senator INOUE. What role did the State Department or the Embassy play in the return of Ray Jones?

Mr. SMITH. In that case, so far as I am aware, the return was engineered primarily by a representative of, I believe, the *Army Times*. Jones and a representative of that publication came to the embassy, and our embassy issued a certificate of identity as a U.S. citizen to Jones and to his son to facilitate their return to Germany.

Senator INOUE. I presume you also extended the loan?

Mr. SMITH. No; we did not.

Senator INOUE. Then what agency paid for the transportation of Mrs. Jones and his son from Sweden to Germany?

Mr. SMITH. I don't know. I have heard that this was paid for by either the newspaper or the reporter himself, but I have no knowledge of it myself. They did not seek a loan from us.

Senator INOUE. What sort of coordination did you have with the military on this case?

Mr. SMITH. I really don't know the extent to which the military was involved in this.

Senator INOUE. I realize this is only one case, but could you give us a report in some detail on the Jones matter? The committee would be interested in studying this report, with special reference to what the coordination is. I cannot help but feel that we are not getting the necessary cooperation between agencies. I hope I am wrong in my observation. This is why I would like to have this report, to see how well you work hand in hand with the military, in this one specific case, the Ray Jones case.

Mr. SMITH. Yes; I will.

(The information referred to follows:)

Roy Ray James called at our Embassy at Stockholm the morning of March 12, 1968. He was accompanied by a correspondent for *Army Times* named Russell. He requested assistance in returning to his army unit in Germany with his wife and six-month old son. The Embassy's Travel Section booked airline tickets for Jones and his family after obtaining authorization from U.S. military authorities. The Consular Section prepared a certificate of identity for him and his son. (His wife possessed a German passport.) The office of the Embassy's Defense Attache cleared Jones' return with U.S. military authorities in Germany and arranged for him to be met. The Political Section of the Embassy arranged for

a consular officer to meet Jones in a private room at the airport terminal. Because of the time factor and the fact that Jones and his wife resided outside Stockholm, a consular officer took the ticket and the certificate of identity to the airport. A non-commissioned officer from the Defense Attache's office accompanied the consular officer with a polaroid camera, by the means of which he was able to provide an instant photograph for use on Jones' certificate of identity which was then completed and given to Jones. Jones and his family, accompanied by the *Army Times* correspondent, departed that afternoon and arrived in Frankfurt the same day. The Information Section of the Embassy, in coordination with the Defense Attache's office, prepared press guidance for possible use in response to queries.

Senator INOUE. Proceed, General.

General HITTLE. I would like, with the chairman's permission, to amplify that request at this time. Would you relate to the committee the mechanics of coordination between State, Department of Defense, and Immigration, with respect to the overseas deserter problem, such exchange of information as you have, keeping up with the numbers that are in different countries, what representations are made to those countries, and the procedures for keeping the other agencies concerned informed?

Mr. SMITH. I would say one of the principal ways in which the agencies are kept informed of reports or activities of each other is through the distribution of communications. As I mentioned before, the reports from, for example, our embassy in Stockholm, which are sent to the State Department, are given distribution throughout the executive branch of the Government in the normal course of things, if it is a message which is of concern and possible interest to them. For example, any telegram that comes from Embassy Stockholm to the Department would also be automatically distributed to the Department of Defense, and I believe the individual services, to the Central Intelligence Agency, the FBI, and so forth.

I might add this also applies to military messages that, for example, come from a command in Europe to the Defense Department. The State Department is on distribution of a great number of those.

Messages that go out from, for example, the State Department to one of our embassies with instructions, is also given the same sort of distribution, and, frequently, depending on the nature of the message, it is a coordinated message; that is, it is one which is drafted in one department with a contribution from somebody in the other department.

General HITTLE. Who within the Department of State is charged with overseeing this problem and coordinating it within the Department of State and with the other agencies; and, secondly, how frequent is there personal interdepartmental contact between State and Department of Defense? For example, personal coordination, conversation, with respect to this problem, and who is the individual who is responsible for it?

Mr. SMITH. In the case of the State Department, primarily the individual country desks or offices.

General HITTLE. Is there no overall supervisor for this in your administrative organization for coordination?

Mr. SMITH. I would say there is no single office or bureau which has been clearly charged with policy direction or coordination of activities in this area. The principal activities have been, of course, with respect to Europe.

There has been frequent contact between, for example, our Swedish desk and the Department of Defense, primarily through ISA and, I believe, the manpower people.

We have set up a procedure whereby the Office of the Assistant Secretary for Manpower sends, now, on a regular basis, lists of deserters to our passport office, in order that the messages may be sent out from the passport office regarding passport facilities to these people. Of course that information comes to us and comes to the country desk.

General HITTLE. In view of the fact that it seems to be the treaties that are the apparent obstacle in the Department of State to obtaining the return to U.S. Custody of these individuals, is there any consideration being given, at this time, within the Department of State for recommendations for renegotiating these treaties, in order to facilitate the return of the deserters to U.S. custody?

Mr. SMITH. There has been some consideration that I know of that has been given to this question. Our conclusions with respect to the extradition treaties are reflected in this paper.

We see no prospect of including military offenses in our extradition agreements.

I really cannot describe any conclusions or positions with respect to possible renegotiation of any status of forces agreements. Personally, I would think that given the atmosphere, the prospects of trying to broaden the coverage of these, for example, to perhaps bring them up to the broad coverage of the Japanese status of forces agreement were rather dim.

General HITTLE. Then are we to understand, at this time, that the Department of State does not have any proposals for attempting to renegotiate even the status of forces agreements with respect to the return of military deserters?

Mr. SMITH. I would really have to check on that.

General HITTLE. Would you check on this question and provide the information for the record, please?

Mr. SMITH. Yes.

(The information referred to follows:)

In the negotiation of Status of Forces agreements with foreign countries, the Departments of State and Defense seek to obtain the widest possible coverage for return of military deserters. There are, however, no present plans for seeking to reopen and renegotiate existing status of forces agreements.

Senator McINTYRE. Mr. Smith, you have indicated a wide degree of cooperation with this particular problem between the Japanese Government and ours. You have also, I think, in this testimony indicated a rather stringent policy and delicate policy with Sweden. We have status of forces agreements with Canada and Mexico, they are two adjoining countries and likely countries for desertions to take place. What would you say about Mexico and Canada as to the degree of cooperation, helpfulness and recognizing our interest?

Mr. SMITH. We have no agreement, so far as I am aware, with Mexico which would cover this sort of thing. [Deleted.]

The Mexican Government has very broad and summary powers to expel people from their country which we don't have, and they exercise it frequently, and I believe—although I think the representatives of the services could perhaps testify more knowledgeably on this point—that there has been considerable cooperation, such as on the California border, and so forth.

As for the Canadian situation, I just don't know.

I understand that another one of our offices in the Department has been receiving information from the Department on deserters in Canada, but I must say that the numbers, quite frankly, came as a surprise to me and to our people at our political desk.

There has been a great deal of publicity in Canada with respect to draft dodgers, but our people have seen virtually none with respect to military deserters.

So I just don't know the extent to which this is involved.

Senator McINTYRE. France indicates some degree of cooperation?

Your testimony, I think, indicates that.

Mr. SMITH. [Deleted.]

These things have a way of changing, and I don't mean to exclude the kind of quiet cooperation that there may be on various levels in exchanging information. But at least that is the general French posture.

Senator McINTYRE. I take it, Mr. Smith, that the State Department's view on this problem of military desertions to a foreign country is a relatively delicate one, one that has to be handled pretty much by perhaps the ambassador on the scene, if he is knowledgeable of the facts, or by broad instructions that have been previously written on other cases; that it wouldn't be the State Department's idea that we should have a definite one, two, three, four policy; that these cases should be handled, I think as you mentioned, on a case-by-case basis; that they are extremely sensitive and delicate, particularly when we refer to Sweden, and in all these other areas, too. For instance, with the second or third level cooperation with the French Government or the Government officials. Is that approximately a fair statement of the way you view it and the State Department views it?

Mr. SMITH. I would say so, yes.

Senator McINTYRE. Thank you, Mr. Smith.

Senator INOUYE. Mr. Smith, are you personally aware of any instance or instances where American ambassadors have objected to the U.S. military or any of its agencies seeking out or contacting deserters, or obtaining the return of deserters?

Mr. SMITH. I don't believe so. My understanding of the situation, for example, in Sweden is that generally we have tried to keep it in what I would call a consular or diplomatic channel, rather than a military channel. If these people come into the Embassy, we have tried to have our consular or political offices deal with them rather than military offices. We think this perhaps reduces the chances for the host country to take offense or for groups in that country to say that our military people are engaging in improper activities. Our consular or diplomatic people certainly have a right to communicate, assuming the individual is willing, with any U.S. citizen who is in that country.

I wouldn't say that that could really be termed an objection, and there certainly have been cases where there have been direct contacts by our military personnel, with some of these people, particularly those seeking to return.

But, as I said, the general position has been that there are great difficulties in our people going out into the country, so to speak, to talk to these people.

Senator INOUYE. Will you furnish the committee any information you may have on individuals or organizations operating here or

abroad for the purpose of enticing or encouraging men in uniform to absent themselves from American jurisdiction? In this report could you tell us the extent of these operations, how they are financed, and how effective they have been to date?

Secondly, we would like to know what steps are being taken by your department or by our Government to counter the activities of these individuals or organizations.

Mr. SMITH. With respect to organizations that are in this country—

Senator INOUE. I do not want the report now.

Mr. SMITH. Excuse me, I wanted to explain that I believe the only report that we would have would have been prepared by another agency.

Senator INOUE. I am asking the State Department for this. We have asked the Defense Department. We are asking Justice and CIA just for information. We want to see what sort of coordination there is.

Mr. SMITH. There is a report on foreign organizations which was prepared by another agency.

Senator INOUE. I think the committee would be interested in knowing whether all of our agencies are receiving the same information or otherwise, so we would like to receive from the State Department any information you may have in this category.

Mr. SMITH. Yes, sir.

(The information requested is classified and is retained in the committee files.)

Senator INOUE. Any further questions?

Senator MCINTYRE. No further questions.

Senator INOUE. Mr. Smith, thank you very much. You have been most helpful to us. If you would like to remain here, you are welcome to do so. We will now continue our inquiry with the intelligence officers of the Defense Department.

Mr. SMITH. Thank you, Senator.

Senator INOUE. We will have a short recess.

(Whereupon, a short recess was taken, after which the hearing was resumed.)

Senator INOUE. Gentlemen, we are grateful to you for returning again this morning. As members of the subcommittee are aware, we were not able to fully interrogate our military witnesses, especially on the intelligence area, so they have most graciously returned to share with us whatever they know.

I asked the State Department representative whether he knew of any instance where American ambassadors have objected to or stopped any effort on the part of our military representatives or intelligence representatives in contacting or seeking out military deserters or bringing about their return to American jurisdiction. Do you know of any instance where our military men have been stopped from carrying out this type of contact?

**STATEMENT OF MAJ. GEN. WILLIAM W. BERG, DEPUTY ASSISTANT  
SECRETARY OF DEFENSE (MANPOWER)**

General BERG. I know of none, sir. These are the three intelligence witnesses here.

Do you know of any?

Major KENNEDY. Yes, sir.

General BERG. Do you know of a case?

Major KENNEDY. [Deleted.]

Senator INOUYE. What reason did they give you?

Major KENNEDY. I believe it was substantially the same statement as Mr. Smith made. They preferred to do this on a diplomatic level.

Senator INOUYE. I believe it should be obvious to all of you here this morning that this subcommittee is quite desirous of studying the extent of coordination, cooperation and liaison that we have within our Government between the various agencies relative to the problem of desertion. I ask you now, are you satisfied with the cooperation, coordination or liaison with the Department of State, the Department of Justice or the CIA on this overall matter?

General BERG. Mr. Chairman. I wonder if I could ask two men here who work daily on this thing to respond to that question.

Senator INOUYE. Please do.

General BERG. Colonel Temple.

Colonel TEMPLE. From our standpoint, sir, we do, in terms of the information we have collected—and when I say “we,” I am speaking of the Office of Assistant Secretary of Defense for Manpower and Reserve Affairs—regularly furnish to the State Department lists of all absentees in foreign countries who have been reported to us by the military departments. We have worked primarily with the Bureau of Security and Consular Affairs of the State Department in setting up such a transmission channel, and we are aware that that information is used by both their Passport Office and their Security Office in handling the overall problem.

So far as details of what that agency does with the information, once it has been transmitted by us, we are essentially in the position of not being familiar with further detail. We are aware also—although we do not directly participate—we are aware that one or more of our services, as they have received information in their own channels of organizations or activities, such as The Bond, that they have passed that information to appropriate authorities in the remainder of the intelligence community as well as to the Department of Justice. Again speaking for ourselves, what those agencies have done with the information, we are not informed.

Senator INOUYE. Do I understand from your statement that you furnish information to these various agencies but you have never received any information from them?

Colonel TEMPLE. No, sir, that is not quite correct. All I meant to say was that when we have furnished the information to them, I am not prepared to tell you in detail what they do with any specific item of information.

Senator INOUYE. In other words, these agencies do not advise you as to the steps they have taken?

Colonel TEMPLE. For example, sir, the State Department advised us, when they coordinated with us on our providing lists of names to them, that it was their intention, through their Passport Office, to circularize these names to all their embassies so that if an embassy was approached by one of these absentees, that embassy would be in position to know that he was a special category of person and that they should not just issue him an unrestricted passport.

Senator INOUE. In other words, there is no free exchange of information between agencies?

Colonel TEMPLE. I would not say that that was so, sir. We do not get an individual report back, I mean, that John Jones by name was circulated to all embassies throughout the world. We know that is what State intends to do with the information. We do not get a name-by-name report back checking off that they have done it.

Senator INOUE. As you are aware, I asked the State Department for a report on the Jones case, and I am asking the Defense Department for a similar report, just so that we can study them to see what sort of coordination we have had between the State Department and the Defense Department.

PVT. ROY RAY JONES

1. Pvt. Roy Ray Jones, [REDACTED], B Troop, 2d Recon Sqdn, 4th Cav, APO [REDACTED] absented himself 13 Jan 67. He made his way to Sweden and was granted asylum. During his 14 month stay in Sweden he made several public statements in which he expressed dissatisfaction with treatment in US of Afro-Americans and opposition to the Vietnam War.

2. Jones was accompanied to Sweden by his wife. A child was born to them in Sweden in the late fall of 1967. The Swedish Employment Office assisted Jones in obtaining employment. Jones, however, stated he was not satisfied with his employment which was as a "Jazz Ballet" teacher. He also stated there was racial prejudice in Sweden, though not as much as in the US.

3. On 11 March 1968, Mr. Bill Russell, Editor, Army Times, Europe, visited the USAREUR Judge Advocate and advised that he had been to Stockholm where he had discussions over a three day period with Jones. Jones told Russell that he considered he had made his gesture of protest against the United States participation in the Vietnam War and now would like to return to military control to stand trial. He told Russell he would do so if he received assurances of a reasonable sentence so that he might eventually return to civilian life in the United States. After further discussion Mr. Russell stated he believed Jones would consider bad conduct discharge, forfeiture of all pay and allowances, confinement at hard labor for six months and reduction to the lowest enlisted grade as a reasonable sentence.

4. Because Jones would normally be reassigned to the 4th Armored Division if he returned to military control in USAREUR, the foregoing information was relayed by telephone to the Staff Judge Advocate, 4th Armored Division, who discussed it with his Commanding General and subsequently advised that such an offer would be favorably considered.

5. Mr. Russell was advised of the foregoing and that no assurance could be given Jones that he would not be assigned to Vietnam if not separated from the service as a result of trial; but in view of the prolonged absence and all the circumstances of the case, it would be extremely unlikely that a general court-martial would not impose a punitive discharge as part of the sentence.

6. On 12 March at approximately 1030 hours Mr. Russell telephoned from Stockholm and advised Office Staff Judge Advocate, USAREUR, that he and Jones would arrive at Frankfurt airport at about 1555 hours, 12 March, at which time Jones would be prepared to surrender voluntarily.

At approximately 1130 hours, 12 March, American Embassy Stockholm advised USAREUR that if press queries are received, information would be released that Jones called at the embassy on 12 March and requested assistance to return to military control in Germany and that the embassy provided the necessary assistance.

8. Military Police took Jones into custody at 1600 hours upon arrival at the Frankfurt airport. A press conference was conducted by Jones and Russell at the airport. Jones' statements were to the effect that he was only opposed to the war in Vietnam and was protesting racial discrimination. He stated he loved America and wanted to return for that reason.

9. A negotiated plea was arranged on Jones' request, assisted by counsel. The convening authority agreed to a sentence not exceeding 6 months confinement at hard labor and a bad conduct discharge. Upon Jones' guilty plea the GCM convicted and sentenced Jones to four months confinement and a bad conduct discharge. The sentence of the court was therefore less than that negotiated.

10. The subcommittee specifically desired to know who paid for the travel of Jones, his wife and the infant son from Stockholm to Frankfurt, Germany. All travel costs for the entire Jones family were paid by Army Times. Army appropriated funds would have paid the travel of Jones, himself, had this been applied for by Jones. However, the cost would subsequently have been recovered from him.

11. Jones entered the Army stockade in Frankfurt 12 March 1968. On 13 March he allegedly charged at an armed guard apparently hoping the guard would shoot him. On 16 March 1968 he slashed his wrists after being moved to the Nuernberg Stockade. He has a previous history of suicide attempts or gestures.

12. Additional detailed information regarding Jones is contained in the record of his trial. This will be made available as previously agreed when convenient for the committee to receive it.

General, can you also give us a report on the extent of coordination you have with the various departments?

General BERG. Military departments?

Senator INOUE. With all the other agencies, CIA, FBI, Justice.

General HITTLE. And State.

Senator INOUE. It can be furnished for the record. We would like to study this matter.

EXTENT OF COOPERATION BETWEEN ALL DOD ELEMENTS AND STATE, JUSTICE,  
FBI AND CIA

OSD—OFFICE OF ASSISTANT SECRETARY OF DEFENSE (M&RA)

This office receives reports from the Military Departments concerning military absentees who have gone to foreign countries (or attempted to do so) for the purpose of making a protest against the United States or committing a disloyal act. Those reports are required as soon as possible after the information being reported comes to the attention of the Military Department concerned. This office prepares and maintains statistical and other records regarding those absentees and makes the information available to interested officials within the Office of the Secretary of Defense. In addition, this office provides information on this special category of absentees on a regular basis to the Office of the Assistant Secretary of Defense (Administration) for transmission to the Deputy Assistant Secretary for Security, Department of State. We also provide a list of such absentees on a regular basis direct to the Director, Passport Office, Department of State, for circularization to American Embassies. Coordination is conducted on an as required basis between representatives of this office and the State Department in connection with particular cases or issues regarding military absentees in foreign countries.

OFFICE OF ASSISTANT SECRETARY OF DEFENSE (ADMIN)

Pursuant to an exchange of correspondence with Mr. Abba Schwartz, at that time Administrator, Bureau of Security and Consular Affairs, this office has been furnishing to the Department of State since 1964 the names of military personnel who have defected to Communist countries or to Communist-dominated areas and the circumstances surrounding defections. These reports were furnished to the Bureau of Security and Consular Affairs in the Department of State until December 8, 1967. Since that date, these reports have been furnished to the Office of the Deputy Assistant Secretary of Security, Department of State.

The investigative agencies of the military departments furnish similar information of value to the Secret Service and to the Federal Bureau of Investigation. Also, the FBI maintains close liaison with Department of Defense investigative agencies and with this office through frequent personal visits of FBI liaison personnel.

OFFICE OF ASSISTANT SECRETARY OF DEFENSE (INTERNATIONAL SECURITY AFFAIRS)

Although this office does not initiate policy actions in this matter, we coordinate closely and continuously with the Department of State on the major policy issues which do arise insofar as they impinge on US relations with specific countries. This close, normal coordination is also maintained with the Joint Staff and the Services.

This office however, does not play a role in routine surveillance, monitoring, or administrative handling of specific cases of military absentees. These matters, of course, are the responsibility of the Services and the Unified Commanders.

No direct coordination between this office and the Department of Justice has been established, and there have been no direct contacts with the FBI regarding military absentees.

#### ARMY

Department of the Army receives copies of incoming and outgoing State cables regarding deserters. These are likewise received by the oversea Headquarters concerned with the reports. Almost all coordination or liaison with State or Justice Departments (except for coordination between Assistant Chief of Staff for Intelligence and FBI) is carried on through OSD. Army has coordinated directly with State on individual name cases or in response to direct requests by State for information peculiar to the Army. There is a constant working relationship with the FBI on apprehension of deserters. The FBI maintains fingerprint files of all Army personnel which occasionally assists in identifying absentees. Each DD Form 553, Absentee Wanted by the Armed Forces, is distributed to the FBI. The FBI makes a large proportion of the apprehensions requested in this manner and, otherwise, appropriately responds with information and assistance in locating and apprehending absentees. ACSI coordinates constantly and directly with both the FBI and CIA on desertion as well as other matters. There is a mutual exchange of reports and information, formally and informally.

#### NAVY

1. Liaison with other governmental agencies by the Navy in matters relating to investigations and counterintelligence is the function of the Naval Investigative Service.

2. The Naval Investigative Service maintains continuous liaison with the Federal Bureau of Investigation (FBI) on counterintelligence and investigative matters of mutual interest, including Navy and Marine Corps personnel who have absented themselves in foreign countries. A liaison representative of the FBI visits Naval Investigative Service Headquarters three or four days a week. In addition there are frequent contacts with FBI personnel on a case-by-case basis. Information concerning Navy and Marine Corps personnel who have absented themselves in foreign countries is exchanged with the FBI, as is information concerning personnel on unauthorized absence in the United States about whom there is reason to believe they intend to travel to a foreign country.

3. Liaison with the Department of Justice is maintained by the Naval Investigative Service through the FBI.

4. Liaison between the Naval Investigative Service and the Central Intelligence Agency (CIA) is also close and continuous. In addition to frequent visits to Naval Investigative Service Headquarters by a CIA liaison officer, representatives of the two agencies meet often on matters of mutual concern. The Naval Investigative Service and CIA exchange information concerning personnel who have absented themselves in foreign countries.

5. Liaison with the Department of State is less frequent than with FBI and CIA, and occurs on a case-by-case basis. The Navy depends upon State to furnish information coming to its attention about personnel who have, without authority, absented themselves in foreign countries. The Naval Investigative Service has also been responsive to requests by State regarding those personnel. The Department of State places on its "passport watch list" the names of USN and USMC personnel who have absented themselves in foreign countries and personnel about whom there is information indicating a possible intention to do so.

#### MARINE CORPS

The Marine Corps and other elements of the Executive Branch of the Government cooperate closely in matters relating to deserters and absentees. Each command publishes notices concerning absentees when they have been gone over 30 days. These notices are sent to the FBI as well as to local law enforcement agencies in areas where the absentee is believed to have gone. Additionally, as a followup, notices are also published on return of deserters. Should a local law enforcement agency apprehend an absentee, the FBI is routinely notified and passes the information to the Marine Corps. FBI personnel who are directly involved in the apprehension of an absentee could be material witnesses in a subsequent trial. In such cases, they are normally made available to testify at the

courts-martial. Additionally, FBI personnel work closely with military law enforcement personnel at many Marine Corps installations. Direct liaison between the military and FBI agents working on criminal cases is the normal relationship. The Marine Corps and Naval Investigation Service also provide data on Marine absentees who are believed to be in a foreign country to ASD (M&RA) for subsequent transmission to the Department of State.

#### AIR FORCE

In regard to the extent of liaison and cooperation that is maintained with other DOD agencies, State Department, Justice Department, the FBI and the CIA, the following is effected by the Air Force:

##### *Personnel*

1. *Immigration and Naturalization Service.* When information is received that an Air Force deserter is known or suspected to be residing in a foreign country, the Immigration and Naturalization Service is so advised and requested to detain him should he attempt to reenter the United States. Additionally, in cases where the citizenship status of an individual might be in question—alien, dual citizen, naturalized citizen—the Immigration and Naturalization Service is requested to verify current status.

2. *Federal Bureau of Investigation.* Bureau assistance for purposes of apprehension is requested in each case of desertion. Upon request they also provide identification services (fingerprint check, etc.) where positive identification of an individual may be questionable.

3. Fine working relationships exist and the services of each agency are considered outstanding.

##### *Office of Special Investigation*

1. Within the Department of the Air Force, OSI maintains liaison with other governmental agencies for counterintelligence and investigative purposes. Liaison with the Department of Justice is accomplished through the FBI. To date, no liaison with that Department concerning Air Force absentees in foreign countries has been necessary. Liaison with the FBI is maintained through an FBI liaison agent. Liaison with the Department of State and CIA is accomplished by a designated OSI liaison officer.

2. With regard to the specific problem of unauthorized absenteeism in foreign countries, the FBI, CIA, and State Department are furnished information when it becomes known to OSI that an Air Force member is absent without leave in a foreign country (such as Sweden) other than a country in which U.S. military forces are maintained. In all such instances, each of those agencies is requested to furnish OSI any information pertinent to Air Force interests which may be contained in its files. Each of these three agencies is also requested to furnish additional information which may be subsequently received.

3. Liaison with the FBI, CIA, and State Department, concerning unauthorized absenteeism in foreign countries, has been effective and information has been exchanged on a timely basis.

General BERG. In that connection this is handled—the intelligence aspect of it is handled by each of the intelligence sections of the individual military departments direct with each of those other agencies. It does not come through us. Whether or not it goes through the CIA or the DIA, I am not aware.

Major KENNEDY. No. We have daily liaison with the Federal Bureau of Investigation which is outstanding, and it is a free exchange of information. We furnish them all information on all of the deserters. We furnish the CIA all information on all of the deserters.

Senator INOUE. You have just said your relationship with the FBI is outstanding.

Major KENNEDY. Yes, sir.

Senator INOUE. How is your relationship with the CIA?

Major KENNEDY. Outstanding, sir.

Senator INOUE. With the State Department?

Major KENNEDY. We do very little liaison with the State Department, only on a case-by-case basis. The Assistant Chief of Staff for

Intelligence, Department of the Army, is charged with liaison with the Federal Bureau of Investigation and both the FBI and CIA have a liaison officer to our office. We have no such thing with the State Department. Therefore, it is primarily on an individual case basis, although, as Mr. Smith indicated, we do receive copies of all of their traffic on the deserters. We have received copies of their reports and studies that they have made, organizations and things like this. By the same token, we have furnished them with information.

Senator INOUE. Senator Tower?

Senator TOWER. I want to try to get a more specific answer to your question, Mr. Chairman.

That is, to the extent you do have liaison and relationship with the State Department, how would you characterize them?

Major KENNEDY. Excellent, sir.

Senator INOUE. Senator McIntyre.

Senator McINTYRE. [Colloquy deleted.]

Senator INOUE. Can you now enlighten us on individuals or organizations here and abroad that are presently either enticing, inducing, or encouraging our men in uniform to absent themselves from military jurisdiction? Second, how are these organizations or individuals financed? Third, how extensive are these operations? And, fourth, how successful have they been?

Major KENNEDY. Yes, sir.

Senator INOUE. If you are not able to answer now, you can furnish it in writing.

Major KENNEDY. I think I can give it to you in general terms. And we have furnished the committee, sir, with some background information in this area. But just some specifics for the purpose here.

At the present time there are 23 organizations located in seven different countries that have definitely been linked with deserter inducement programs. Now these differ with organizations which are some 50 or 60 others, in other countries offering aid, whether it be material aid, physical aid, legal aid, but not actually attempting inducements.

Now these vary. As far as I remember, there is only one in the United States, and that is the War Resisters League.

Senator INOUE. What about the Bond?

Major KENNEDY. This is not an organization, sir. It is a newspaper. A fact sheet was prepared concerning the Bond last December, I believe it was, and given to the Office of Legislative Liaison. We received a tremendous number of congressional inquiries, and the fact sheet was prepared so that we would not have to rewrite a letter each time. Legislative Liaison sent one to Senator Russell on April 16 and it was recently brought up to date.

The background of Bond is that it is a newspaper that was started in 1967 in Berkeley, Calif., by a man by the name of William Callison. Senator INOUE. What is his background?

Major KENNEDY. [Deleted.]

He was the editor of the Bond at the time it started. A young former soldier who was just given an undesirable discharge from the U.S. Army at Fort Sill, Okla., by the name of Andrew Stapp is not the editor of the Bond; although there is an indication that he does very little work for the Bond. His name is being used because of the notoriety involved with his name.

It is an antimilitary, antiwar but pro serviceman type newspaper, and it has articles supposedly written by soldiers, either in Vietnam or in the United States, condemning the military, the military system, the officer caste system, with proposals that the enlisted personnel vote for their own officers. They have regular rules, regulations, a union, so to speak.

Senator INOUE. That is ridiculous.

Major KENNEDY. Some of these things are really fantastic, sir. Actually some military subscribe or send their names to the Bond just to get the newspaper for the laughs. Some of the articles, some of the letters, are completely fantastic.

Senator INOUE. Is this an underground paper or is it legitimately published?

Major KENNEDY. It is legitimately published.

Senator TOWER. In Berkeley nothing has to go underground.

General HITTLE. How about its permit to go through the mails?

Major KENNEDY. This is a question that has come up, and I [deleted]. The language they use in it is something—I do not know if you are familiar with something like the Berkeley Barb or the Washington Free Press locally here. They are horrible things.

Senator TOWER. Sort of a Haight-Ashbury type of thing.

Major KENNEDY. Yes, sir. The Judge Advocate General, Department of the Army, expressed concern over the Bond and Callison's activities and the effect this might have on the military and prepared a memo to the Assistant Chief of Staff for Intelligence, which we forward to the Federal Bureau of Investigation and suggested that they refer it further to the Justice Department to check into Callison's activities and the effect of the Bond.

Senator INOUE. Has this organization been successful in inducing—

Major KENNEDY. No, sir. We have never found an organization that has been successful in actual inducement.

Senator INOUE. None of those you have mentioned?

Major KENNEDY. None, sir. Now these have all offered tremendous amounts of aid, but as far as inducing a man right from the start, we have nothing to indicate such.

Senator INOUE. I gather from reading the press accounts on the four men who left the Navy and had a great time in Moscow, that these men had received guidance—

Major KENNEDY. Aid.

Senator INOUE (continuing). Counsel and inducement from certain organizations.

Major KENNEDY. Yes, sir, the Beheiren organization in Tokyo.

General BERG. Would you like to hear from the naval intelligence representative?

Mr. SCHAEFER. Yes, sir; they received a good deal of assistance from Beheiren, but we have no information that they were induced by the organization to desert at that time.

Senator TOWER. But it is possible they could have been induced.

Mr. SCHAEFER. Yes, sir. We just do not have the information.

Senator INOUE. I cannot see four young men roaming the streets of Yokohama finally deciding, "Let's leave and let's catch the next cab." Somebody must have contacted them.

Mr. SCHAEFER. In trying to trace what happened this is still a matter of question. We just have not pinned that down.

General HITTLE. How well have you been able to reconstruct the sequence of events with respect to these three?

Mr. SCHAEFER. [Deleted.]

Senator INOUE. As far as you know, Major, no organization in the world has been able to successfully induce any one of our men to desert?

Major KENNEDY. To the best of our knowledge; no, sir.

[Colloquy Deleted.]

Senator INOUE. You were telling us about the War Resistors League.

Major KENNEDY. I mentioned this is the only one that we have indicated to be active in the United States, sir.

Senator INOUE. Is this organization on the Attorney General's list?

Major KENNEDY. I could not say, sir.

Senator INOUE. Who finances this organization, to the best of your knowledge?

Major KENNEDY. [Deleted.]

Senator INOUE. What sort of people make up the top echelon of this organization?

Major KENNEDY. [Deleted.]

The organizations listed at the end of the leaflet including the War Resistors League were characterized as organizations which could be contacted for advice and help in the event a serviceman wished to discuss or take any of the suggested actions.

Senator INOUE. I am surprised you are [deleted].

Major KENNEDY. Sir, the information I have here is only information received through Department of the Army channels. [deleted].

Senator TOWER. Is this the same outfit that held the mock war crime trials?

Major KENNEDY. No, sir.

Senator TOWER. Old Bertrand Russell's outfit.

Major KENNEDY. Yes, sir. There were a number of these organizations represented, but there was one sponsoring the whole thing, and I do not believe that was it, sir.

General HITTLE. That is one question I would like to ask. You responded that there is no indication that any of these organizations originally induced anybody to desert. But the same answer would not apply if we say "facilitated" their desertion, would it?

Major KENNEDY. No, sir. We know that there are a number; for example, the four sailors.

General HITTLE. The chairman may want to get an account of these examples.

Senator TOWER. The existence of such an organization alone is an encouragement to people to desert.

Major KENNEDY. Yes, sir.

Senator TOWER. Because they know they have somebody to help them if they choose to desert.

Major KENNEDY. Yes, sir.

Senator McINTYRE. They certainly must have aided, abetted and contributed to the desertion.

Senator INOUE. What sort of counteraction program—if that is the right word—do you have relative to these organizations?

Major KENNEDY. Primarily intelligence gathering, sir, and informing the commanders and the military itself of the existence of the

organizations. I believe this was gone into by Secretary Fitt yesterday, the programs that have been set up, to inform the military personnel of the existence of these organizations, the difficulties encountered in desertion. As far as counteracting them, sir—

Senator INOUE. Do we advise our personnel of these organizations?

Major KENNEDY. Yes, sir.

Senator INOUE. I do not mean just the generals, but the privates, the enlisted men.

Major KENNEDY. Yes, sir. We tell them that there are organizations who are offering aid.

General BERG. Our object is to alert them.

Major KENNEDY. Not to point them toward such organizations.

Senator INOUE. I would think you would be helping them.

Major KENNEDY. No, sir; as far as specifics we do not give them details as to who is running them but the existence of organizations and individuals, and of course they are encouraged to report any approach that they might have from any of these individuals or organizations.

Senator INOUE. I have one more question.

Yesterday, I made an observation to the effect that if I were thinking of staying out of the military service, it would seem to me much better to volunteer, get a European assignment, then get into one of these countries as a deserter, stay away for a year, then voluntarily return, receive a bad conduct discharge, and 4 months' hard labor, because it would appear that if I burned my draft card or somehow resisted the draft, I could be in prison more than a year, according to what I have read.

If that is the case, if my observation is correct, do you not think that this would serve as an inducement for those who may have in mind avoidance of military service? We are now trying draft dodgers, for example, and I notice one young fellow who burned his card—got 3 years, I think. He is appealing his case. I have not seen any 4 months at hard labor. Everything has been over a year. And now I see the courts martial coming out. Ray Jones, I believe, got 4 months at hard labor, a bad conduct discharge, and that is it. If a man is convicted of a felony, and he gets 3 years, he loses all of his civil rights. If a man gets a bad conduct discharge, he does not lose all of them. He would not get the GI bill of rights, nor would the other man with 3 years. If you balance it that way, I would think that some young fellow would say, "Well, let's volunteer."

Senator TOWER. A bad conduct discharge and 4 months seems to me to be a pretty mild punishment.

Senator INOUE. That is what Ray Jones found.

Senator McINTYRE. That is why we are trying to get the record to see what mitigating factors there may have been.

Senator INOUE. He was away for 15 months. What do you think about that?

Colonel HANNIGAN. Mr. Chairman, in answer to your question if a man would do that, he would be faced with—No. 1, he could get 5 years and a DD depending upon the type of desertion that he would be charged with. He would be tried in all probability by a general court, so that the maximum punishment he could get would range from the DD and 5 years down to a DD and 1 year or 2 years, depending upon the type of charge you had against him.

Senator INOUE. I am well aware of that, but in looking over the report on the convictions there is not a single 5-year. I think the most severe one was 2 years. Of all the others, some were suspended, the most recent one is 4 months. Therefore, at least one member of this subcommittee, and that is I, cannot help but feel that you people are making certain deals with them, because if I were faced with the possibility of a dishonorable discharge and 5 years, I would stay in Sweden. Why should I take a chance? But if I knew that I am going to get 6 or 4 months and a bad conduct discharge, then I would come back. You see, the facts do not show that the threat of 5 years is actually carried out.

Colonel HANNIGAN. This is the maximum punishment.

Senator INOUE. Yes. Can you name me one individual in the last 2 years who has received a sentence DD plus 5 years?

Colonel HANNIGAN. Sir, I would have to go back and check. I cannot answer that off the top of my head.

Commander WILGUS. Yes, sir; the Navy had one. This one happened and the reason he did not report it, he went prior to our cutoff date which is July 1, 1966, but we had a man that defected to Red China from Hong Kong, a fellow named Armstrong. He was only gone—well, he was in Red China about 10 days, and he came back, was turned over to the U.S. authorities in Hong Kong much to or over his objections, and he did get a DD and 5 years.

Senator INOUE. This was an unusual case, was it not, because he went to Red China?

Commander WILGUS. Perhaps it was.

(Discussion off the record.)

Commander WILGUS. [Deleted].

Also this organization that was mentioned in Japan, Beheiren, may have been effective in inducing a Navy man to go unauthorized absence. This gentleman was reported. His name is Ormsby, there are two of them. The fellow Ormsby that was approached and had four meetings in fact with this organization did go unauthorized absence. However, when he was apprehended 4 days later and brought back and among other things saw a psychiatrist, he found he was incompetent to stand trial, so whether that is a success I am not sure, sir.

Senator INOUE. Mr. Hittle?

General HITTLE. With reference to this individual whose name is Stapp who got an undesirable discharge and who became the editor of The Bond, what was he discharged for? What was his offense? If you do not have it now, you can furnish it.

Colonel PARKER. I am Colonel Parker. Private Andrew Stapp is a case that received quite a good deal of publicity. He was, I believe, at Fort Sill. He was antiwar. They tried him by lower court. You may remember some of the newspaper accounts of it.

If he has been discharged, I know that the procedures were underway, it was as a national security risk under Army Regulation 604-10. The type of discharge for that kind of separation is an undesirable discharge. I think his case is not final.

Senator INOUE. This is most interesting, because in yesterday's testimony I recall your department stating that you had no desire to reward these absentees. Therefore instead of giving them any discharge, you were taking them back into the service, and in many cases assigning them to Vietnam.

Colonel PARKER. That is true.

Senator INOUYE. Stapp was rewarded.

Colonel PARKER. First, sir, Stapp did not come into the matters which we reported. He was not an absentee.

Senator INOUYE. I realize that.

Colonel PARKER. Secondly, there is a general program that you do not take security risks into the service.

Senator INOUYE. So these absentees are not considered security risks?

Colonel PARKER. They were not initially, sir.

Senator INOUYE. May I ask are these absentees considered non-security risks now?

General BERG. The 282 that were reported?

Senator INOUYE. The ones that according to your report have been sent back into active duty? I think most of them have. They have had 2 months hard labor, a reduction in grade, loss of pay for 3 months and sent to Vietnam or something like that.

General BERG. I think in a general sense with respect to what Colonel Parker is talking about, as in the case of Stapp, they are not considered security risks in the same category. Now you look at each individual to see whether or not you gave him the security clearance.

General HITTLE. But it would appear in the case of Stapp that although he was a security risk he got an undesirable discharge and was turned loose to become a public security risk.

General BERG. What we are faced with here, General Hittle and Mr. Chairman, is the judgment problem that we are up against all the time. You bring somebody into the service and hope that he is fully productive. Some of them, for reasons of immaturity or inexperience, cannot measure up. If we can in any way rehabilitate them so that they do become productive citizens we take that as the challenge. But after you have exhausted every possible remedy that you have to make this man productive, and he has already cost you a lot of lost time and everything else, you finally reach a point at which you say the only thing for us to do is cancel this guy out and give him an undesirable discharge. This really penalizes him a great deal.

Senator INOUYE. I have just one final question. This relates to punishment. Can you give this committee some idea as to what sort of punishment deserters or absentees received during World War II? I ask this because I cannot help but feel that during those days you people were pretty rough.

General BERG. Yes. We have that information, sir, and generally it will support exactly what you are saying. And for example, if you were to go back to 1942 and start laying it out during World War II and then Korea, you will see a gradual diminishing number of the people who were actually tried and convicted of desertion.

Senator INOUYE. If that is the case, could you furnish this committee the reasons for this reduction in punishment, or this leniency? Or is there any sort of official directive in effect saying, "Let's be kind to these men?"

General BERG. Mr. Chairman, may I respond by saying that we will furnish statistics, and at the very least annotate it with historical changes that have occurred during that period of time, such as the introduction of the Uniform Code of Military Justice, some legal decisions which have affected it.

(Information requested follows:)

No directives or instructions have been issued by the Office of the Secretary of Defense, the Joint Chiefs of Staff, or any of the Military Departments providing for leniency or any kind of "special treatment" to be given to absentees or any other kind of offenders. As Secretary Fitt stated in his testimony before this Special Subcommittee on May 21, 1968 "So far as the Department of Defense is concerned, there is not and will not be any 'special' policy regarding the disciplinary treatment or disposition of persons who return to military control from unauthorized absences in foreign countries. Under the Uniform Code of Military Justice and relevant decisions of the Court of Military Appeals, any such 'special' policy would unquestionably be in violation of Article 37 of the Code, which makes unlawful any attempt to coerce or by unauthorized means to influence the outcome of a court-martial." Mr. Fitt pointed out further that upon the return of absentees of military control "it is our policy, in keeping with the statutory requirements of the Uniform Code of Military Justice and the decisions of the United States Court of Military Appeals, that the action to be taken in each instance will be determined on an individual basis in light of all the facts and circumstances surrounding the absence, including extenuating, mitigating, and aggravating factors."

We are not prepared to offer a definitive explanation as to the reasons for any given trends in punishments imposed since the World War II era. If, in fact, there has been a trend toward lighter punishment for military offenders during this period, it may be attributable, at least in part, to a similar trend toward offenders which has been noted in our society as a whole. Other significant factors which have had some unmeasurable impact in this general subject area include the fact that the Presidential limitations on punishment for certain offenses (including Absence without Authority and Desertion) were suspended during World War II and Korea, and the fact that the Uniform Code of Military Justice was enacted by Congress in 1950 imposing for the first time a highly sophisticated system of criminal jurisprudence upon the military services—including strong statutory prohibitions against command influence. With respect to the latter point, Article 37 of the Uniform Code of Military Justice among other things precludes military commanders (who may be concerned that sentences are too light) from expressing their dissatisfaction to the court-members or otherwise attempting to influence courts to impose harsher punishment. These strong prohibitions are an outgrowth of the many allegations made during and after World War II to the effect that military commanders exercised improper control over the outcome of courts-martial, including sentences.

As a result of feelings expressed in connection with World War II sentences the Department of the Army established special clemency boards to review the cases of persons sentenced by courts-martial during that period. Following is pertinent information, including relevant statistics, concerning the purpose and activities of those clemency boards.

(Additional information on clemency boards is maintained in the committee files.)

Senator INOUE. We had a young fellow in my platoon who went AWOL, for a reason which I thought was meritorious. He wanted to get overseas, and so he left our company to catch up with the group of men who were destined to go overseas, and he was away 3 days. They gave him 6 months' hard labor for being AWOL 3 days. He did not get a bad conduct discharge. He got an honorable discharge later on because he went overseas and got about four purple hearts and all that, but he got 6 months. That is why I am beginning to wonder if you people have received directives, and if they are directives from the higher command as to the desirability for leniency, the committee would like to receive copies.

General HITTLE. We have asked for all instructions.

Colonel PARKER. Mr. Chairman, may I just answer that one point about directives?

Senator INOUE. Yes, sir.

Colonel PARKER. There are no such directives.

Colonel HANNIGAN. May I just add one thing?

Senator INOUE. Please do, sir.

Colonel HANNIGAN. From 1917 on through to the present time the table of maximum punishment for AWOL and desertion has increased. However, you asked for a rationale between World War II and the present time. I think one of the answers to your question is that the desertion article in the code itself prescribes that the court can punish a man as it directs, but there is another article in the code which permits the President to determine what the maximum punishment is for the offense of desertion.

Now, the manual for court-martial requires a "declaration of war" as opposed to "time of war," so there has to be an official declaration of war in order to do away with the table of maximum punishments and resort to more severe punishment. Therefore, in World War II, because there was a "declaration of war," there were no limitations on punishment for AWOL and desertion.

Senator INOUE. Are you serious in this discussion? I realize there is no declaration of war, but what would be our involvement in Vietnam?

Colonel HANNIGAN. No, sir; I did not intend to get into that aspect of it.

Senator INOUE. I realize the technical difference.

Colonel HANNIGAN. They do make a distinction in the manual and in the code between time of war and declaration of war, and the Court of Military Appeals has described that declaration of war means what it says.

Senator INOUE. Under the present legal situation where there is no declaration of war, you are still telling us that the general court-martial may punish a man with 5 years at hard labor and dishonorable discharge?

Colonel HANNIGAN. Right.

Senator INOUE. But it is not being done in most cases.

Colonel HANNIGAN. The statistics will prove the courts are not giving that type of a sentence.

General BERG. I think what he is really saying, Mr. Chairman, is the fact that in the time period that you referred to, those limits were removed by the existence of war.

Senator INOUE. You mean the 5 years.

General BERG. Yes, sir.

Senator INOUE. They could go beyond 5 years.

General BERG. That is right.

Colonel HANNIGAN. Right.

General BERG. So that 6 months in that context, with no limitations—

Senator INOUE. I realize that but what I cannot understand is even if you have a ceiling of 5 years why can they not go up to 5 years? For AWOL, instead of giving him 2 weeks at hard labor and suspending it with 1 month's pay reduction, et cetera—and this is what the report shows. I have been told that if punishment is properly meted out, it may serve as a deterrent, but in this kind of case I see very little deterrence, personally.

Colonel PARKER. Mr. Chairman, may I make just one comment on that?

Senator INOUE. Please do.

Colonel PARKER. Deterrence is one of the objectives. The other is the reformation of the individual.

Senator INOUE. I understand that.

Colonel PARKER. And I think Mr. Fitt yesterday emphasized that particularly in time of a shooting war we are more interested, I believe, in getting this man back into productive service as long as the sentence he gets serves as a deterrent. Our measurement of whether it serves as a deterrent is a pretty rough sort of a thing, I suppose. You have to look to see whether we are doing worse in terms of people going absent now than in previous times when we perhaps gave bigger sentences?

Senator INOUE. Yesterday, I requested that the Department furnish this committee information on the number of men who have absented themselves after receiving orders to go to Vietnam, the number of those who have absented themselves while in Vietnam, and the number of those who absented themselves after serving in Vietnam.

I would like to add one more request to that. If you do have deserters who have absented themselves while serving in Vietnam, I want to know what sort of punishment they received.

General BERG. Yes, sir.

#### ARMY—VIETNAM ERA

NUMBER OF PERSONS TRIED AND CONVICTED FOR AWOL AND DESERTION IN VIETNAM (FISCAL YEARS 1965 THROUGH APRIL 1968)

	Tried	Convicted	Convicted of AWOL
<b>Desertion:</b>			
Fiscal year 1965.....	None	-----	1
Fiscal year 1966.....	14	-----	5
Fiscal year 1967.....	14	9	5
July 1967 through April 1968.....	16	5	11
<b>AWOL:</b>			
Fiscal year 1965.....	None	-----	-----
Fiscal year 1966.....	4	4	-----
Fiscal year 1967.....	35	34	-----
July 1967 through April 1968.....	43	41	-----



## AIR FORCE

*Number of men absent without authority in Vietnam FY 1967 and FY 1968*

Fiscal year 1967----- 0  
 Fiscal year 1968 (9 months)----- 5

Note: Of the five persons reported as having been dropped from the rolls in Vietnam during the first nine months of fiscal year 1968, records of the trial of only two are on file at Hq USAF. They are:

a. Blair, Roy, A2C, [XXXXXXXXXX] Case No. ACM 22504, SCMO No. 15, Hq 7 AF, 1 Dec 67.

Tried by Special Court-Martial on following charges:

Ch I Art 86 Spec AWOL 21 Aug 67 to 4 Oct 67.

Ch II Art 92 Spec Violate MACV general regulation by possession of a privately owned pistol.

Ch III Art 134 Spec 1 Wrongfully discharge a firearm, endangering human life: Spec 2 Wrongfully discharge a firearm.

Plea: To Ch I & II and Specs, G; to Ch III and Specs, NG.

Findings: To all Ch and Specs, G.

Sentence as adjudged and approved and now final: BCD, CHL for 3 months; Forfeiture of \$86 per month for 3 months; reduction to AB.

The Secretary of the Air Force has ordered substitution of a General Discharge for the Bad Conduct Discharge under Article 74(b) (based on considerations of his past good service).

b. Johnson, Bradley B., Sgt (E-4), Case No. ACM 22499, SCMO 38, Hq 21 AF, 24 Nov 67.

Tried by Special Court-Martial on following charge:

Ch Art 86, Spec AWOL 1 Jul 67 to 21 Sep 67.

Plea: Guilty.

Findings: Guilty.

Sentence as adjudged and approved and now final: BCD, CHL for 3 months.

## NAVY

Punishments Imposed Upon Persons Absent Without Authority  
 Over 30 Days in Vietnam

Last AWOL 30 Days		Last AWOL 30 Days		Last AWOL 30 Days		Last AWOL 30 Days	
From- to	Disposition	From- to	Disposition	From- to	Disposition	From- to	Disposition
9-27-67	SPCM	8-3-66	SPCM	8-26-66	Not Tried	10-10-66	Excused As
11-8-67	6 Mos CHL	9-28-66	2 Mos CHL	4-4-68	Yet	12-18-66	Unavoidable
-----	\$50 X 6		\$59 X 2				(Phy. Disab.
4 SPCM	ADSEP Under		E-1	1-26-68	NJP		D/C)
7 NJP		12-31-67	SPCM	2-14-68	\$118 X 1	7-27-66	SPCM
		2-3-68	4 Mos CHL	6-12-66	SPCM	12-18-66	3 Mos CHL
11-3-67	SPCM		(Susp)	8-3-66	"Not Guilty"		\$50 X 3
1-3-68	3 Mos CHL		\$76 X 4	8-31-66			E-3
	\$68 X 3		E-2	6-25-66	SPCM		ADSEP 3-57
	E-1	1-3-68	CM	1-11-67	6 Mos CHL	3-17-67	SPCM
7-1-67	SPCM	2-1-68			\$60 X 6	5-19-67	3 Mos CHL
8-5-67	3 Mos CHL	8-8-67	SPCM		E-1		\$90 X 3
	\$50 X 3	10-13-67	30 days HL		BCD		E-1
	E-1		w/o C	9-17-66	No D/A		BCD
	BCD		(Susp 6	11-16-66	Admin Sep		
8-17-67	SPCM		mos)		(Unsuit)		
2-11-68	3 Mos CHL	10-10-67	NJP				
	\$109 X 3	11-13-67	E-3				
	E-3						
12-21-66	SPCM	11-4-67	SPCM				
1-24-67	2 Mos CHL	1-11-68	60 days Ret				
	\$60 X 2		\$150 X 2				

## DISCIPLINARY STATISTICS ON DESERTER/ABSENTEE IN VIETNAM, FISCAL YEARS 1967 AND 1968

## FISCAL YEAR 1967

	Sentences	
	Discharge	Average confinement
Desertion convictions (art. 85 UCMJ): 2		
Adjudged .....	2DD	6 years.
Appd by CA .....	2DD	1 year.
Art. 86 convictions (UA excess 30 days): Complete records not readily available as about 1/2 have been returned to records centers.		

## FISCAL YEAR 1968

Desertion convictions (art. 85 UCMJ): 9		
Adjudged .....	7DD 2BCD	3.4 years.
Appd by CA .....	5DD 2BCD	2.5 years.
Art. 86 convictions (UA excess of 30 days): 53		
Adjudged .....	1DD 13BCD	5.3 months.
Appd by CA .....	9BCD	2.8 months.

Senator INOUE. Any further questions?

General HITTLE. I have just a couple for the record, Mr. Chairman.

Senator INOUE. Proceed.

General HITTLE. In order to proceed with the record and the subject matter of these organizations inducing or facilitating individuals to desert, would you, without getting into the details, state for the record now the number of such organizations in the United States and overseas that you are aware of that are engaged in this type of activity?

Major KENNEDY. Yes, sir. Now remember, sir, these are U.S. Army figures only that I have available. To date we have 23 organizations located in seven countries that have definitely been linked with deserter inducement programs. In addition, there are more than 50 individuals and groups throughout the world that have publicly stated that they are willing to provide aid of a physical, legal, or advisory nature to U.S. deserters who enter their countries or to U.S. servicemen in their countries who are contemplating desertion from the Armed Forces.

General HITTLE. Do you have any information on what organization is supporting the deserters now in Sweden?

Major KENNEDY. Yes, sir, we have nine organizations and/or individuals that we have received information concerning, that are furnishing some sort of physical, legal, or advisory support to these individuals.

Senator INOUE. May I cut in there? In other words, the life is not too bad.

Major KENNEDY. We do not really know, sir.

Senator INOUE. Because at one point in the testimony you said that military personnel presently are being advised that life is rough. Now if you have nine organizations and/or individuals assisting our absentees there, I presume that they are fed, clothed, housed. The pictures I have seen of them seem to indicate that they are leading a pretty high life, a nice crop of hair with peace beads.

General BERG. May I ask Mr. Stahl of the Air Force to comment?

Mr. STAHL. From the Air Force absentee who recently returned we learned that as soon as he got his residence permit he was allowed up to \$50 a month by the Swedish Government for subsistence.

Senator INOUE. By the Government?

Mr. STAHL. By the Government, it is sort of a relief program, if you will, and he was given another \$16 a week for his food and pocket money.

The only other aid that he received was free legal advice from a man by the name of Franck, who is a very prominent leftwinger in Sweden. He is a native of Sweden. And some assistance and guidance was received from an American by the name of Vail who is legitimately in Sweden, who is nonservice connected and who tries to pull these American absentees together to keep them close to one another rather than just spreading out all over the country.

Our boy did go to a school in the northern part of Sweden to study the Swedish language, and for the brief month that he was there the question as to who was going to pay for the school arose. He did not know. The principal or the head of the school said, "Well, they would bill the American Defectors Committee," which is what these Americans call themselves over there. If funds were not forthcoming, then he would go to Mr. Franck to see where they might come from. But that is the extent of the financial aid that he received.

Senator INOUE. He got about \$120 a month, from what you have just told us, \$16 a week plus \$50 a month.

Mr. STAHL. Yes.

Senator INOUE. In Sweden is that good or bad?

Mr. STAHL. I do not know enough about the standard of living to answer that question, Mr. Chairman. However, he did live in a roominghouse, a private room in a roominghouse. From his description of it, it did not seem to be very plush, but on the other hand it was adequate.

Senator INOUE. Unless these pictures are propaganda pictures that we are receiving in the United States, the pictures I have seen of our absentees show smiling men who seem healthy with beautiful girl friends, living in nice apartments, well clothed.

Mr. STAHL. Some may have been more fortunate than others in finding more commodious apartments with pretty young girls, sir, we do not know.

Senator INOUE. I have no further questions.

Major KENNEDY. Some few are working, too, sir.

General HITTLE. In connection with their activities overseas, I ran across this interview and feature story by the Army Times in connection with Roy Jones' wife and the activities of Jones while he was in Sweden. It says he "found work as a jazz ballet instructor." So apparently there is work available to these individuals.

There is one question here that I want to firm up with respect to the record, and I go back to the end of our testimony yesterday. It pertains to the records that are being kept within the Department of Defense and we understand by the military departments. Each of these military departments, please correct me if I am wrong, is keeping a running cumulative account of its absentees who are overseas and engaged in anti-U.S. activities, and furthermore that information is furnished to the appropriate agency, if these individuals are returned to the United States or returned to the U.S. jurisdiction, for trial. Is that a fair and correct statement?

Mr. SCHAEFER. Yes, sir, the Navy does.

General HITTLE. For the Air Force?

Mr. STAHL. The information is furnished to the appropriate commander exercising court-martial jurisdiction.

General HITTLE. For the Army?

Major KENNEDY. I would say made available to the commander, sir.

General HITTLE. Does the Marine Corps have the same procedure?

Colonel SEVIER. Yes, sir.

General HITTLE. I have one more question. Is there any thought or any consideration, or any position, within the Department of Defense at this time with respect to granting any form of amnesty to these overseas deserters upon the conclusion, if there is a conclusion, to the Vietnam conflict?

General BERG. I would say almost categorically the answer to that is "No".

General HITTLE. Mr. Chairman, I think it would be appropriate at this time to state that the information furnished, other than the testimony, will be made a part of the permanent record of the committee.

Senator INOUE. Oh, yes. There being no objection, all information that you will be furnishing us or that other departments will be furnishing this committee will be made part of the record.

I have one final question. It was just brought to my attention that after the Korean conflict our defectors or deserters or turncoats were tried in a central area instead of being sent back to the individual outfits for appropriate trial and sentencing. Is this true?

Colonel PARKER. No, as far as the Army is concerned that is not an accurate statement. Various of those people were tried in different locations, some of them back in the United States, but in different places in the United States. There was no central repository or place for disposition of them.

Senator INOUE. Once again the subcommittee is grateful to all of you gentlemen for being most helpful. I can say for myself that I have learned a lot. I think most of us began this inquiry with certain preconceived ideas and thoughts. We are now coming through with different ideas. You have been most helpful.

This subcommittee will now recess. Thank you very much.

(Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene subject to the call of the Chair.)



